



Planning Session Agenda

November 5, 2020

9:00 AM

The Northern Water and Municipal Subdistrict Planning Session will be held via Zoom Meeting Webinar

Public access to the webinar will be in "listen only" mode. Members of the public wishing to submit comments on agenda items may do so by visiting our website at: www.northernwater.org or by phone message to 970-292-2517. Comments must be received by 8:00 a.m. November 5, 2020. Comments submitted by the deadline will be entered into the public record. Members of the public wishing to give oral comment directly to the Board should do so by making a reservation request on our website at least 12 hours in advance of the meeting. At this time, oral comments must be provided remotely using the Zoom video platform.

Please click the link below to join the webinar:

<https://northernwater.zoom.us/j/97607273033?pwd=VXI2MEo2VzRDNE1McDNMYmVESm1MQT09>

Please dial the number below for audio only access to the meeting:

877-369-0926 (Toll Free)

Webinar ID: 976 0727 3033

Password: 344511

1. Preliminary Items

- 1.A. Call to Order: Roll Call and Verification of Quorum
Presenter: Chairman Applegate
Action: None

- 1.B. Opportunity for Public Comment
Presenter: Chairman Applegate
Action: None

- 1.C. Agenda Modification
Presenter: Brad Wind
Action: None

- 1.D. Recommendation for Executive Session
Presenter: Brad Wind and Karen Rademacher
Action: As Needed

2. Discussion/Study Items

- 2.A. Update on Northern Water's Wildfire Response
Presenter: Jim Struble, Jerry Gibbens and Esther Vincent
Action: None
- 2.B. Update on Soldier Canyon Outlet Project
Presenter: Landon Shaw
Action: None
- 2.C. Update on Boulder Reservoir Maintenance Project
Presenter: Landon Shaw
Action: None
- 2.D. Summary Report of the November 5, 2020, Finance and Benefits Committee Meeting
Presenter: Committee Chairman Emslie
Action: None
- 2.E. Growing WaterSmart
Presenter: Frank Kinder
Action: None
- 2.F. Update on Proposed Modifications to the C-BT Tracking Rule
Presenter: Jim Hall
Action: None
- 2.G. Status Update for 18CW3216 - Protected Mitigation Releases for NISP
Presenter: Luke Shawcross and General Counsel, Trout Raley P.C.
Action: None
- 2.H. Northern Water's Purchase Card Program
Presenter: Kristyn Unrein
Action: None

- 2.I. Overview of the Forthcoming 73rd Regular Session of the State of Colorado General Assembly
Presenter: Julie McKenna, Government Affairs Consultant, Bradeberry - McKenna Public Affairs
Action: None
- 2.J. WOTUS and Gap Waters
Presenter: Sean Henry
Action: None
- 3. **Preview of Municipal Subdistrict Agenda Topics for November 12, 2020, Board Meeting**
 - 3.A. Windy Gap Firming Project - Allotment Contract
Presenter: Jeff Drager
Action: None
[WGFP Allotment Contract Template](#)
 - 3.B. Windy Gap Firming Project - Resolution MS-XXX-11-20 Authorizing Execution of Allotment Contracts for Capacity in the Windy Gap Firming Project with the Project Participants
Presenter: Jeff Drager
Action: None
[MS-XXX-11-20 WGFP Resolution Authorizing Execution of Allotment Contracts](#)
 - 3.C. Windy Gap Firming Project - Colorado Water Conservation Board Loan Contract
Presenter: Jonathan Hernandez
Action: None
[CWCB Loan Contract](#)
 - 3.D. Windy Gap Firming Project - Resolution MS-XXX-11-20 Regarding Subordinate CWCB Loan to Fund a Portion of the Costs of Windy Gap Firming Project
Presenter: Jonathan Hernandez
Action: None
[MS-XXXX-11-20 WGFP Resolution Authorizing CWCB Subordinate Loan](#)
 - 3.E. Deed of Dedication for a Conveyance of Property to Larimer County for Chimney Hollow Project Road Widening
Presenter: Jim Struble
Action: None
[Deed of Dedication](#)
[Deed of Dedication Exhibit A Property Description](#)
- 4. **Preview of Northern Water Agenda Topics for November 12, 2020, Board Meeting**

- 4.A. Amendment to Jacobs Engineering Group Agreement for Financial Planning Services
Presenter: Jonathan Hernandez
Action: None
[Jacobs Contract Summary](#)
[Jacobs Amendment 2 and Exhibits](#)
- 4.B. Consulting Services Agreement with Axton Realty for NISP Appraisal Services
Presenter: Kirsten Muncy
Action: None
[Axton Contract Summary](#)
[Axton Scope of Work](#)
- 4.C. Consulting Services Agreement with Bonnie Roerig for NISP Appraisal Services
Presenter: Kirsten Muncy
Action: None
[Roerig Contract Summary](#)
[Roerig Scope of Work](#)
- 4.D. Agreement with Kisters North America for Implementation of Phase III Data Management System
Presenter: Matt Gloe
Action: None
[Kisters Contract Summary](#)
[Kisters Statement of Work Phase III](#)
- 4.E. Continuing Services Contract - Davis Graham & Stubbs, LLP
Presenter: Brad Wind
Action: None
[DG&S Scope of Services - Revised Hourly Rates 2020-2021](#)
- 4.F. Conclusion of 2002 and 2012 Certificates of Participation Transactions
Presenter: General Counsel, Trout Raley P.C.
Action: None
[Draft Release of Indenture](#)
[Draft Termination Agreement](#)

5. Informational Items

- 5.A. Board of Directors Roundtable
Presenter: Chairman Applegate
Action: None

5.B. Future Events:

November 18 and 19, 2020, CWCB Board Meeting

December 10, 2020, Legal and Legislative Committee Meeting

Presenter: Brad Wind

Action: None

5.C. Other Matters

Presenter: Brad Wind

Action: None

6. Executive Session

Matters that fall within C.R.S. § 24-6-402 (4) (a) through (g) may be discussed¹

¹ The Executive Session listed above may be cancelled at the discretion of the Board of Directors at the commencement of, or during, this meeting.

**ALLOTMENT CONTRACT BETWEEN THE WINDY GAP FIRING PROJECT
WATER ACTIVITY ENTERPRISE, MUNICIPAL SUBDISTRICT, NORTHERN
COLORADO WATER CONSERVANCY DISTRICT, AND [*ACTUAL ALLOTTEE
NAME*], FOR CAPACITY IN THE WINDY GAP FIRING PROJECT**

This Allotment Contract (“Contract”) for an allotment of capacity in the hereinafter defined and described Windy Gap Firing Project is entered into this ____ day of _____, 2020, by and between the Windy Gap Firing Project Water Activity Enterprise (“WGFP Enterprise”) and [*Actual Allottee Name*] (“[Actual Allottee Name*]”), pursuant to C.R.S. § 37-45-131 and C.R.S. §§ 37-45.1-103(4), 106(4).

RECITALS

A. The WGFP Enterprise is a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District (the “Subdistrict”), and whose address is 220 Water Avenue, Berthoud, Colorado 80513. The WGFP Enterprise is a water activity enterprise that will exercise the authorities granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, for the purpose of the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project.

B. [Actual Allottee Name*] is a [add description of party (enterprise)*].

C. The Windy Gap Firing Project (“WGFP”) is described in general in the U.S. Bureau of Reclamation Record of Decision, together with supporting documents for the WGFP dated December 2011, as may be amended from time to time.

D. The WGFP has not, as of the date of this Contract, been financed, constructed, and completed. This Contract therefore includes provisions that address the WGFP before and after completion of construction and commencement of project operation. This Contract also includes provisions that apply only if and to the extent that [Actual Allottee Name*] satisfies all or a portion of its Capital C&E Funding Obligations through either Capital C&E Funding Cash Payments or participation in WGFP Financing.

- **PART I**, “Contract Definitions,” consists of **Section 1**, which includes definitions that apply to this entire Contract.
- **Part II**, “Provisions Applicable to All WGFP Allottees,” consists of Sections 2 through 6 and applies to [Actual Allottee Name*] regardless of its chosen means of satisfying its Capital C&E Funding Obligations, unless specifically provided otherwise. **Section 2** is an allotment by the WGFP Enterprise to [Actual Allottee Name*] of capacity in the WGFP. **Section 3** includes provisions that are applicable prior to WGFP Completion, as that term is defined herein. **Section 4** includes provisions that are relevant to the operation of the WGFP after WGFP Completion. **Section 5** includes other general terms and conditions, including terms on Default and forfeiture under this Contract. **Section 6** includes provisions relating to [Actual Allottee Name*]’s obligations to pay for the WGFP.

- **PART III**, “Provisions Applicable to Cash Allottees,” consists of **Section 7**, which includes provisions that apply to [Actual Allottee Name*] only to the extent that it satisfies all or a portion of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, and then only for the term of any payments for Capital C&E using proceeds from such Capital C&E Funding Cash Payments.
- **PART IV**, “Provisions Applicable to Loan Allottees,” consists of **Section 8**, which includes provisions that apply to [Actual Allottee Name*] only to the extent that it satisfies all or a portion of its Capital C&E Funding Obligations through participation in a WGFP Financing, and then only for the term of repayment of the WGFP Financing (including any refinancing of the same) in which [Actual Allottee Name*] participates. The terms of Section 8 are not in effect at such times as there is no outstanding WGFP Financing in which [Actual Allottee Name*] participates.

The effective date and terms of each Section of this Contract are provided in Section 5.1.

AGREEMENT

THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

PART I – CONTRACT DEFINITIONS

1. **Definitions.** The following definitions shall apply to this Contract unless expressly modified herein.
 - 1.1. **“Acre-foot”** means 43,560 cubic feet of water.
 - 1.2. **“Capital C&E Funding Cash Payment”** means the payment by [Actual Allottee Name*] of any Capital C&E Funding Obligations in cash to the WGFP Enterprise.
 - 1.3. **“Capital C&E Funding Obligations”** means [Actual Allottee Name*]’s pro rata obligation, based on the WGFP Participation Percentages, to fund Capital C&E, which obligation shall equal the product of the Capital C&E multiplied by [Actual Allottee Name*]’s WGFP Participation Percentage. For reference purposes, each WGFP Allottee’s Capital C&E Funding Obligation for Initial C&E pursuant to Section 6.2.1 is set forth in **Exhibit A** opposite each WGFP Allottee’s name, which exhibit the WGFP Enterprise may update from time to time as needed. For reference purposes, the amount of each WGFP Allottee’s Capital C&E Funding Obligations for any additional Capital C&E under Sections 6.2.2 and 6.2.3 will be set out in **Exhibit B** (with separate tables for each additional Capital C&E), which exhibit the WGFP Enterprise may update from time to time as needed. [Actual Allottee Name*] may fulfill its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof.
 - 1.4. **“Carriage Contract”** means that Amendatory Contract, 2014 Contract No. 15XX650003, entered into on December 19, 2014, between the Subdistrict, the District, and the United States of America for the purpose of utilizing the unused capacity of the facilities of the Colorado–Big Thompson Reclamation Project for

the carriage of Windy Gap Project Water, and any subsequent amendments or successor contracts for the same purpose.

- 1.5. **“C-BT Project Water”** means water from the Colorado–Big Thompson Reclamation Project.
- 1.6. **“Chimney Hollow Reservoir”** means that reservoir to be located in Sections 4, 5, 8, and 9, T4N, R70W, and Sections 33 and 34, T5N, R70W, 6th P.M., Larimer County, Colorado, and generally described in the U.S. Bureau of Reclamation Record of Decision, together with supporting documents, for the WGFP.
- 1.7. **“Contract”** means this contract.
- 1.8. **“Costs and Expenses”** or **“C&E”** means any and all costs and expenses incurred for the WGFP, all of which are encompassed by one of the following defined terms:
 - 1.8.1. **“Capital C&E”** means and includes any and all Initial C&E, Completion C&E, and Future Extraordinary C&E, including if applicable any and all WGFP Financing Costs associated with the same.
 - 1.8.1.1. **“Initial C&E”** means the WGFP Enterprise’s initial estimated costs of construction and completion of the WGFP with approximately 90,000 acre-feet of usable water storage capacity to be funded by the WGFP Allottees under Section 6.2.1.
 - 1.8.1.2. **“Completion C&E”** means the WGFP Enterprise’s costs in excess of Initial C&E, if any, that are necessary for the construction and completion of the WGFP with approximately 90,000 acre-feet of usable water storage capacity to be funded by the WGFP Allottees under Section 6.2.2.
 - 1.8.1.3. **“Future Extraordinary C&E”** means the WGFP Enterprise’s costs of any individual repair, replacement, rehabilitation, improvement, or regulatory compliance activities incurred after Initial C&E and Completion C&E that are required to be undertaken under Section 6.2.3 for the continued safe operation of the WGFP and that, because of the large amount of such costs, cannot be paid (1) using the Operating Reserve Fund or (2) by the WGFP Allottees through an annual payment for Operating C&E.
 - 1.8.2. **“Operating C&E”** means any and all costs, exclusive of Initial C&E, Completion C&E, and Future Extraordinary C&E, incurred by the WGFP Enterprise (1) to administer, operate, maintain, repair, replace, rehabilitate, and improve the WGFP; (2) attributable to the delivery and storage of water in Chimney Hollow Reservoir that are not paid pursuant to a WGFP Allottee’s Windy Gap Project allotment contract, including, without limitation, pumping costs, carriage costs, and power interference costs; and (3) to meet regulatory requirements associated with the WGFP. Operating

C&E specifically includes any and all “Costs and Expenses” that are not Capital C&E that may accrue after execution of this Contract.

- 1.9. **“Default”** means any event described in Sections 5.3.1 and 8.10 hereof.
- 1.10. **“District”** means the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado created under and having the powers provided in the Water Conservancy Act, C.R.S. §§ 37-45-101 *et seq.*
- 1.11. **“Enterprise Board”** means the Board of Directors of the WGFP Enterprise.
- 1.12. **“Final Default”** has the meaning provided in Section 5.3.5.
- 1.13. **“Financing Document”** means any indenture, trust agreement, loan agreement, installment purchase agreement, or other financing document entered into by the WGFP Enterprise in connection with any WGFP Financing Obligation (as defined in Section 8.2).
- 1.14. **“Fiscal Year”** means the fiscal year of the WGFP Enterprise, which currently begins on October 1 of each calendar year and ends on September 30 of each calendar year, or such other twelve-month period which may be designated by the WGFP Enterprise as its Fiscal Year.
- 1.15. **“Interim Agreements”** means previously executed agreements between [Actual Allottee Name*] and the WGFP Enterprise under which [Actual Allottee Name*] agreed to pay a pro rata portion, based on the WGFP Participation Percentages, for the operation, maintenance, legal, administrative, improvement, and other costs of developing the WGFP before execution of this Contract.
- 1.16. **“Liquidity Fund”** means a reserve fund established under Section 8.4.1.
- 1.17. **“Loan Allottee Financing Obligation”** means the obligation of a Loan Allottee to pay a percentage of the total WGFP Financing Costs (as defined in Section 8.2) that is equal to the Loan Allottee’s WGFP Financing Participation Percentage.
- 1.18. **“Operating Costs & Reserves”** means, collectively, Operating C&E and the amounts required to be deposited into the Operating Reserve Fund and such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E (if any) pursuant to Section 6.1.2.
- 1.19. **“Operating Fund”** means a fund established to provide for the payment of the Operating C&E of the WGFP.
- 1.20. **“Operating Reserve Fund”** means a reserve fund established to provide for the payment of Operating C&E if the moneys contained in the Operating Fund are insufficient to make such payments. The Operating Reserve Fund shall be maintained such that the amount of money in the fund shall equal the aggregate of two years of Operating C&E, as estimated by the WGFP Enterprise based on a five-year rolling average (except in the first five years of the Operating Reserve

Fund's existence, during which time the WGFP Enterprise will estimate based on available information) and taking into consideration the WGFP Enterprise's reasonable expectations as to future Operating C&E.

- 1.21. **“Prepositioned C-BT Project Water”** means C-BT Project Water stored in Chimney Hollow Reservoir pursuant to the Carriage Contract.
- 1.22. **“Prepositioned Windy Gap Project Water”** means Windy Gap Project Water stored in Chimney Hollow Reservoir as the result of C-BT Prepositioning pursuant to the Carriage Contract.
- 1.23. **“Subdistrict”** means the Municipal Subdistrict, Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado created under and having the powers provided in the Water Conservancy Act, C.R.S. §§ 37-45-101 *et seq.*
- 1.24. **“Water Year”** means the period from October 1 of one calendar year through September 30 of the next succeeding calendar year.
- 1.25. **“WGFP Allotment”** means the quantity of capacity in the WGFP, expressed in “WGFP Units,” granted to [Actual Allottee Name*] by this Contract, or if the context requires, granted to each WGFP Allottee by WGFP Allotment Contracts. Each WGFP Allottee's WGFP Allotment is shown in **Exhibit A**. A WGFP Allotment does not include an allotment of Windy Gap Project Water, which is granted by the Subdistrict in separate Windy Gap Project allotment contracts.
- 1.26. **“WGFP Allotment Contract”** means any contract between the WGFP Enterprise and a WGFP Allottee for a WGFP Allotment, including this Contract if the context requires.
- 1.27. **“WGFP Allottee”** means each entity that holds a WGFP Allotment pursuant to a WGFP Allotment Contract, including [Actual Allottee Name*]. **Exhibit A** lists all current WGFP Allottees.
 - 1.27.1. **“Cash Allottee”** means a WGFP Allottee that, under Section 6.2, satisfies all or a portion of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments pursuant to Section 7. A WGFP Allottee is a Cash Allottee to the extent that it satisfies its Capital C&E Funding Obligation through Capital C&E Funding Cash Payments, and then only for the term of any payments of Capital C&E using proceeds from Capital C&E Funding Cash Payments made by such WGFP Allottee.
 - 1.27.2. **“Loan Allottee”** means a WGFP Allottee that, under Section 6.2, satisfies all or a portion of its Capital C&E Funding Obligation through participation in a WGFP Financing pursuant to Section 8. A WGFP Allottee is a Loan Allottee to the extent that it satisfies its Capital C&E Funding Obligation through participation in WGFP Financing, and then only during the term of such WGFP Financing.

- 1.28. **“WGFP Completion”** means the determination pursuant to Section 3.3 of this Contract.
- 1.29. **“WGFP Enterprise”** has the meaning assigned to the term in the introductory paragraph of this Contract.
- 1.30. **“WGFP Financing”** means a financing by the WGFP Enterprise of Capital C&E through one or more loans, lines of credit, notes, bond issues, or other forms of indebtedness, and any refinancing of the same, on behalf of the Loan Allottees participating in such WGFP Financing. WGFP Financing includes the CWCBC Loan (as defined in Section 8.2) and any other lien borrowings that may be subordinated to other financing.
- 1.31. **“WGFP Financing Participation Percentage”** means the quotient of a Loan Allottee’s Capital C&E Funding Obligations that are to be paid through a WGFP Financing divided by the total amount of Capital C&E Funding Obligations to be paid by the WGFP Allottees through a WGFP Financing. To the extent a WGFP Allottee is a Loan Allottee for the Initial C&E, the WGFP Allottee’s WGFP Financing Participation Percentage that is applicable to the WGFP Financing for such Initial C&E is set forth in **Exhibit A** opposite each WGFP Allottee’s name. The amount of each WGFP Allottee’s WGFP Financing Participation Percentage that is applicable to additional Capital C&E under Sections 6.2.2 and 6.2.3 will be set out in **Exhibit B**.
- 1.32. **“WGFP Participation Percentage”** means the quotient of the number of WGFP Units held by a WGFP Allottee divided by the total number of WGFP Units, as such WGFP Participation Percentage may be modified in accordance herewith. The WGFP Participation Percentages for each WGFP Allottee are set forth in **Exhibit A** opposite each WGFP Allottee’s name.
- 1.33. **“WGFP Unit”** means 1/90,000th of the usable water storage and conveyance capacity in the WGFP. There are 90,000 WGFP Units total.
- 1.34. **“Winding-Up Agent”** means the agent appointed by the Enterprise Board in accordance with Section 3.4 hereof.
- 1.35. **“Winding-Up Resolution”** means a resolution adopted by the Enterprise Board in accordance with and after making the determination required by Section 3.4.
- 1.36. **“Windy Gap Firming Project”** or **“WGFP”** means Chimney Hollow Reservoir and related or ancillary features constructed, operated and maintained by the WGFP Enterprise for the purpose of providing storage and delivery of water for use pursuant to WGFP Allotment Contracts.
- 1.37. **“Windy Gap Project”** means that project (including the acquisition and perfection of water rights) constructed by the Subdistrict for the diversion, carriage, and delivery of water from the Colorado River pursuant to the Carriage Contract.
- 1.38. **“Windy Gap Project Water”** means water from the Windy Gap Project and also is referred to in the Windy Gap Project allotment contracts as “Subdistrict water.”

Storage and conveyance of Windy Gap Project Water in the WGFP does not change such water's status as Windy Gap Project Water.

PART II – PROVISIONS APPLICABLE TO ALL WGFP ALLOTTEES

2. **Allotment of WGFP Units.** The WGFP Enterprise hereby allots and confirms to [Actual Allottee Name*] a WGFP Allotment of XX* WGFP Units commencing as of the date of execution of this Contract and for so long thereafter as [Actual Allottee Name*] fully complies with all the terms, conditions and obligations hereinafter set forth. This WGFP Allotment is subject to C.R.S. § 37-45-101 *et seq.*, C.R.S. § 37-45.1-101 *et seq.*, the Carriage Contract, and the rules and regulations of the WGFP Enterprise, as may be established or amended from time to time. This Allotment is a complete substitute for the grant to [Actual Allottee Name*] of rights in the WGFP in any prior or current Interim Agreements between the WGFP Enterprise and [Actual Allottee Name*]. For reference purposes, each WGFP Allottee's WGFP Allotment is shown in **Exhibit A**.

3. **Construction and Completion of WGFP.**
 - 3.1. **Obligation of WGFP Enterprise to Construct and Complete the WGFP.** The WGFP Enterprise agrees to diligently pursue the WGFP in good faith and to pursue the construction, completion, and operation of the WGFP provided that the WGFP Allottees provide all required funding under their respective WGFP Allotment Contracts, the WGFP Enterprise has the ability, and the WGFP is feasible and practical. By entering into this Contract and accepting payments from [Actual Allottee Name*], the WGFP Enterprise does not warrant that it will construct and complete the WGFP.

 - 3.2. **Prior Agreements.** All prior Interim Agreements and amendments thereto, including the [Xth*] Amendment to the [Xth*] Interim Agreement, dated *, are terminated and of no further force and effect upon the effective date of this Contract under Section 5.1. Any unexpended funds made available to the WGFP Enterprise pursuant to such Interim Agreements shall be transferred into the Operating Fund and credited by the WGFP Enterprise to amounts payable by [Actual Allottee Name*] under this Contract for Operating C&E, or into the Operating Reserve Fund.

 - 3.3. **WGFP Completion.** The WGFP shall be deemed to be complete for purposes of this Contract upon the Colorado State Engineer's final certification of Chimney Hollow Reservoir for storage of water to its full capacity.

 - 3.4. **WGFP Termination Before WGFP Completion.** The WGFP may be terminated before WGFP Completion in the following manner:
 - 3.4.1. If the Enterprise Board determines that the WGFP will be terminated before WGFP Completion because of infeasibility, impracticality, inability, or failure of the WGFP Allottees to fund the WGFP as provided in Section 3.1, it shall first adopt a WGFP Winding-Up Resolution.

 - 3.4.2. Upon the adoption of a WGFP Winding-Up Resolution by the Enterprise Board under Section 3.4.1, and consistent with the rights, if any, of Larimer

County, the WGFP Enterprise shall first offer to the Subdistrict to sell to it, at fair market value as determined by a majority of a panel of three licensed appraisers (one selected by the WGFP Allottees, one selected by the Subdistrict, and the third selected by these two selected appraisers), (1) the Chimney Hollow Reservoir site, (2) any partially constructed or completed physical works or assets that divert water into or release water from the Chimney Hollow Reservoir site, and (3) any other non-physical rights, interests, or obligations related to the WGFP. If the Subdistrict accepts such offer for any or all of the offered interests, then it shall close upon such interests within 180 days of the appraiser panel's determination of fair market value. The WGFP Enterprise and [Actual Allottee Name*] specifically agree that the Subdistrict is a third-party beneficiary to this Contract for purposes of this Section 3.4.2 and Section 5.10.

- 3.4.3. Upon adoption of a Winding-Up Resolution by the Enterprise Board, the Enterprise Board shall appoint a WGFP Winding-Up Agent. The WGFP Winding-Up Agent shall, upon expiration of the time for the Subdistrict to accept the offer described in Section 3.4.2 above, prepare a plan for disposition of WGFP, and upon approval of the Enterprise Board, implement the disposition of WGFP assets pursuant to the plan, including the disposition of unexpended and unobligated funds of the WGFP Enterprise. Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable manner. Proceeds from the disposition of WGFP Enterprise assets and any other cash or cash equivalents then held by the WGFP Enterprise shall be first used, based on the WGFP Participation Percentages, to both (1) distribute cash to the WGFP Allottees that satisfied their Capital C&E Funding Obligations through Capital C&E Funding Cash Payments and (2) repay debts of the WGFP Enterprise incurred for WGFP Financing; provided, however, that any moneys contributed by a Cash Allottee and held at the time of winding-up in such Cash Allottee's subaccount in a fund or reserve fund established under Section 6.1, or in such Cash Allottee's Escrow Fund under Section 7 and the terms of such Cash Allottee's Escrow Agreement, shall not be used to repay debts of the WGFP Enterprise incurred for WGFP Financing. Any remaining funds shall then be distributed to the WGFP Allottees based on their respective WGFP Participation Percentages. [Actual Allottee Name*] shall be entitled to copies of any work products developed by the WGFP Enterprise or its consultants on behalf of the WGFP Allottees, and the WGFP Enterprise shall convey to [Actual Allottee Name*], as a tenant in common with all other WGFP Allottees who are not in Default of their respective WGFP Allotment Contracts, a pro rata interest in all real and personal property remaining after implementation of the plan for disposition of WGFP Assets pursuant to this Section 3.4.
- 3.4.4. Upon completion of the winding-up process described in this Section 3.4, the Enterprise Board shall adopt a resolution of termination of the WGFP. Upon the adoption of such resolution, all WGFP Allotments shall be terminated.

4. **WGFP Operation After WGFP Completion.**

- 4.1. **Use of WGFP Allotment.** [Actual Allottee Name*] agrees that its WGFP Allotment shall only be used for the storage and delivery of Windy Gap Project Water to which [Actual Allottee Name*] is entitled, storage of Prepositioned C-BT Project Water under the terms of the Carriage Contract, or storage and delivery of such other legally available water as the Enterprise Board shall authorize for storage and delivery in the WGFP, which authorization shall not be unreasonably withheld. [Actual Allottee Name*]'s receipt and use of Windy Gap Project Water also is subject to the Carriage Contract and [Actual Allottee Name*]'s Windy Gap Project allotment contract(s). [Actual Allottee Name*] shall have the right to assign or otherwise agree to the use of [Actual Allottee Name*]'s WGFP Allotment by one or more WGFP Allottees.
- 4.2. **Prepositioning.** The Subdistrict shall have the right to preposition C-BT Project Water in any portion of the WGFP not used by [Actual Allottee Name*] for the storage of water in [Actual Allottee Name*]'s WGFP Allotment under Section 4.1. Prepositioned C-BT Project Water shall become Prepositioned Windy Gap Project Water when Windy Gap Project Water is available and designated for storage in Chimney Hollow Reservoir. Prepositioned C-BT Project Water shall be allocated to WGFP Allottees that have ordered and paid for the delivery of Windy Gap Project Water into Chimney Hollow Reservoir in the then current Water Year. Further details of allocation of Prepositioned C-BT Project Water will be developed in the operating criteria described in Section 4.7.
- 4.3. **Estimate of Charges.** The WGFP Enterprise shall furnish [Actual Allottee Name*] with an estimated statement of anticipated C&E required to be paid in the following year under this Contract on or before the last business day in August of each year, which statement may be used by [Actual Allottee Name*] for budgeting purposes.
- 4.4. **Estimated Demand and Delivery Schedule.** On or before the last business day in September of each year, [Actual Allottee Name*] shall provide the WGFP Enterprise with an estimated demand and delivery schedule for Windy Gap Project Water that will be stored in or delivered from the WGFP for the following Water Year, which schedule will be used by the WGFP Enterprise for purposes of submitting a proposal to the U.S. Bureau of Reclamation in accordance with the Carriage Contract. The schedule shall contain the time, delivery points, and quantities of water which [Actual Allottee Name*] estimates it shall require. This schedule may be modified from time to time as the need warrants within the physical capabilities of the C-BT Project, Windy Gap Project, and WGFP.
- 4.5. **Billing Statement.** On or before the last business day of December of each year, the WGFP Enterprise shall render a billing statement to [Actual Allottee Name*] for C&E required to be paid in the following year under this Contract. The billing statement shall be based upon actual C&E incurred by the WGFP Enterprise during the current Water Year and planned C&E for the upcoming Water Year. Any credit from the previous Water Year or any additional C&E from the previous Water Year shall be included in the billing statement rendered. Each billing statement shall be accompanied by reasonable supporting documentation showing the basis and

derivation of C&E shown in the billing statement. After receipt of the billing statement, [Actual Allottee Name*] shall pay the net C&E charges shown on the billing statement of estimated C&E on or before the last business day of January of the succeeding calendar year.

- 4.6. **Billing Statement Dispute Resolution.** If [Actual Allottee Name*] disputes the correctness of any billing statement by the WGFP Enterprise, it shall pay the WGFP Enterprise the full amount billed when due and shall, before or contemporaneously with such payment, inform the WGFP Enterprise that such payment is made wholly or partially under protest and request an explanation of the billing statement from the WGFP Enterprise. If the bill is determined to be incorrect, the WGFP Enterprise shall issue a corrected billing statement to [Actual Allottee Name*]. Any overpayment shall be refunded to [Actual Allottee Name*] within sixty (60) days. If the WGFP Enterprise and [Actual Allottee Name*] fail to agree on the correctness of a bill within one hundred twenty (120) days after [Actual Allottee Name*] gives notice to the WGFP Enterprise that a payment is made wholly or partially under protest, then the parties may agree to submit the dispute to binding arbitration or, failing such agreement, proceed to protect and enforce their respective rights by appropriate judicial proceeding.
- 4.7. **Operating Criteria.** [Actual Allottee Name*] acknowledges and understands that the storage and delivery of water in the WGFP will require and will be implemented pursuant to operating criteria agreed upon between the WGFP Allottees and the WGFP Enterprise that will address additional operational, financial, and other details of the WGFP. [Actual Allottee Name*]'s WGFP Allotment will be operated on substantially the same terms as all other WGFP Allottees. The operating criteria shall not modify or amend this Contract or result in a material adverse effect on [Actual Allottee Name*]'s rights under this Contract to control its WGFP Allotment, or its ability to have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees.
- 4.8. **Delivery Points.** The WGFP Enterprise's liability and responsibility to [Actual Allottee Name*] to deliver a quantity of water ordered for delivery by release from the WGFP under this Contract shall end and cease at the moment that such quantity of water is released out of WGFP structures or facilities. The WGFP Enterprise agrees to cooperate with [Actual Allottee Name*] in the coordination and accomplishment of conveyance and delivery of water from that point to [Actual Allottee Name*] through structures or facilities not owned by the WGFP Enterprise.
- 4.9. **Capacity Limitations.** In the event that orders of water from the WGFP exceeds available delivery capacity at any WGFP structure or facility, the available capacity at such structure or facility shall be allocated between the WGFP Allottees requiring delivery through such structure or facility in proportion to their respective WGFP Participation Percentages.

5. Other General Terms.

- 5.1. **Effective Date and Term.** No provision of this Contract shall take effect until each WGFP Allottee identified in **Exhibit A** duly authorizes, executes, and delivers to the WGFP Enterprise its respective WGFP Allotment Contract, and the WGFP Enterprise duly authorizes, executes, and delivers to the WGFP Allottees their respective WGFP Allotment Contracts. Sections 1, 2, 4, 5, and 6 of this Contract shall be perpetual unless terminated pursuant to this Contract. Section 3 shall be in effect until WGFP Completion. Section 7 of this Contract shall be in effect during the term of any payments of Capital C&E using proceeds from Capital C&E Funding Cash Payments made by such WGFP Allottee. Section 8 of this Contract shall be in effect during the term of any WGFP Financing in which [Actual Allottee Name*] participates.
- 5.2. **Transfer of a WGFP Allotment.**
- 5.2.1. **Transfer to Existing WGFP Allottee.** Subject to the terms and conditions set forth in any Financing Documents, the Enterprise Board shall approve a requested transfer of WGFP Units constituting all or a portion of [Actual Allottee Name*]'s WGFP Allotment to one or more other WGFP Allottees that have a WGFP Allotment as of the time of the transfer if the Enterprise Board determines that (1) the WGFP Allottee receiving the additional WGFP Units has an existing or future need for additional WGFP Units, (2) the WGFP Allottee receiving the additional WGFP Units has sufficient financial capacity, and (3) the transfer will not create a material risk under applicable law.
- 5.2.2. **Transfer to Other Parties.** [Actual Allottee Name*] may transfer all or a portion of its WGFP Allotment to an entity that will use the WGFP Allotment within the Subdistrict that is not an existing WGFP Allottee at the time of the proposed transfer but that holds, or has the legal ability to acquire, an allotment of Windy Gap Project Water with the approval, in its discretion, of the Enterprise Board; provided, however, that the Enterprise Board shall disclose, in writing, the basis for a decision to not approve a proposed transfer under this Section 5.2.2.
- 5.2.3. If [Actual Allottee Name*], with approval of the Enterprise Board as required by this Section 5.2, transfers a part of its WGFP Allotment to another entity, then [Actual Allottee Name*] shall be relieved of its obligations hereunder to the extent of said transfer, except as otherwise provided herein, specifically including in Section 8. If [Actual Allottee Name*], with approval of the Enterprise Board as required by this Section 5.2, transfers all of its WGFP Allotment to another entity, then [Actual Allottee Name*] shall no longer participate in the WGFP and [Actual Allottee Name*] shall be relieved of its obligations, except as otherwise provided herein, specifically including in Section 8.

5.3. **Default.**

5.3.1. **Event of Default.** An event of Default shall occur upon any breach of this Contract, including, without limitation:

5.3.1.1. Capital C&E Funding Cash Payments. The failure of [Actual Allottee Name*] to pay when due amounts payable pursuant to Sections 6.2 and 7 of this Contract for Initial C&E. As provided in Section 6.2.2.1, if [Actual Allottee Name*] elects to pay its Capital C&E Funding Obligations for Completion C&E or Future Extraordinary C&E under this Contract through Capital C&E Funding Cash Payments, then failure to timely make its Capital C&E Funding Cash Payment for such Completion C&E or Future Extraordinary C&E after so electing shall not constitute an event of Default, but in such event [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E or Future Extraordinary C&E through participation in a WGFP Financing in the same manner as provided in Section 6.2.2.2 and Section 8.

5.3.1.2. WGFP Financing. The failure of [Actual Allottee Name*] to pay when due amounts payable pursuant to Sections 6.2 and 8 of this Contract.

5.3.1.3. Operating Costs & Reserves. The failure of [Actual Allottee Name*] to pay when due amounts payable pursuant to Section 6.3 of this Contract.

5.3.1.4. The violation of C.R.S. § 37-45-101 *et seq.*, C.R.S. § 37-45.1-101 *et seq.*, or the rules and regulations of the WGFP Enterprise, as may be established or amended from time to time.

5.3.2. **Notice of Default.** Upon a Default, the WGFP Enterprise in the case of a Default by [Actual Allottee Name*], or [Actual Allottee Name*] in the case of a Default by the WGFP Enterprise, shall give the defaulting party and all other WGFP Allottees written notice of the Default in accordance with Section 5.16 and, if applicable, Section 5.4.3 or Section 5.5.4, on or before the first business day of March following the Default.

5.3.3. **Use of WGFP Allotment While in Section 5.3.1 Default.** Beginning on the day notice is received under Section 5.3.2 and continuing for so long as [Actual Allottee Name*] is in Default under this Section 5.3, [Actual Allottee Name*] may place water into storage in its WGFP Allotment but shall have no rights to take water out of storage from or otherwise use any water stored therein; provided, however, that if [Actual Allottee Name*] is in Default under Section 5.3.1.4 for violation of a rule or regulation of the WGFP Enterprise and such rule or regulation authorizes a WGFP Allottee to take water out of storage from or otherwise use any water stored in its WGFP Allotment during the term of any Default for violation of the rule or

regulation, those terms of the rule or regulation shall control. [Actual Allottee Name*] may continue to use and exercise its rights in the Windy Gap Project during any time it is in Default under this Section 5.3. Water in storage under [Actual Allottee Name*]'s WGFP Allotment shall continue to be assessed evaporative and other losses during any period of Default under this Section 5.3. The Subdistrict may continue to use the WGFP Allotment of [Actual Allottee Name*] under this Section 5.3.3 for storage of Prepositioned C-BT Project Water; however, other WGFP Allottees shall have no right to use the WGFP Allotment of [Actual Allottee Name*] under this Section 5.3.3 for the term of the Default. Upon [Actual Allottee Name*]'s cure of its Default under Section 5.3.4, [Actual Allottee Name*]'s rights to use its WGFP Allotment and any water stored therein shall be restored, subject to any operational limitations that may exist.

- 5.3.4. **Cure.** For events of Default other than those Defaults under Sections 5.3.1.1 (Capital C&E Funding Cash payments), 5.3.1.2 (WGFP Financing payments), and 5.3.1.3 (payments of and into Operating Costs & Reserves), [Actual Allottee Name*] or the WGFP Enterprise, as the case may be, shall have 60 days from receipt of a Notice of Default given under Section 5.3.2. to cure a Default by performance or acceptance by the non-defaulting party of an alternate means of or plan for cure of the Default. In the case of a proposed alternate means of or plan for cure of a Default by [Actual Allottee Name*], the WGFP Enterprise shall give notice of the proposed alternate means or plan for cure to all other WGFP Allottees before taking formal action rejecting or accepting the same. A non-defaulting party's acceptance of a plan for cure of a Default under this Section 5.3.4 shall not constitute a waiver of any rights, claims, defenses, or remedies under this Contract. [Actual Allottee Name*]'s rights to cure events of Default under (1) Sections 5.3.1.1 and 5.3.1.2 are as provided in Section 5.4.5 and (2) Section 5.3.1.3 are as provided in Section 5.5.5.
- 5.3.5. **Final Default.** For events of Default other than those Defaults under Sections 5.3.1.1 (Capital C&E Funding Cash payments), 5.3.1.2 (WGFP Financing payments), and 5.3.1.3 (payments of and into Operating Costs & Reserves), a Final Default shall occur upon (i) the expiration of the period for cure of a Default if [Actual Allottee Name*] or the WGFP Enterprise, as the case may be, does not cure the Default or the non-defaulting party does not accept, within the period for cure, a plan for an alternate means of or plan for cure of the Default, or (ii) failure of [Actual Allottee Name*] or the WGFP Enterprise, as the case may be, to perform under a duly accepted alternate means of or plan for cure of the Default. Notice of a Final Default under this Section 5.3.5 shall be given to the WGFP Enterprise and all WGFP Allottees no later than the first business day of the first February after the cure period terminates. Final Default with respect to events of Default under (1) Sections 5.3.1.1 and 5.3.1.2 shall occur as provided in Section 5.4.6, and (2) Section 5.3.1.3 shall occur as provided in Section 5.5.6.
- 5.3.6. **Consequences of Final Default.** The consequences of Final Default shall be as specified in this Contract.

- 5.3.6.1. Capital C&E Funding Cash Payments. The consequence of [Actual Allottee Name*]'s Final Default under Section 5.3.1.1 shall be as described in Section 5.4 of this Contract.
- 5.3.6.2. WGFP Financing. The consequence of [Actual Allottee Name*]'s Final Default under Section 5.3.1.2 shall be as described in Section 5.4 of this Contract.
- 5.3.6.3. Operating Costs & Reserves. The consequence of [Actual Allottee Name*]'s Final Default under Section 5.3.1.3 shall be as described in Section 5.5 of this Contract.
- 5.3.6.4. The consequence of [Actual Allottee Name*]'s Final Default for any breach of this Contract other than a failure to pay amounts due under this Contract shall be as described in Section 5.5.6 and Section 5.5.7 of this Contract, except that Final Defaults for violations of the rules and regulations of the WGFP Enterprise shall be remedied as provided in such rules and regulations and shall result in forfeiture and termination of [Actual Allottee Name*]'s WGFP Allotment in accordance with Section 5.5.6 and Section 5.5.7 only if the violated rule or regulation so provides.
- 5.3.6.5. A Final Default by [Actual Allottee Name*] shall not terminate any obligation to pay amounts due under this Contract as established by Sections 6, 7, and 8 of this Contract.
- 5.3.6.6. Upon a Final Default for any breach of this Contract by the WGFP Enterprise, [Actual Allottee Name*] and the WGFP Enterprise agree to confer in good faith to attempt to resolve the Final Default, and if conferral fails to resolve the Final Default, then to participate in nonbinding mediation.
- 5.3.7. **Enforcement of Remedies.** In addition to the other remedies set forth herein, including in this Section 5.3, upon the occurrence of a Final Default as defined herein, the WGFP Enterprise or [Actual Allottee Name*], as the case may be, shall be entitled to proceed to protect and enforce the rights vested in such party by this Contract by such appropriate judicial proceeding as such party shall deem most effectual, either by action of law or by suit in equity, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in such party by this Contract or by law, and the prevailing party shall be entitled to an award of its reasonable costs and attorney fees.
- 5.4. **Default on Capital C&E Funding Obligations Under Sections 5.3.1.1 and 5.3.1.2.**
 - 5.4.1. **Capital C&E Funding Obligations Default.** Failure of [Actual Allottee Name*] to pay amounts due under Section 6.2 and in accordance with

Section 7 or Section 8, as applicable, shall constitute an event of Default under Section 5.3.1.1 or Section 5.3.1.2, as applicable.

- 5.4.2. **Grace Period.** If [Actual Allottee Name*] is in Default under Section 5.4.1 and fully pays its defaulted payments within 30 days after such payments are due, then [Actual Allottee Name*] shall no longer be considered in Default under Section 5.4.1 and no interest, penalties, or other Default obligations or consequences shall attach.
- 5.4.3. **Notice of Default.** On the first business day after the grace period under Section 5.4.2 runs, the WGFP Enterprise shall notify each WGFP Allottee of the names of all WGFP Allottees, if any, in Default under Section 5.4.1.
- 5.4.4. **WGFP Financing Liquidity Fund.** For each Loan Allottee in Default under Section 5.4.1, the WGFP Enterprise shall on the first business day after the grace period under Section 5.4.2 runs apply such Loan Allottee's Liquidity Fund to cover that Loan Participant's defaulted payment.
- 5.4.5. **Cure Period.** [Actual Allottee Name*] has until the last business day of January of the succeeding calendar year to cure any Default under Section 5.4.1. A Loan Allottee cures a Default under Section 5.4.1 by reimbursing the Liquidity Fund, plus a late-fee penalty of 5%, and by reimbursing any other expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. A Cash Allottee cures a Default under Section 5.4.1 by paying the defaulted Capital C&E Funding Cash Payment and reimbursing any expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. If [Actual Allottee Name*] timely cures a Default under this Section 5.4.5, then no part of [Actual Allottee Name*] WGFP Allotment shall be forfeited and reallocated under Section 5.4.6.
- 5.4.6. **Final Default; Penalties and Reallocation of WGFP Allotment.** If [Actual Allottee Name*] does not timely cure a Default under Section 5.4.5, then Final Default shall be deemed to have occurred and all or a portion of [Actual Allottee Name*]'s WGFP Allotment shall be permanently forfeited and reallocated as follows:
- 5.4.6.1. For purposes of this Section 5.4.6, to the extent that [Actual Allottee Name*] is a Loan Allottee for Initial C&E and Completion C&E (if any) and in Default under Section 5.3.1.2, "**Vested Allotment**" shall mean that proportion of [Actual Allottee Name*]'s WGFP Allotment attributable to its participation in a WGFP Financing for Initial C&E and Completion C&E (if any) that is equal to the quotient of the amount of its Capital C&E Funding Obligations (not including WGFP Financing Costs other than principal) paid by [Actual Allottee Name*] immediately prior to the date of the Default under Section 5.4.1 divided by the total amount of [Actual Allottee Name*]'s Capital C&E Funding Obligations for Initial C&E and Completion C&E (if any) satisfied through

participation in a WGFP Financing (not including WGFP Financing costs other than principal), rounded down to the nearest whole WGFP Unit; and “**Unvested Allotment**” shall mean the remainder of [Actual Allottee Name*]’s WGFP Allotment attributable to [Actual Allottee Name*]’s participation in a WGFP Financing for Initial C&E and Completion C&E (if any).

- 5.4.6.2. For purposes of this Section 5.4.6, to the extent that [Actual Allottee Name*] is a Cash Allottee for Initial C&E and in default under Section 5.3.1.1, “**Vested Allotment**” shall mean that proportion of [Actual Allottee Name*]’s WGFP Allotment attributable to its satisfaction of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments that is equal to the quotient of the amount of such Capital C&E Funding Obligations for Initial C&E paid by [Actual Allottee Name*] through Capital C&E Funding Cash Payments, if any, immediately prior to the date of the Default under Section 5.4.1 divided by the total amount of such WGFP Allottee’s Capital C&E Funding Obligations for Initial C&E satisfied through Capital C&E Funding Cash Payments, rounded down to the nearest whole WGFP Unit; and “**Unvested Allotment**” shall mean the remainder of [Actual Allottee Name*]’s WGFP Allotment attributable to [Actual Allottee Name*]’s satisfaction of such Capital C&E Funding Obligations through Capital C&E Funding Cash Payments.
- 5.4.6.3. Upon [Actual Allottee Name*]’s satisfaction of all Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 and Completion C&E under Section 6.2.2, [Actual Allottee Name*]’s “Vested Allotment” shall be considered to be all (100%) of [Actual Allottee Name*]’s WGFP Allotment, and any other Capital C&E Funding Obligations for Future Extraordinary C&E under Section 6.2.3 shall have no effect on [Actual Allottee Name*]’s “Vested Allotment.”
- 5.4.6.4. A WGFP Allottee in Final Default under this Section 5.4.6 shall forfeit any and all right, title, claim, or interest, whether express or implied, in or to its Unvested Allotment plus fifty percent (50%) of its Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment. The WGFP Enterprise shall give notice to all WGFP Allottees of such forfeiture by the first business day of February of the calendar year in which such forfeiture occurs. [Actual Allottee Name*], by executing this Agreement, certifies that it has fully disclosed to the governing body of [Actual Allottee Name*] the existence and consequence of this Contract, and agrees that but for its acceptance of the forfeiture of a WGFP Allotment pursuant to this Section 5.4.6.4, the WGFP Enterprise would not have entered into this Contract or any other agreement related to

WGFP. [Actual Allottee Name*] waives any and all legal or equitable claims, in any forum, to WGFP, WGFP Allotments, or WGFP assets, or against the WGFP Enterprise, arising out of a Final Default under this Section 5.4 by [Actual Allottee Name*]. Irrespective of such forfeiture, a WGFP Allottee shall remain liable to the WGFP Enterprise to pay the full amount of its Capital C&E Funding Obligations.

5.4.6.5. A defaulting Loan Allottee's forfeited Unvested Allotment and Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment, shall be reallocated under Section 5.4.6.6 to all Loan Allottees that step up in proportion to the amounts each Loan Allottee stepped up thereunder. A defaulting Cash Allottee's forfeited Unvested Allotment and Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment, shall be reallocated to all non-defaulting WGFP Allottees by the WGFP Enterprise under the terms of Section 5.5.7.

5.4.6.6. **Loan Allottee Step-Up.**

5.4.6.6.1. **Voluntary Step-Up.** By March 15 following any Final Default under Section 5.4.6 that is subject to this Section 5.4.6.6, any Loan Allottee may voluntarily step up to (1) make all or part of the defaulted payment (including replenishment of the Liquidity Fund), and (2) assume the obligation for all future annual debt service and Operating C&E payments for that portion of a defaulting Loan Allottee's obligation. If two or more Loan Allottees volunteer to step up under this Section 5.4.6.6, then each will assume a pro rata portion (based on their respective WGFP Financing Participation Percentages), or agreed upon amount, of the defaulted payment.

5.4.6.6.2. **Mandatory Step-Up.** If not all defaulted payments are covered by Loan Allottees who choose to voluntarily step up under Section 5.4.6.6.1, then for any portion of the defaulted payment not voluntarily assumed under Section 5.4.6.6.1, the following mandatory step-up process is initiated on the first business day of April.

5.4.6.6.3. All Loan Allottees, including all Loan Allottees who voluntarily stepped up under Section 5.4.6.6.1, shall be assessed pro rata, based on the WGFP Financing Participation Percentages of the Loan Allottees not then in Default, to make up the defaulted payment (plus late fees and other expenses) by payment to the WGFP Enterprise on or before the first business day of July and must make all future annual payments for that pro rata portion of the defaulting Loan Allottee's WGFP Allotment.

5.4.6.6.4. For each non-defaulting Loan Allottee, mandatory step-up in any single year under Section 5.4.6.6.2 shall not exceed thirty-five percent (35%) of the Loan Allottee's then-existing Loan Allottee Financing Obligation.

5.5. Default on Operating C&E Payments Under Section 5.3.1.3.

- 5.5.1. **Operating Costs & Reserves Default.** [Actual Allottee Name*]'s failure to fully pay its payments due under Section 6.3.1 by the last business day of January of each calendar year shall constitute an event of Default.
- 5.5.2. **Operating Reserve Fund to Cover Deficiency.** In the event that [Actual Allottee Name*] fails to fully and timely pay its pro-rata share of Operating C&E under Section 6.3.1, the WGFP Enterprise may draw upon [Actual Allottee Name*]'s portion of the Operating Reserve Fund or such other reserves as the Enterprise Board may establish and maintain in relation to Operating C&E pursuant to Section 6.1.2 to make up any deficiency as a result of the failure of [Actual Allottee Name*] to make a payment required under Section 6.3.
- 5.5.3. **Grace Period.** If [Actual Allottee Name*] is in Default under Section 5.5.1 and fully makes its payments due under Section 6.3 by the last business day of February, then [Actual Allottee Name*] shall no longer be considered in Default under Section 5.5.1 and no penalties or other Default obligations or consequences shall attach.
- 5.5.4. **Notice of Default.** On the first business day of March of each calendar year, the WGFP Enterprise shall notify [Actual Allottee Name*] of the names of all WGFP Allottees, if any, whose payments due under Section 6.3 remain in Default after the grace period provided in Section 5.5.3.
- 5.5.5. **Cure.** [Actual Allottee Name*] may cure a Default under this Section 5.5 by paying, on or before the last business day of January of the succeeding calendar year, an amount equal to (1) any Operating C&E then due or in Default; (2) a late-fee penalty of 1.5% of the amount of Operating C&E in Default for each month in Default after the grace period provided in Section 5.5.3 terminates, which shall be deposited into the Operating Reserve Fund in addition to any other amounts owed to such fund under this Contract; and (3) any other expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. Alternatively, [Actual Allottee Name*] may cure a Default under this Section 5.5.5 by obtaining the WGFP Enterprise's acceptance, on or before the last business day of January of the succeeding calendar year, of an alternate means of or plan for cure of the Default and thereafter fully performing under such alternate means of or plan for cure; the WGFP Enterprise shall give notice of the proposed alternate means or plan for cure to all other WGFP Allottees before taking formal action rejecting or accepting the same. The WGFP Enterprise's acceptance of a plan for cure of a Default under this Section

5.5.5 shall not constitute a waiver of any rights, claims, defenses, or remedies under this Contract.

5.5.6. **Final Default and Forfeiture.** Final Default shall occur if [Actual Allottee Name*] fails to cure its defaulted payment under Section 5.5.5 by the date provided therein or fails to fully perform under a duly accepted alternate means of or plan for cure of the Default. If [Actual Allottee Name*] has committed a Final Default under this Section 5.5.6, then [Actual Allottee Name*] shall completely forfeit any and all right, title, claim, or interest, whether express or implied, in or to WGFP, including, without limitation, any and all WGFP Allotments or rights to WGFP assets under this Contract or any other agreement related to the WGFP. Any water in storage under a forfeited WGFP Allotment at the time of forfeiture shall not be available to the defaulting party and shall be reallocated along with the WGFP Allotment as provided in Section 5.5.7. [Actual Allottee Name*], by executing this Contract, certifies that it has fully disclosed to the governing body of [Actual Allottee Name*] the existence and consequence of this Contract, and agrees that but for its acceptance of the termination of a WGFP Allotment and the consequences of Default, the WGFP Enterprise would not have entered into this Contract or any other agreement related to WGFP. Except for claims of breach under the express terms of this Contract, [Actual Allottee Name*] waives any and all legal or equitable claims, in any forum, to WGFP, WGFP Allotments, or WGFP Assets, or against the WGFP Enterprise, arising out of a Final Default under this Contract by [Actual Allottee Name*]. Irrespective of such termination, [Actual Allottee Name*] shall remain liable to the WGFP Enterprise to pay the full amount of its Capital C&E Funding Obligations under this Contract. The WGFP Enterprise shall send a notice of forfeiture under this Section 5.5.6 to all WGFP Allottees on the first business day of February in the calendar year in which the cure period terminates.

5.5.7. **Reallocation of Forfeited WGFP Allotment.** WGFP Allotments forfeited under Section 5.3.6.4 or Section 5.5.6 shall be reallocated by the WGFP Enterprise through a sealed-bid auction open to all non-defaulting WGFP Allottees. Auction bids to purchase all or a portion of the forfeited WGFP Allotment shall be submitted to the WGFP Enterprise on or before the first business day of April of the calendar year in which the cure period terminates and the WGFP Allotment is forfeited. In the event that the WGFP Enterprise receives one or more successful bids, closing on the sale of WGFP Allotments to such successful bidders shall occur by the first day in July of the same calendar year. The proceeds of any auction sale shall be applied first to cover the cure amount described in Section 5.5.5, except any monthly penalty, and second to cover any Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment. Any excess proceeds shall be distributed to [Actual Allottee Name*], less the monthly penalty provided in Section 5.5.5 if applicable. In the event the proceeds of any auction sale do not cover the cure amount described in Section 5.5.5, except any monthly penalty, and all Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment, the successful bidder(s) purchasing the WGFP

Allotment shall pay the deficiency attributable to the amount of WGFP Units purchased at such auction sale.

5.5.7.1. In the event that the entire WGFP Allotment forfeited under Section 5.5.6 is not reallocated through the auction described in Section 5.5.7, the WGFP Enterprise shall in its discretion offer the remaining WGFP Allotment to other entities that are not existing WGFP Allottees at the time of the proposed transfer but that hold an allotment of Windy Gap Project Water. In the event that the WGFP Enterprise's offer is accepted by one or more entities under this Section 5.5.7.1, closing on the sale shall occur by the first business day in September of the same calendar year. The proceeds of any such sale shall be applied first to cover the cure amount described in Section 5.5.5, except any monthly penalty, and second to cover any Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment. Any excess proceeds shall be distributed to [Actual Allottee Name*], less the monthly penalty provided in Section 5.5.5 if applicable. In the event the proceeds of any sale under this Section 5.5.7.1 do not cover the cure amount described in Section 5.5.5, except any monthly penalty, and all Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment, the purchaser(s) of the WGFP Allotment shall pay the deficiency attributable to the amount of WGFP Units purchased.

5.5.7.2. In the event that the entire WGFP Allotment forfeited under Section 5.5.6 is not reallocated through the auction described in Section 5.5.7 or under Section 5.5.7.1, the WGFP Enterprise shall reallocate such remaining WGFP Allotment to the non-defaulting WGFP Allottees pro rata based on the WGFP Participation Percentages. The WGFP Allottees who receive a portion of the reallocated WGFP Allotment under this Section 5.5.7.2 shall pay the amount then owing (except for the monthly cure penalty if applicable) on the WGFP Allotment on or before the first business day of November of the same calendar year in which the WGFP Allotment is forfeited.

5.5.8. If, in a particular Fiscal Year, [Actual Allottee Name*] is in Default under the terms of this Section 5.5 with respect to payments to cover its pro-rata share of Operating C&E due under Section 6.3.1 and also in Default under the terms of Section 5.4, then the terms of this Section 5.5, and not Section 5.4, shall govern.

5.6. Liability of WGFP Enterprise and [Actual Allottee Name*].

5.6.1. **WGFP Enterprise Liability.** Any and all obligations of the WGFP Enterprise that may arise under this Contract, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by the WGFP Enterprise. Nothing herein shall be deemed

to prevent the WGFP Enterprise from making any payments from any other legally available source. In no event shall the WGFP Enterprise be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Contract or which would cause the WGFP Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, neither the WGFP Enterprise, the Subdistrict, nor the District shall be required to expend any funds or impair any assets of the Subdistrict or the District in the performance of any of the WGFP Enterprise's obligations under this Contract. The obligations of the WGFP Enterprise under this Contract do not constitute a debt or indebtedness of the WGFP Enterprise, the Subdistrict, or the District within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of the WGFP Enterprise, the Subdistrict or the District.

5.6.2. **Allottee Liability.** Any and all obligations of [Actual Allottee Name*] that may arise under this Contract whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by [Actual Allottee Name*] from the operation of its [water activity] enterprise. Nothing herein shall be deemed to prevent [Actual Allottee Name*] from making any payments from any other legally available source. In no event shall [Actual Allottee Name*] be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Contract or which would cause [Actual Allottee Name*] to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, [Actual Allottee Name*] shall not be required to expend any funds or impair any assets of its parent entity in the performance of its obligations under this Contract. The obligations of [Actual Allottee Name*] under this Contract do not constitute a debt, indebtedness or multiple fiscal year obligation of its parent entity within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of [Actual Allottee Name*] or of its parent entity.

5.6.3. [Actual Allottee Name*] shall not be liable to another WGFP Allottee or to the WGFP Enterprise, and the WGFP Enterprise shall not be liable to the WGFP Allottees, for consequential, indirect, punitive, or special damages arising under this Contract.

5.6.4. **Governmental Immunity.** The WGFP Enterprise and [Actual Allottee Name*] are each relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, defenses, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended from time to time.

5.7. **Amendments.** Except as otherwise provided in this Section 5.7, this Contract may be amended only with the written consent of (1) the WGFP Enterprise, (2) at least 75.0% of the WGFP Allottees, and (3) WGFP Allottees that collectively hold at

least 75.0% of all WGFP Units; provided, however, that if any WGFP Financing is outstanding, any amendment to this Contract will be subject to the terms and conditions set forth in any Financing Documents; and further provided that this Contract may not be amended without [Actual Allottee Name*]'s written consent in a manner that results in a material adverse impact on the rights of [Actual Allottee Name*] under this Contract to control its WGFP Allotment or have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees. As provided in Section 6.2.1.1, an amendment under the terms of this Section 5.7 is not required for certain modifications to the means of payment of [Actual Allottee Name*]'s Capital C&E Funding Obligations for Initial C&E, the proportional amounts of its Capital C&E Funding Obligations for Initial C&E to be paid through Capital C&E Funding Cash Payments and/or participation in a WGFP Financing, or its election under Section 8.18, which modifications shall instead be governed by Section 6.2.1.1.

5.8. **Limitations on Rights of Allottee.** In addition to all the other terms, conditions and covenants contained herein, it is specifically understood and agreed by and between the parties hereto that the rights of [Actual Allottee Name*] hereunder are subject to the following terms, conditions and limitations, to all intents and purposes as though set forth verbatim herein, and made a part hereof by reference:

5.8.1. The Water Conservancy Act of Colorado, C.R.S. § 37-45-101 *et seq.*;

5.8.2. The water activity enterprise statute, C.R.S. § 37-45.1-101 *et seq.*;

5.8.3. The Carriage Contract; provided that if any amendment to the Carriage Contract is proposed which would affect the right of [Actual Allottee Name*] to use or reuse its full allotment of Windy Gap Project Water, the approval of such amendment shall first be obtained from [Actual Allottee Name*];

5.8.4. The rules, regulations and policies of the Enterprise Board, as may be established and amended from time to time; provided, however, that any such rules, regulations or policies shall not result in a material adverse impact on the rights of [Actual Allottee Name*] under this Contract to control its WGFP Allotment or to have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees; and

5.8.5. The requirements or conditions of any state or federal law, permits or regulatory approvals for the WGFP.

5.9. **Future Participation.** Nothing herein shall be construed in any manner that will obligate [Actual Allottee Name*] to participate in any future or other project of the Subdistrict or the WGFP Enterprise that is not a part of the WGFP or preclude Allottee from participation therein.

5.10. **Third Party Beneficiaries.** Any WGFP Allottee shall have the right as a third-party beneficiary to initiate and maintain suit to enforce the obligations of other WGFP Allottees hereunder. The Subdistrict shall have the right as a third-party

beneficiary to initiate and maintain suit to enforce its rights under Section 3.4.2. Except as otherwise provided by this Section 5.10, Section 3.4.2, and Section 8.17, enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the parties.

- 5.11. **Authorization.** [Actual Allottee Name*] attaches hereto a true and correct copy of [Actual Allottee Name*]'s records authorizing the officers, whose names appear hereon, to enter into this Contract.
- 5.12. **Counterparts.** This Contract may be executed by the WGFP Enterprise and [Actual Allottee Name*] in separate counterparts, each of which when so executed and delivered shall be an original, and all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes.
- 5.13. **Entire Agreement; Merger of Prior Agreements.** This Contract, together with the statutes, contracts, rules, regulations and policies listed in Section 5.8, constitute the entire agreement and understanding of the parties and supersedes all prior agreements and understanding between the parties relating to the subject matter hereof. This Contract may not be interpreted, modified or changed by reference to other documents, understandings or agreements, whether written or oral, unless the interpretation, modification or change is subsequently agreed to in writing by the parties hereto.
- 5.14. **Severability.** If one or more clauses, sentences, Sections, paragraphs or provisions of this Contract shall be held to be unlawful, invalid or unenforceable, the remainder of this Contract shall not be affected thereby.
- 5.15. **Choice of Law; Venue.** This Contract shall be governed by the laws of the State of Colorado, and each party hereto consents and submits to venue in the District Court of Weld County, Colorado.
- 5.16. **Notices.** Notices authorized or required to be given under this Contract shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the relevant party's address set forth in **Exhibit C**, or to such other address as a party may provide to the other party and all other WGFP Allottees from time to time. If specified herein, notice required to be given to all WGFP Allottees shall be given to the addresses set forth in **Exhibit C** or to such other addresses as the WGFP Allottees may provide to the WGFP Enterprise and the other WGFP Allottees from time to time.
- 5.17. **Construction Reports and Meetings.** The WGFP Enterprise will provide [Actual Allottee Name*] with written monthly reports, together with financial reports regarding payment of charges and costs and expenditures during construction of Chimney Hollow Reservoir, on the progress of construction and the expenditure of funds. Among other items, the monthly written reports will include a breakdown and sum total of all known increases to the Chimney Hollow Reservoir construction contract amount due to projected, pending, or executed changes in work, including change orders, change directives, or field orders. In addition, the WGFP Enterprise shall schedule and hold meetings of all WGFP Allottees at the offices of the District

at least quarterly at which time the WGFP Enterprise shall present and discuss the financial reports regarding payment of charges and costs by the WGFP Allottees and the expenditure of funds. Notwithstanding the foregoing, if any single Chimney Hollow Reservoir construction contract cost change will exceed two and a half percent (2.5%) of the initial Chimney Hollow Reservoir construction contract amount, the WGFP Enterprise will provide [Actual Allottee Name*] with written notice of such anticipated cost changes before the cost change is executed and will hold a meeting of all WGFP Allottees as soon as practicable to discuss the drivers for such cost change, possible remedies, and budget impacts. In addition, the WGFP Enterprise will provide monthly updates regarding costs and potential changes for construction management, mitigation, enhancement, and other WGFP costs not included in the Chimney Hollow Reservoir construction contract.

- 5.18. **Financial Reporting Requirements; Audits.** The WGFP Enterprise shall furnish to [Actual Allottee Name*], as soon as available and in any event within one hundred eighty (180) days after the end of each Fiscal Year, the financial statements of the WGFP Enterprise as of the end of such Fiscal Year, all prepared in accordance with generally accepted accounting principles and in reasonable detail; provided that the WGFP Enterprise shall be in compliance with this reporting requirement when such information is published on the WGFP Enterprise's website or the Municipal Securities Rulemaking Board's Electronic Municipal Marketplace Access System (EMMA), or any service or services established by the Municipal Securities Rulemaking Board (or any of its successors) as a successor to EMMA. [Actual Allottee Name*] may request an independent audit of the WGFP Enterprise's financial statements for a Fiscal Year (as well as associated WGFP accounting records, supporting documentation, and billings to WGFP Allottees), to be paid for by [Actual Allottee Name*], by sending a written audit request to the WGFP Enterprise before the end of the succeeding Fiscal Year. If more than one WGFP Allottee requests an independent audit for a given Fiscal Year, then only one audit shall occur, and the audit shall be paid for by the WGFP Allottees that requested the audit based on their respective WGFP Participation Percentages.
- 5.19. **Most Favored Party.** The terms and provisions of the WGFP Allotment Contracts for each of the WGFP Allottees will be substantially similar and in no event shall the WGFP Enterprise offer an Allotment Contract to another WGFP Allottee with more favorable provisions based on all of the terms and conditions of the WGFP Allotment Contract as a whole without first offering to [Actual Allottee Name*] the opportunity to amend this Contract to contain such favorable provisions.

6. WGFP Funding.

6.1. Establishment of Funds.

- 6.1.1. In addition to the funds established in Sections 7.4 and Section 8.4, the WGFP Enterprise shall establish and maintain an Operating Fund and an Operating Reserve Fund, with segregated accounts for each WGFP Allottee, to be used for disbursements to pay for the Operating C&E of the WGFP under the WGFP Allotment Contracts.

6.1.2. The WGFP Enterprise may establish and maintain additional reserve funds as it shall determine are necessary for operation, maintenance, repair, replacement, rehabilitation, or improvement of WGFP structures or facilities, with segregated accounts for each WGFP Allottee.

6.2. **Payment of Capital C&E Funding Obligations.** [Actual Allottee Name*] agrees to pay its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments under the terms of Section 7, participation in a WGFP Financing under the terms of Section 8, or a combination thereof.

6.2.1. **Initial C&E.** The Initial C&E to be funded by the WGFP Allottees shall be \$[XXXXXXXX]*. [Actual Allottee Name*] agrees to pay its Capital C&E Funding Obligations for Initial C&E under this Section 6.2.1 through [Capital C&E Funding Cash Payments under the terms of Section 7] [participation in a WGFP Financing under the terms of Section 8]. **Exhibit A** indicates each WGFP Allottee's Capital C&E Funding Obligation for such Initial C&E and chosen means of payment for such Initial C&E.

6.2.1.1. Until the date noticed by the WGFP Enterprise under this Section 6.2.1.1, [Actual Allottee Name*] may, with the WGFP Enterprise's written consent and without the need to amend this Contract under the terms of Section 5.7, modify its chosen means of payment of its Capital C&E Funding Obligations for Initial C&E, including its proportional amounts between a Capital C&E Funding Cash Payment and participation in a WGFP Financing and its election under Section 8.18 (if participating in WGFP Financing), and upon such modification the WGFP Enterprise shall update **Exhibit A** to the WGFP Allotment Contracts. Before the date of sale of a WGFP Financing for Initial C&E other than the CWCB Loan, the WGFP Enterprise will provide written notice to [Actual Allottee Name*] setting forth the date by which [Actual Allottee Name*] must finalize its payment method and election under Section 8.18 (if participating in WGFP Financing) for Initial C&E, which date shall be no less than 3 months after the date of notice unless [Actual Allottee Name*] otherwise agrees. Any modification of payment method or election under Section 8.18 (if participating in WGFP Financing) for Initial C&E after the date provided in the notice shall require a contract amendment under the terms of Section 5.7.

6.2.2. **Completion C&E.** If the WGFP Enterprise determines that the WGFP Allottees' payment of their respective Capital C&E Funding Obligations to fund Initial C&E under Section 6.2.1 will be depleted and Completion C&E must be incurred to complete construction of the WGFP, then the WGFP Enterprise shall give notice as soon as reasonably practicable to the WGFP Allottees of the need to pay additional Capital C&E Funding Obligations under this Section 6.2, the estimated total amount of Completion C&E to be incurred, and whether the WGFP Enterprise will undertake additional

WGFP Financing for the Completion C&E. If the WGFP Enterprise offers the option to participate in additional WGFP Financing, then [Actual Allottee Name*] shall, within ninety (90) days of such notice, elect in writing to the WGFP Enterprise to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof. If no such election is made, [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E through participation in a WGFP Financing under Section 6.2.2.2. The WGFP Enterprise will update **Exhibit B** from time to time as needed under this Section 6.2.2.

6.2.2.1. To the extent that [Actual Allottee Name*] elects to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through Capital C&E Funding Cash Payments, then it shall make such payments in accordance with Section 7 and on substantially the same terms as other WGFP Allottees making Capital C&E Funding Cash Payments, and agrees to execute any documents and agreements necessary to bind [Actual Allottee Name*] to such terms. If [Actual Allottee Name*] fails to timely make its Capital C&E Funding Cash Payment for such Completion C&E after so electing, then [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E through participation in a WGFP Financing in the same manner as provided in Section 6.2.2.2.

6.2.2.2. To the extent that [Actual Allottee Name*] is obligated to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through participation in a WGFP Financing, then it shall make such payments and participate in such WGFP Financing in accordance with Section 8 and any applicable Financing Document and on substantially the same terms as any other WGFP Allottees participating in the WGFP Financing, and agrees to execute any documents and agreements necessary to bind [Actual Allottee Name*] to such terms.

6.2.3. Future Extraordinary C&E. If the WGFP Enterprise determines that Future Extraordinary C&E must be incurred, then the WGFP Enterprise shall give notice as soon as reasonably practicable to [Actual Allottee Name*] of the need to pay additional Capital C&E Funding Obligations under this Section 6.2 and the estimated total amount of Future Extraordinary C&E to be incurred. The Enterprise Board, in consultation with the WGFP Allottees, shall set a timeline for the WGFP Allottees to elect in writing to pay the Capital C&E Funding Obligations for such Future Extraordinary C&E under this Contract through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof in accordance with the process described in Sections 6.2.2.1 and 6.2.2.2, and for the WGFP Allottees to make such payments of their respective Capital C&E Funding Obligations for such Future Extraordinary C&E to the WGFP

Enterprise. If no such election is made, [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such Future Extraordinary C&E through participation in a WGFP Financing in accordance with the process described in Section 6.2.2.2.

6.2.3.1. Notwithstanding the foregoing in Section 6.2.3, if an emergency or natural disaster imminently threatens life, health, safety, or damage to the WGFP, the WGFP Enterprise may incur Future Extraordinary C&E to make reasonably necessary emergency repairs to mitigate threatened damage, provided that the WGFP Enterprise shall notify [Actual Allottee Name*] of such emergency and the need for such expenditures in advance (or if not possible in advance, then as soon as practicable), and whether the WGFP Enterprise will undertake additional WGFP Financing for the future Extraordinary C&E. In the event that the WGFP Enterprise incurs such emergency Future Extraordinary C&E, and if the WGFP Enterprise offers the option to participate in additional WGFP Financing, then [Actual Allottee Name*] shall have thirty (30) days to elect in writing to pay its Capital C&E Funding Obligations for such emergency Future Extraordinary C&E through Capital C&E Funding Cash Payments in accordance with the process described in Section 6.2.2.1. If no such election is made, then [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such emergency Future Extraordinary C&E through participation in a WGFP Financing in accordance with the process described in Section 6.2.2.2.

6.2.4. To the extent [Actual Allottee Name*] satisfies any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, other than Capital C&E Funding Cash Payments for emergency Future Extraordinary C&E incurred by the WGFP Enterprise prior to the giving of notice to [Actual Allottee Name*], the WGFP Enterprise may require that [Actual Allottee Name*] provide adequate assurance in advance of closing on the corresponding WGFP Financing that it will be able to provide the required Capital C&E Funding Cash Payment on the date such Capital C&E Funding Cash Payments are due to the WGFP Enterprise under Section 7.3 or such other date as is agreed to by the WGFP Enterprise and [Actual Allottee Name*].

6.3. **Payment of Operating C&E and into Reserve Funds.**

6.3.1. To the extent that [Actual Allottee Name*] meets its Capital C&E Funding Obligations under Section 6.2 through participation in WGFP Financing, [Actual Allottee Name*] hereby agrees to fund all of its portion of Operating Costs & Reserves during the term(s) of any debt incurred for WGFP Financing in which [Actual Allottee Name*] participates in accordance with Section 8 hereof. When [Actual Allottee Name*] is not participating in any WGFP Financing or no debt is outstanding on WGFP Financing in which [Actual Allottee Name*] participates, [Actual Allottee

[Name*] agrees to fund its portion of Operating Costs & Reserves by paying to the WGFP Enterprise, on or before the last business day of January of each calendar year, the following amounts:

- 6.3.1.1. An amount equal to the product obtained by multiplying [Actual Allottee Name*]'s WGFP Participation Percentage by the total amount of all Operating C&E estimated by the WGFP Enterprise to be incurred by the WGFP Enterprise in the then current calendar year, which the WGFP Enterprise shall deposit in the Operating Fund to be drawn upon in proportion to the WGFP [Actual Allottee Name*]'s WGFP Participation Percentages to pay for Operating C&E as they are incurred;
- 6.3.1.2. Any amount needed to replenish any draws theretofore made on [Actual Allottee Name*]'s subaccount in the Operating Reserve Fund, which the WGFP Enterprise shall deposit in the Operating Reserve Fund;
- 6.3.1.3. An amount equal to the product obtained by multiplying [Actual Allottee Name*]'s WGFP Participation Percentage by the total amount needed to increase the amount on deposit in the Operating Reserve Fund to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20, which the WGFP Enterprise shall deposit in the Operating Reserve Fund to be drawn upon when the moneys contained in [Actual Allottee Name*]'s subaccount in the Operating Fund are insufficient to make payments on Operating C&E; and
- 6.3.1.4. An amount equal to the product obtained by multiplying [Actual Allottee Name*]'s WGFP Participation Percentage by the total amount needed to replenish and maintain such other reserves as the Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2.

6.4. **Funding.** In order to meet [Actual Allottee Name*]'s obligations under this Contract to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, [Actual Allottee Name*] agrees as follows:

- 6.4.1. [Actual Allottee Name*] shall to the fullest extent permitted by law fix rates, charges, or assessments so that [Actual Allottee Name*] will at all times have sufficient money to meet its obligations hereunder, and confirms (1) that, in accordance with C.R.S. § 31-35-402(1)(h), payments of its outstanding obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract (i) constitute special obligations of [Actual Allottee Name*], payable solely from the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)], and (ii) shall be treated as expenses of operating such [entity name/type (water activity enterprise/utility enterprise/etc.)]; and (2) that there are

either (i) no liens, charges or encumbrances on the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)], or (ii) no liens, charges or encumbrances on the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)] that include priority of payments with respect thereto that are prior to the payment of the expenses of operating such [entity name/type (water activity enterprise/utility enterprise/etc.)], including amounts hereunder. [Actual Allottee Name*] represents and warrants that it constitutes an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution (TABOR) and does not have the legal authority to levy a tax. [Actual Allottee Name*]’s outstanding obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations if any, under this Contract do not constitute a general obligation debt or indebtedness of [Actual Allottee Name*] within the meaning of any constitutional or statutory debt limitations or provisions, and are not payable in whole or in part from the proceeds of ad valorem property or other taxes of [Actual Allottee Name*].

- 6.4.2. Nothing herein shall be construed as prohibiting [Actual Allottee Name*] from (1) using any other funds and revenues legally available therefor for purposes of satisfying any provisions of this Contract or (2) incurring obligations payable on a parity with the obligations under this Contract so long as [Actual Allottee Name*]’s obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract continue to constitute special obligations of [Actual Allottee Name*], payable solely from the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)], and are treated as expenses of operating such [entity name/type (water activity enterprise/utility enterprise/etc.)].
- 6.4.3. [Actual Allottee Name*] shall make payments required by this Contract whether or not the WGFP is permitted, undertaken, completed, operable, operated or retired and notwithstanding the suspension, interruption, interference, reduction, or curtailment of operation of the WGFP in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by the WGFP Enterprise or any other WGFP Allottee under this Contract or any other agreement.
- 6.4.4. [Actual Allottee Name*] shall take all reasonable steps to maintain its status as an enterprise as defined in Section 20 of Article X of the Colorado Constitution.
- 6.4.5. [Actual Allottee Name*] shall not be liable under this Contract for the obligations of any other WGFP Allottee except as otherwise expressly set forth herein. Each WGFP Allottee shall be solely responsible and liable for performance of its obligations under its respective WGFP Allotment Contract. The obligation of each WGFP Allottee to make payments under

its respective WGFP Allotment Contract is a several obligation and not a joint obligation with those of the WGFP Allottees.

- 6.5. **Security.** [Actual Allottee Name*] hereby represents and warrants that the revenues of its [entity name/type (water activity enterprise/utility enterprise/etc.)] are pledged to pay the operation and maintenance expenses of such [entity name/type (water activity enterprise/utility enterprise/etc.)] along with any indebtedness incurred by [Actual Allottee Name*] for the purpose of financing or refinancing improvements to its [entity name/type (water activity enterprise/utility enterprise/etc.)]. Furthermore, [Actual Allottee Name*] hereby represents and warrants that, in accordance with C.R.S. § 31-35-402(1)(h), [Actual Allottee Name*]'s obligations to pay its pro rata portion of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract constitute special obligations of [Actual Allottee Name*], payable solely from the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)], and shall be treated as expenses of operating such [entity name/type (water activity enterprise/utility enterprise/etc.)]. [Actual Allottee Name*] hereby covenants that it will not issue or otherwise incur any indebtedness or other obligation that has a lien on the revenues of its [entity name/type (water activity enterprise/utility enterprise/etc.)] prior or superior to its obligation to pay the operating expenses of its [entity name/type (water activity enterprise/utility enterprise/etc.)].
- 6.6. **Cooperation, Disclosure and Documents.** [Actual Allottee Name*] shall cooperate with the WGFP Enterprise for the purpose of expediting the issuance of WGFP Financing Obligations (as defined in Section 8.2) to finance the applicable portion of Capital C&E by providing such information and disclosure as may be reasonably required for such purpose, and by delivering all closing documents reasonably required by the WGFP Enterprise's counsel at the closing of each series of WGFP Financing Obligations. The WGFP Enterprise and [Actual Allottee Name*] will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to effect any financing and refinancing of Capital C&E and to allow the WGFP Enterprise to comply with reporting obligations, to assure the WGFP Enterprise of [Actual Allottee Name*]'s intention to perform hereunder and for the better assuring and confirming unto the WGFP Enterprise and any Lender (as defined in Section 8.2) the rights and benefits provided to them herein.
- 6.7. **Maintenance of Tax-Exempt Status of WGFP Financing Obligations.** Notwithstanding any other provision of this Contract, no WGFP Allottee will take any action or omit to take any action, directly or indirectly, in any manner, which would result in any of the WGFP Financing Obligations (as defined in Section 8.2), the interest on which was intended to be excludable from gross income for federal income tax purposes, being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1986, as amended, by reason of classification of such WGFP Financing Obligations as a "private activity bond" within the meaning of Section 141 of said Code, by reason of classification of such WGFP Financing Obligations as an "arbitrage bond" within the meaning of Section 148 of said Code, or for any other reason.

PART III – PROVISIONS APPLICABLE TO CASH ALLOTTEES

7. Provisions Applicable to Cash Allottees.

7.1. **Applicability.** This Section 7 shall, unless modified by express language in a subsequent agreement, be applicable to [Actual Allottee Name*] to the extent that it meets its Capital C&E Funding Obligations under Section 6.2 through Capital C&E Funding Cash Payments. [Actual Allottee Name*] is referred to herein as a Cash Allottee to the extent that it meets its Capital C&E Funding Obligations under Section 6.2 through Capital C&E Funding Cash Payments.

7.2. **Additional Definitions.** In addition to the definitions in Section 1, the following definitions shall apply to this Section 7.

7.2.1. **“Escrow Agreement”** means the escrow agreement between the WGFP Enterprise and Cash Allottee as more particularly described in this Section 7.

7.2.2. **“Escrow Fund”** means the escrow fund established under the Escrow Agreement.

7.3. Payment of Capital C&E Funding Obligations.

7.3.1. **Initial C&E.** To the extent [Actual Allottee Name*] meets its Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 through Capital C&E Funding Cash Payments, [Actual Allottee Name*] hereby agrees to provide its Capital C&E Funding Cash Payment for such Initial C&E to the WGFP Enterprise on or before the date of sale of any WGFP Financing, exclusive of a CWCB Loan (as defined in Section 8.2), for such amount of Capital C&E.

7.3.1.1. In the event that the WGFP Enterprise, in consultation with the WGFP Allottees, determines that a portion of the Initial C&E should be incurred before the date of sale of any WGFP Financing (exclusive of a CWCB Loan) and paid for using the CWCB Loan and Capital C&E Funding Cash Payments, the WGFP Enterprise shall give notice to the WGFP Allottees of its intent to incur such Capital C&E and, to the extent [Actual Allottee Name*] meets its Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 through Capital C&E Funding Cash Payments, [Actual Allottee Name*] agrees to provide a portion of its Capital C&E Funding Cash Payment corresponding to the proportion of the Initial C&E to be incurred before the date of sale of any WGFP Financing (exclusive of a CWCB Loan) to the WGFP Enterprise within sixty (60) days after WGFP Enterprise sends the notice described herein; in such event, the remainder of [Actual Allottee Name*]’s Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 shall still be due to the WGFP Enterprise on or before the date

of sale of any WGFP Financing for such amount of Capital C&E, exclusive of a CWCB Loan.

- 7.3.2. **Completion C&E and Future Extraordinary C&E.** To the extent [Actual Allottee Name*] elects to meet its Capital C&E Funding Obligations for Completion C&E under Section 6.2.2 or its additional Capital C&E Funding Obligations for Future Extraordinary C&E under Section 6.2.3, other than Capital C&E Funding Cash Payments for emergency Future Extraordinary C&E incurred by the WGFP Enterprise prior to the giving of notice to [Actual Allottee Name*], through Capital C&E Funding Cash Payments, [Actual Allottee Name*] hereby agrees to provide its Capital C&E Funding Cash Payment to the WGFP Enterprise on or before the date of sale of any associated WGFP Financing, or on such other date as agreed to by the WGFP Enterprise and [Actual Allottee Name*].
- 7.3.3. For sixty (60) days immediately before a Capital C&E Funding Cash Payment associated with Capital C&E is due to the WGFP Enterprise in accordance with this Section 7.3, Cash Allottee agrees to place the funds to be provided to WGFP Enterprise in an escrow account and schedule such funds for release to the WGFP Enterprise on the date such Capital C&E Funding Cash Payments are due to the WGFP Enterprise, except that Cash Allottee may release and provide such funds to the WGFP Enterprise in advance of such due date in its discretion.
- 7.3.4. To the extent [Actual Allottee Name*] meets any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, [Actual Allottee Name*] hereby represents, warrants, and covenants that such Capital C&E Funding Cash Payments shall and will be delivered to the WGFP Enterprise free and clear of any prior lien, including any pledge of the revenues of its [entity name/type (water activity enterprise/utility enterprise/etc.)].
- 7.4. **Escrow Agreement; Escrow Fund.** In addition to the funds established under Section 6.1, the WGFP Enterprise shall establish and maintain an Escrow Fund pursuant to an Escrow Agreement between the WGFP Enterprise and Cash Allottee in the form attached hereto as **Exhibit D**, with segregated accounts for each WGFP Allottee required to make payments into such Escrow Fund. The WGFP Enterprise shall deposit the proceeds of Cash Allottees' Capital C&E Funding Cash Payments into the Escrow Fund.
- 7.5. **Disbursements From Escrow Fund to Pay for Capital C&E.** Pursuant to the terms of the Escrow Agreement, the WGFP Enterprise shall disburse amounts from the Escrow Fund on a periodic basis for the payment of amounts due and owing on account of the Cash Allottee's Capital C&E Funding Obligations attributable to its Capital C&E Funding Cash Payment. Pursuant to the terms of the Escrow Agreement, such periodic disbursements from the Escrow Fund shall occur simultaneously with disbursements from the funds and accounts funded with proceeds provided by all other WGFP Allottees, whether through the provision of Capital C&E Funding Cash Payments or through participation in WGFP Financing, and each disbursement from the Escrow Fund shall be in an amount where the ratio

of such amount to the total disbursements for Capital C&E Funding Obligations for such period is equal to the Cash Allottee's pro-rata share of Capital C&E Funding Obligations attributable to its Capital C&E Funding Cash Payment at the time of any such disbursement.

- 7.6. To the extent [Actual Allottee Name*] satisfies any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, if the WGFP Enterprise holds any proceeds from [Actual Allottee Name*]'s payment of its Capital C&E Funding Obligations after the WGFP Enterprise determines that all Capital C&E have been paid in full, then the WGFP Enterprise shall, at [Actual Allottee Name*]'s option, either reimburse such proceeds to [Actual Allottee Name*] or transfer and credit such proceeds to [Actual Allottee Name*]'s payment of other C&E due under this Contract.

PART IV – PROVISIONS APPLICABLE TO LOAN ALLOTTEES

8. WGFP Financing.

- 8.1. **Applicability.** This Section 8 shall, unless modified by express language in a subsequent agreement, be applicable to [Actual Allottee Name*] to the extent that it participates in a WGFP Financing and for the term of repayment of any such WGFP Financing in which [Actual Allottee Name*] participates. [Actual Allottee Name*] is referred to herein as a Loan Allottee to the extent that it participates in any WGFP Financing.
- 8.2. **Additional Definitions.** In addition to the definitions in Section 1, the following definitions shall apply to WGFP Financing and this Section 8.
 - 8.2.1. **“CWCB Loan”** means a loan or loans issued or to be issued to the WGFP Enterprise by the Colorado Water Conservation Board under an intergovernmental loan contract.
 - 8.2.2. **“Debt Service Fund”** means a fund established under any Financing Document to provide for the payment of WGFP Financing Obligations.
 - 8.2.3. **“Debt Service Reserve Fund”** means a reserve fund established under any Financing Document to provide for the payment of WGFP Financing Obligations when the moneys contained in the Debt Service Fund for such WGFP Financing Obligations are insufficient to make such payments.
 - 8.2.4. **“Lender”** means any lender, bondholder, noteholder, lessee or other holder of any other obligation or indebtedness (including the State of Colorado, the United States of America, or any department, bureau or other affiliated entity thereof) issued in connection with a WGFP Financing of the WGFP Enterprise which constitutes a WGFP Financing Obligation.
 - 8.2.5. **“Revenue Fund”** means a fund established to provide for the disbursement of annual payments made by Loan Allottees under the terms of Section 8.6.

- 8.2.6. **“Subordinated Lien Loan Fund”** means a fund established hereunder to provide for the payment of any lien borrowings that are subordinate to WGFP Financing Obligations, including the CWCB Loan.
- 8.2.7. **“Subordinated Lien Loan Reserve Fund”** means a reserve fund established under Section 8.4.
- 8.2.8. **“WGFP Financing Costs”** means any and all costs associated with a WGFP Financing, including but not limited to (a) the principal of and interest on all WGFP Financings, (b) fees payable to Lenders and others related to the issuance and administration of a WGFP Financing, and (c) reserves required in connection with a WGFP Financing, if any. WGFP Financing Costs are included in the definition of Capital C&E.
- 8.2.9. **“WGFP Financing Obligation”** means the obligation of the WGFP Enterprise to repay an amount of money borrowed from a Lender through a WGFP Financing.
- 8.3. **Issuance or Incurrence of WGFP Financing Obligations.** The WGFP Enterprise will use its best efforts to issue or cause to be issued WGFP Financing Obligations. The WGFP Enterprise may obtain such WGFP Financing in one or more transactions and by one or more means. The WGFP Financing Obligations shall be issued, in one or more issuances, only upon approval of the Enterprise Board. To the extent [Actual Allottee Name*] participates in any WGFP Financing, [Actual Allottee Name*] authorizes an initial WGFP Financing for the Initial C&E (less that amount funded by Capital C&E Funding Cash Payments) as described in Section 6.2.1, defined in **Exhibit A**, and in accordance with Section 8.18; and such WGFP Financing for Completion C&E or Future Extraordinary C&E as determined by the Enterprise Board to be necessary under Section 6.2.2 and Section 6.2.3, respectively.
- 8.4. **WGFP Financing Funds.** In addition to the funds established in Section 6.1, there shall be established and maintained either by the WGFP Enterprise or under any Financing Documents the following funds and reserve funds, with segregated accounts for each Loan Allottee, to be used under the terms of this Section 8: a Revenue Fund; a Debt Service Fund; a Debt Service Reserve Fund; a Subordinated Lien Loan Fund; a Subordinated Lien Loan Reserve Fund; and a Liquidity Fund.
- 8.4.1. **Liquidity Fund.** For each WGFP Financing undertaken by the WGFP Enterprise, whether senior lien or subordinate lien, in which [Actual Allottee Name*] participates, and to the extent of such participation, Loan Allottees shall, on a due date or due dates set by the WGFP Enterprise in its discretion and noticed to the WGFP Allottees, deposit with the WGFP Enterprise an amount equal to the product of Loan Allottee’s WGFP Financing Participation Percentage multiplied by 30% of the maximum annual debt service on such WGFP Financing, which the WGFP Enterprise shall deposit in the Liquidity Fund in segregated accounts for each Loan Allottee. Such Liquidity Fund shall be held by the WGFP Enterprise to be applied separately from any reserves required for the borrowings. Upon full repayment of a WGFP Financing, the WGFP Enterprise shall return the

amount each Loan Allottee deposited in the Liquidity Fund for such WGFP Financing to such Loan Allottee. Any interest accrued by the Liquidity Fund shall be transferred to the Operating Fund and credited, based on the WGFP Financing Participation Percentages, to each Loan Allottee's payment of amounts due to such fund under this Contract.

8.5. **Payment of Loan Allottee's Capital C&E Funding Obligations and Operating C&E.** To the extent [Actual Allottee Name*] participates in any WGFP Financing and for the term of any such WGFP Financing, Loan Allottee hereby agrees to pay, on or before the last business day of January of each calendar year, an amount equal to the sum of the following:

- 8.5.1. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount of all Operating C&E estimated by the WGFP Enterprise to become due in the then current calendar year;
- 8.5.2. Subject to Section 8.18 hereof, an amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount of principal of and interest to become due, on or prior to January 14 of the following calendar year, on all WGFP Financing;
- 8.5.3. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Operating Reserve Fund;
- 8.5.4. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in the Operating Reserve Fund to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20;
- 8.5.5. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Debt Service Reserve Fund;
- 8.5.6. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount needed to increase the amount on deposit in the Debt Service Reserve Fund to equal the amount required to be on deposit therein under any Financing Document;
- 8.5.7. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Subordinated Lien Loan Reserve Fund;
- 8.5.8. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount needed to increase the amount on deposit in the Subordinated Lien Loan Reserve Fund to equal the amount required to be on deposit therein under any Financing Document;

- 8.5.9. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccounts in such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2;
 - 8.5.10. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2 to equal the amount determined by the Enterprise Board to be necessary to be on deposit therein;
 - 8.5.11. An amount equal to Loan Allottee's obligation to contribute funds into the Liquidity Fund as provided in Section 8.4.1; and
 - 8.5.12. Any amount due from Loan Allottee pursuant to Voluntary Step-Up or Mandatory Step-Up under Section 5.4.6.6.
- 8.6. **Revenue Fund.** The WGFP Enterprise shall deposit all amounts paid by Loan Allottee under Section 8.5 into the Revenue Fund and credit such amounts to Loan Allottees' subaccounts therein. Monies in the Revenue Fund shall be disbursed periodically by the WGFP Enterprise to the following funds in the following order of priority:
- 8.6.1. To the Operating Fund, the full amount of the current Operating C&E attributable to all Loan Allottees;
 - 8.6.2. To the Debt Service Fund, an amount equal to the WGFP Financing Costs for such period, except for financing costs for any subordinated lien borrowing, including the CWCB Loan;
 - 8.6.3. To the Subordinated Lien Loan Fund, an amount necessary to pay the debt service for such period on all subordinated lien borrowings, including the CWCB Loan;
 - 8.6.4. To the Operating Reserve Fund, an amount necessary to replenish any prior draws made in respect of any and all Loan Allottees and to increase the amount on deposit therein to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20;
 - 8.6.5. To the Debt Service Reserve Fund, an amount necessary to replenish any prior draws made in order to pay WGFP Financing Costs and to increase the amount on deposit therein to equal the amount required to be on deposit therein under any Financing Document;
 - 8.6.6. To the Subordinated Lien Loan Reserve Fund, an amount necessary to replenish any prior draws made in order to pay any subordinated lien borrowings, including the CWCB Loan, and to increase the amount on

deposit therein to equal the amount required to be on deposit therein under any Financing Document;

- 8.6.7. To such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2, an amount necessary to replenish any prior draws made in order to pay Operating C&E and to increase the amount on deposit therein to equal the amount determined by the Enterprise Board to be necessary to be on deposit therein;
 - 8.6.8. To the Liquidity Fund, an amount necessary to maintain such fund at the amount described in Section 8.4.1; and
 - 8.6.9. If any amount remains, to a surplus fund established and maintained by the WGFP Enterprise to be used by the WGFP Enterprise in its discretion for any lawful purpose of the WGFP Enterprise.
- 8.7. **Billing Statement and Payment of WGFP Financing Costs and Operating C&E.** As a component of the Billing Statement described in Section 4.5, the WGFP Enterprise shall furnish Loan Allottee with a written statement of the estimated WGFP Financing Costs for each succeeding Fiscal Year, if any, taking into account applicable credits received by the WGFP Enterprise and estimated investment earnings on moneys, if any, related to WGFP Financing Obligations and held by the WGFP Enterprise. Allottee shall pay, or cause to be paid, to the WGFP Enterprise, on or before the last business day of January of each calendar year, 100% of the WGFP Financing Costs billed to Allottee in such written statement.
- 8.8. **Interest on Late Payment.** Any amount of the WGFP Financing Costs billed in a Fiscal Year by the WGFP Enterprise under Section 8.7 which remains unpaid after the last business day of February shall bear interest from such day at the per annum interest rate of eighteen percent (18%) until paid. To the extent [Actual Allottee Name*] is a Loan Allottee, interest paid by Loan Allottee shall not change the WGFP Participation Percentage or WGFP Financing Participation Percentage of Loan Allottee but shall be applied to the payment of WGFP Financing Costs of the Loan Allottees other than the Loan Allottee paying such interest in accordance with the applicable Financing Documents.
- 8.9. **WGFP Enterprise Responsibility Regarding Collected Funds.** The WGFP Enterprise shall apply the funds paid by Loan Allottee pursuant to Section 8.5 solely as provided in Section 8.6. The WGFP Enterprise shall keep amounts collected under this Contract from Loan Allottee in a designated account for the WGFP Financing Obligations, promptly pay when due the WGFP Financing Costs, provide WGFP Financing accounting and payment information to all WGFP Allottees, and take such other reasonable actions as may be requested by Loan Allottee and agreed to by the WGFP Enterprise; provided, that failure of the WGFP Enterprise or of Loan Allottee to make payment required by Section 8 of a WGFP Allotment Contract shall not relieve Loan Allottee of its obligation to pay all amounts owed under this Contract.

- 8.10. **Loan Allottee Bankruptcy or Insolvency.** In addition to a failure to pay any amounts due under Section 8.5, Default under Section 5.3.1.2 shall also include, without limitation, Loan Allottee's act of filing any petition or instituting any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby Loan Allottee asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or Loan Allottee's act of making a general or any assignment for the benefit of its creditors. A Default under this Section 8.10 shall be subject to the Default, forfeiture, and other provisions of Section 5.4.
- 8.11. **Future Financings.** In the event [Actual Allottee Name*] participates in any future borrowing or refinancing authorized by this Contract, [Actual Allottee Name*] agrees to undertake the same obligations as are set forth in this Section 8.
- 8.12. **Obligation Is Not Subject to Reduction.** Loan Allottee shall make payments under Section 8.5 of this Contract whether or not WGFP is permitted, undertaken, completed, operable, operated or retired and notwithstanding the suspension, interruption, interference, reduction, or curtailment of operation of WGFP or of water or storage contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by the WGFP Enterprise or any other Loan Allottee under this Contract or any other agreement. If and to the extent Loan Allottee transfers all or a part of its WGFP Allotment associated with any WGFP Financing under the terms of Section 5.2, Loan Allottee shall remain liable for its obligations to pay the WGFP Enterprise for the WGFP Financing associated with the transferred WGFP Allotment in the event and to the extent not paid by the transferee acquiring such WGFP Allotment.
- 8.13. **Severable Obligation.** No Loan Allottee shall be liable under its respective WGFP Allotment Contract for the obligations of any other Loan Allottee except as expressly set forth in Section 5.4 hereof. Each Loan Allottee shall be solely responsible and liable for performance of its obligations under its respective WGFP Allotment Contract. The obligation of each Loan Allottee to make payments under its respective WGFP Allotment Contract is a severable obligation and not a joint obligation with those of the other WGFP Allottees.
- 8.14. **Limited Obligations of WGFP Enterprise.** WGFP Financing Obligations incurred by the WGFP Enterprise pursuant to this authorization are special revenue obligations of the WGFP Enterprise payable solely from the amounts received by the WGFP Enterprise from the Loan Allottees under the WGFP Allotment Contracts. WGFP Financing Obligations do not constitute a general obligation debt or indebtedness of the WGFP Enterprise within the meaning of any constitutional or statutory debt limitations or provisions. The WGFP Enterprise does not have the legal authority to levy a tax.

- 8.15. **Allocation of Project Expenses; Disbursements.** Allottee agrees that all WGFP Financing Costs are to be paid solely from the amounts received by the WGFP Enterprise from the Loan Allottees under the WGFP Allotment Contracts, and are not the responsibility of the WGFP Enterprise, the WGFP Allottees that did not participate in WGFP Financing to the extent that they did not participate, or the District.
- 8.15.1. The Financing Documents relating to WGFP Financing Obligations shall provide that simultaneously at the time of the disbursement of any proceeds of WGFP Financing Obligations there will be a disbursement of proceeds from the funds holding cash payments made by WGFP Allottees not participating in WGFP Financing, and that in each instance the disbursement of proceeds of WGFP Financing Obligations and the disbursement of proceeds from the funds holding cash payments made by WGFP Allottee not participating in WGFP Financing shall be in proportion to the applicable WGFP Participation Percentage of each WGFP Allottee.
- 8.16. **Pledge or Assignment to Lender.** The WGFP Enterprise may pledge and assign to any Lender all or any portion of the payments received under this Contract from Allottee. Such pledge and assignment by the WGFP Enterprise shall be made effective for such time as the WGFP Enterprise shall determine and provide that the Lender shall have the power to enforce this Contract if an event of default occurs under the applicable Financing Document.
- 8.17. **Lender is Third Party Beneficiary.** Any Lender shall have the right as a third-party beneficiary to initiate and maintain suit to enforce this Contract to the extent provided in any Financing Document.
- 8.18. **Loan Allottees' Elections of Amortization Schedules.** All WGFP Allottees have been directly and substantially involved with the WGFP Enterprise in creating the form of this Contract. The WGFP Enterprise has advised all WGFP Allottees, among other things, that: (a) the WGFP is not a project amenable to being down-scaled in the event less than all currently anticipated WGFP Allottees participate; (b) the WGFP Enterprise intends to obtain for Initial C&E (i) a WGFP Financing in the form of a \$90 million, 30-year, low interest rate, subordinate lien, level debt service CWCB Loan, and (ii) a WGFP Financing in the form of a publicly-offered issue of revenue bonds for the balance of the WGFP Financing Obligation for Initial C&E with a 30-year, market-based interest rate, level debt service loan (the "Revenue Bond Financing"). Some Loan Allottees have informed the WGFP Enterprise that they prefer to participate in the Revenue Bond Financing to fund their individual Capital C&E Funding Obligation for Initial C&E if their payments are substantially based on an amortization schedule of 20 years, and other Loan Allottees have informed the WGFP Enterprise that their ability to participate in the Revenue Bond Financing to fund their individual Capital C&E Funding Obligation for Initial C&E requires a 30-year amortization. The WGFP Enterprise has determined that separate 20-year and 30-year bond issues are not a viable option. The WGFP Enterprise and WGFP Allottees are willing to accommodate a mixture of 20-year and 30-year amortization schedules if the accommodation does not adversely affect any WGFP Allottees or alter the obligations of all Loan Allottees under their WGFP Allotment Contracts (other than establishment of different

amortization schedules for Loan Allottees according to their preferences for 20-year or 30-year amortization schedules). The WGFP Enterprise has advised all WGFP Allottees, among other things, that: (a) the WGFP Enterprise must make determinations as to what is in the best interests of building the WGFP and in the best interests of all WGFP Allottees; and (b) it has sought, received and is relying on the advice of its financial advisor and its investment banker as to this Contract, including as to alternative financing structures, as well the advice of its bond counsel and general counsel on related legal matters. The WGFP Enterprise has determined its only currently viable financing course of action for Initial C&E is that: (A) if available, the CWCB Loan will have a 30-year level debt service amortization and all Loan Allottees shall participate in funding repayment of the CWCB Loan; and (B) the Revenue Bond Financing will have a 30-year amortization and will be structured in such a manner that (i) the Capital C&E Funding Obligations of those Loan Allottees who affirmatively elect to participate in the Revenue Bond Financing based on a 20-year amortization schedule will have 90% of their individual Capital C&E Funding Obligations amortized on a level debt service basis over the period of years 1 to 20 of the 30-year amortization of the Revenue Bond Financing, with the remaining 10% of their individual Capital C&E Funding Obligations amortized on a level debt service basis in years 21 to 30 of the 30-year amortization of the Revenue Bond Financing (the “90-10 arrangement”), and (ii) the Capital C&E Obligations of all Loan Allottees who do not affirmatively elect either amortization schedule will have 100% of their individual Capital C&E Funding Obligations amortized on a 30-year level debt service basis. If [Actual Allottee Name*] chooses the 90-10 arrangement, it means that [Actual Allottee Name*]: (A) has determined this arrangement is in its best interests; (B) agrees that the accommodation to allow Loan Allottees to elect between 20- and 30-year amortization schedules for the Revenue Bond Financing of their individual Capital C&E Funding Obligations and the other rights and interests created by this Contract are legally sufficient consideration for all obligations of [Actual Allottee Name*] under this Allotment Contract, including, without limitation, all step-up obligations of [Actual Allottee Name*] pursuant to Section 5.4.6.6.; (C) acknowledges that the 10% of [Actual Allottee Name*]’s individual Capital C&E Funding Obligations which does not begin to amortize until year 21 will bear current interest in years 1 to 20 and that [Actual Allottee Name*] is obligated to pay such interest on a current basis; (D) acknowledges that this arrangement does not change [Actual Allottee Name*]’s WGFP Financing Participation Percentage under this Allotment Contract in any way except in respect of the amount payable under Section 8.5.2; and (E) acknowledges that the step-up amounts, if any, payable in years 21 to 30, will not be adjusted for the 90-10 arrangement. Subject to all of the terms and conditions recited above in this Section 8.18, a Loan Allottee may choose the 90-10 arrangement by giving written notice to the WGFP Enterprise pursuant to Section 6.2.1.1.

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DATED: _____

[ALLOTTEE]

By: _____

[NAME]

[TITLE]

ATTEST:

By: _____

Title: _____

DATED: _____

**WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE
MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY
DISTRICT**

By: _____

Name: Dennis Yanchunas

Title: President

ATTEST:

By: _____

Name: Bradley D. Wind

Title: Secretary

EXHIBIT A
Initial C&E

WGFP Allottee	WGFP Allotment (WGFP Units)	WGFP Participation Percentage	Capital C&E Funding Obligation (Initial C&E)	Capital C&E Funding Cash Payment (Initial C&E)	WGFP Units Attributable to Capital C&E Funding Cash Payment (Initial C&E)	WGFP Financing (Initial C&E)	WGFP Units Attributable to WGFP Financing (Initial C&E)	WGFP Financing Participation Percentage (Initial C&E)
Broomfield	26,464	29.40%	\$176,400,000	\$22,000,000	3,300	\$154,400,000	23,164	32.26%
Platte River Power Authority	16,000	17.78%	\$106,680,000	\$27,000,000	4,049	\$79,680,000	11,951	16.64%
Loveland	10,000	11.11%	\$66,660,000	\$20,000,000	3,000	\$46,660,000	7,000	9.75%
Greeley	9,189	10.21%	\$61,260,000		0	\$61,260,000	9,189	12.80%
Longmont	7,500	8.33%	\$49,980,000	\$49,980,000	7,500	0.00		0.00%
Erie	6,000	6.67%	\$40,020,000		0	\$40,020,000	6,000	8.36%
Little Thompson Water District	4,850	5.40%	\$32,400,000		0	\$32,340,000	4,850	6.75%
Superior	4,726	5.25%	\$31,500,000		0	\$31,500,000	4,726	6.58%
Louisville	2,835	3.15%	\$18,900,000		0	\$18,900,000	2,835	3.95%
Fort Lupton	1,190	1.32%	\$7,920,000		0	\$7,920,000	1,190	1.66%
Lafayette	900	1.00%	\$6,000,000		0	\$6,000,000	900	1.25%
Central Weld County Water District	346	0.38%	\$2,280,000	\$2,280,000	346	0.00	0	0.00%
Totals	90,000	100%	\$600,000,000	\$121,260,000	18,195	\$478,680.00	71,805	100.00%

EXHIBIT B#
Completion C&E/Future Extraordinary C&E

WGFP Allottee	Capital C&E Funding Obligation	Capital C&E Funding Cash Payment	WGFP Units Attributable to Capital C&E Funding Cash Payment	WGFP Financing	WGFP Units Attributable to WGFP Financing	WGFP Financing Participation Percentage
Broomfield	\$0.00	\$0.00	0	\$0.00	0	0.00%
Platte River Power Authority	0.00	0.00	0	0.00	0	0.00%
Loveland	0.00	0.00	0	0.00	0	0.00%
Greeley	0.00	0.00	0	0.00	0	0.00%
Longmont	0.00	0.00	0	0.00	0	0.00%
Erie	0.00	0.00	0	0.00	0	0.00%
Little Thompson Water District	0.00	0.00	0	0.00	0	0.00%
Superior	0.00	0.00	0	0.00	0	0.00%
Louisville	0.00	0.00	0	0.00	0	0.00%
Fort Lupton	0.00	0.00	0	0.00	0	0.00%
Lafayette	0.00	0.00	0	0.00	0	0.00%
Central Weld County Water District	0.00	0.00	0	0.00	0	0.00%
Totals	\$ 0.00	\$ 0.00	0	\$ 0.00	0	100.00%

EXHIBIT C

IF TO:	MAILING ADDRESS
Windy Gap Firming Project Water Activity Enterprise	c/o WGFP Project Manager 220 Water Avenue Berthoud, CO 80513
Broomfield	c/o David F. Allen Director of Public Works 1 DesCombes Drive Broomfield, CO 80020-2495
Central Weld County Water District	c/o Stan Linker District Manager 2235 2 nd Avenue Greeley, CO 80631-7203
Greeley	c/o Sean Chambers Director of Water & Sewer 1100 10 th Street, Ste 300 Greeley, CO 80631-3863
Erie	c/o Todd Fessenden Deputy Public Works Director PO Box 750 Erie, CO 80516-0750
Fort Lupton	City of Fort Lupton Attn: City Administrator 130 South McKinley Avenue Fort Lupton, CO 80621
Lafayette	c/o Jeff Arthur Public Works Director 1290 S Public Road Lafayette, CO 80026-2706
Little Thompson Water District	c/o Amber Kauffman District Manager 835 E State Hwy 56 Berthoud, CO 80513-9237
Longmont	c/o Ken Huson Water Resources Engineer 1100 S. Sherman Street Longmont, CO 80501-6550
Louisville	c/o Cory Peterson Water Resources Engineer 749 Main Street Louisville, CO 80027-1136

IF TO:	MAILING ADDRESS
Loveland	c/o Larry D. Howard Senior Civil Engineer – Water Resources 200 N. Wilson Avenue Loveland, CO 80537-6017
Platte River Power Authority	c/o Heather Banks Fuels & Water Manager 2000 E Horsetooth Road Fort Collins, CO 80525-5721
Superior	c/o Jim Widner Utilities Superintendent 124 E Coal Creek Drive Superior, CO 80027-9626

EXHIBIT D

[Form of Escrow Agreement]

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made effective as of _____, by and between the Windy Gap Firing Project Water Activity Enterprise (the “**WGFP Enterprise**”), and [Name of Cash Allottee] (the “**Cash Allottee**”), and is made with reference to the following facts:

RECITALS

A. The WGFP Enterprise is a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District, and whose address is 220 Water Avenue, Berthoud, Colorado 80513. The WGFP Enterprise is a water activity enterprise that will exercise the authorities granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, for the purpose of the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project (“WGFP”).

B. Cash Allottee is a [add description*].

C. Pursuant to the WGFP Allotment Contract between the WGFP Enterprise and Cash Allottee, Cash Allottee has elected to make an upfront cash payment (the “Capital C&E Funding Cash Payment”) to the WGFP Enterprise for the purpose of paying [a portion of] Cash Allottee’s pro rata obligation, based on the WGFP Participation Percentages, to fund [Initial C&E] (“Capital C&E Funding Obligations”). Specifically, Cash Allottee has elected to make a Capital C&E Funding Cash Payment of \$[XXXXXXXXXX], which is equal to [X%] of its Capital Funding Obligations for [Initial C&E].

D. In accordance with the WGFP Allotment Contract, the WGFP Enterprise has established and agreed to maintain an Escrow Fund with segregated accounts for each WGFP Allottee required to make a Capital C&E Funding Cash Payment into such Escrow Fund.

AGREEMENT

THEREFORE, in consideration of the facts recited above and of the covenants, terms, and conditions set forth herein, the parties agree as follows:

1. Definitions. Each and every definition set forth in the foregoing “introduction” and “recitals” is hereby incorporated into this Escrow Agreement by this reference. Capitalized terms not defined herein shall have the meanings assigned those terms in the WGFP Allotment Contract. To the extent the definition of a capitalized term herein conflicts with the definition of such term in the WGFP Allotment Contract, the definition in the WGFP Allotment Contract shall prevail.

2. Establishment of [Name of Cash Allottee] Proceeds Fund. Within the Escrow Fund, there is hereby created and established a special fund designated “[Name of Cash Allottee] – Capital C&E Funding Cash Payment Proceeds Fund” (the “[Name of Cash Allottee] Proceeds Fund”), which shall be held in trust by the WGFP Enterprise separate and apart from all other

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

funds of the WGFP Enterprise. The [Name of Cash Allottee] Proceeds Fund shall be a separate account from any other funds or accounts in the Escrow Fund funded with proceeds provided by other WGFP Allottees.

3. Deposit of Capital C&E Funding Cash Payment. The proceeds of the Capital C&E Funding Cash Payment paid by Cash Allottee to the WGFP Enterprise pursuant to the WGFP Allotment Contract shall be deposited in the [Name of Cash Allottee] Proceeds Fund and applied to the Cash Allottee's Capital Funding Obligations set forth under the WGFP Allotment Contract.

4. Disbursements From [Name of Cash Allottee] Proceeds Fund. The WGFP Enterprise shall disburse amounts from the [Name of Cash Allottee] Proceeds Fund on a periodic basis for the payment of amounts due and owing on account of the Cash Allottee's Capital C&E Funding Obligations. Such periodic disbursements from the [Name of Cash Allottee] Proceeds Fund shall occur simultaneously with disbursements from the funds and accounts funded with proceeds provided by all of the WGFP Allottees, whether through the provision of cash, through the participation in a financing by the WGFP Enterprise, or through both. Each disbursement from the [Name of Cash Allottee] Proceeds Fund shall be in an amount where the ratio of such amount to the total disbursement for [Initial C&E] at such time is equal to the Cash Allottee's WGFP Participation Percentage attributable to its Capital Funding Cash Payment at the time of any such disbursement.

5. Investment of Proceeds. Any moneys in the [Name of Cash Allottee] Proceeds Fund not presently needed for payment of the Cash Allottee's Capital Funding Obligations as set forth above may be invested in any legal investments for monies of the WGFP Enterprise maturing or otherwise available not later than the date upon which such moneys will be needed according to a schedule of anticipated payments from the [Name of Cash Allottee] Proceeds Fund prepared by the WGFP Enterprise in connection with the WGFP. Any such investments shall be made in accordance with the investment policies adopted by the WGFP Enterprise and shall be held by the WGFP Enterprise, in trust, for the account of the [Name of Cash Allottee] Proceeds Fund until maturity or until sold, and at maturity or upon such sale the proceeds received therefrom including accrued interest and premium, if any, shall be immediately deposited in the [Name of Cash Allottee] Proceeds Fund and shall be disposed of in the manner and for the purposes provided in the WGFP Allotment Contract.

6. Reporting. The WGFP Enterprise shall provide Cash Allottee with periodic (no less than quarterly) reports regarding the disbursement of funds from the [Name of Cash Allottee] Proceeds Fund under the terms of this Escrow Agreement.

7. Reimbursement or Transfer After [Initial C&E] Paid in Full. If the WGFP Enterprise holds any moneys in the [Name of Cash Allottee] Proceeds Fund after the WGFP Enterprise determines that all [Initial C&E] has been paid in full, then the WGFP Enterprise shall, at Cash Allottee's option, either reimburse such proceeds to Cash Allottee or transfer and credit such proceeds to Cash Allottee's payment of other costs due under its WGFP Allotment Contract.

8. Counterparts. This Escrow Agreement may be executed by the WGFP Enterprise and the Cash Allottee in separate counterparts, each of which when so executed and delivered shall

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes

9. Severability. If one or more clauses, sentences, paragraphs or provisions of this Escrow Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of this Escrow Agreement shall not be affected thereby.

10. Choice of Law. This Agreement shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the WGFP Enterprise and the Cash Allottee, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers as of the date set forth above.

[ALLOTTEE]

By: _____
[NAME]
[TITLE]

ATTEST:

By: _____
Title: _____

WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE

By: _____
[NAME]
[TITLE]

**WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE, MUNICIPAL
SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS**

RESOLUTION NO. MS-XXX-11-20

**AUTHORIZING EXECUTION OF ALLOTMENT CONTRACTS FOR CAPACITY IN
THE WINDY GAP FIRING PROJECT WITH THE PROJECT PARTICIPANTS**

WHEREAS, the Windy Gap Firing Project Water Activity Enterprise (“WGFP Enterprise”) is a government-owned business within the meaning of Article X, § 20(2)(d), of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District (the “Subdistrict”); and

WHEREAS, in accordance with its statutory duties and powers granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, the WGFP Enterprise has pursued the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project (“WGFP”), a project designed to, among other things, deliver a firm annual yield of about 30,000 acre-feet of water from the existing Windy Gap project to meet a portion of the existing and future demands of the project participants (“WGFP Allottees”) by construction of approximately 90,000 acre-feet of usable water storage capacity; and

WHEREAS, as of the date of this Resolution, the WGFP Allottees are (1) the City and County of Broomfield, a Colorado municipal corporation and county, acting by and through its Water Enterprise; (2) Central Weld County Water District; (3) the Town of Erie, acting by and through its Erie Water Activity Enterprise; (4) the City of Fort Lupton Utility Enterprise; (5) the City of Greeley, a Colorado home rule municipal corporation, acting by and through its Water Enterprise; (6) the Town of Lafayette, a Colorado home-rule municipality, acting with and on behalf of the Lafayette Water Fund Enterprise; (7) the City of Longmont, a municipal corporation acting by and through its Water Utility Enterprise; (8) the City of Louisville, a Colorado home rule municipal corporation, acting by and through the City of Louisville Water Activity Enterprise; (9) the City of Loveland, a Colorado home rule municipal corporation, acting by and through its Water Enterprise; (10) Little Thompson Water District; (11) Platte River Power Authority; and (12) Superior Metropolitan District No. 1; and

WHEREAS, over the course of several months, the WGFP Enterprise and the WGFP Allottees have worked cooperatively through their respective staffs and attorneys to develop a form of a WGFP Allotment Contract, a copy of which is attached hereto as **Exhibit 1**, that, among other things, will allot and confirm to each WGFP Allottee a portion of the usable water storage and conveyance capacity of the WGFP pursuant to C.R.S. § 37-45-131, C.R.S. § 37-45.1-103(4), and C.R.S. § 37-45.1-106(4); set out the WGFP Allottees’ respective obligations to pay for the WGFP; and provide details about operation of the WGFP upon completion of construction; and

WHEREAS, the governing body of each WGFP Allottee has considered the form of WGFP Allotment Contract, has duly authorized their respective officers to enter into and execute a WGFP Allotment in the form attached hereto as Exhibit 1, and has provided the WGFP Enterprise with written evidence of such authorization; and

WHEREAS, the WGFP Enterprise Board of Directors finds it necessary, convenient, and appropriate at this time to enter into a WGFP Allotment Contract in the form attached hereto as Exhibit 1 with each of the WGFP Allottees;

NOW, THEREFORE, BE IT RESOLVED: The Board of Directors of the WGFP Enterprise hereby authorizes and directs its President, for and on behalf of the WGFP Enterprise, to enter into and execute a WGFP Allotment Contract in the form attached hereto as Exhibit 1, with such changes and amendments as hereinafter provided for, with each of the WGFP Allottees listed herein, as well as any other associated documents, including without limitation an Escrow Agreement in the form included as Exhibit D in Exhibit 1, with such changes and amendments as hereinafter provided for, with any WGFP Allottee that satisfies all or a portion of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments pursuant to its respective WGFP Allotment Contract. Said forms may be changed and amended by approval of the General Manager and General Counsel of the WGFP Enterprise, provided that the covenants therein shall not be materially more burdensome to the WGFP Enterprise.

CERTIFICATE

I, Bradley D. Wind, do hereby certify that the above is a true and correct copy of a Resolution adopted by the Board of Directors of the Windy Gap Firming Project Water Activity Enterprise at a regular meeting of the Board of Directors held in Berthoud, Colorado, on November 12, 2020.

Dated: _____

Secretary

Exhibit 1

ALLOTMENT CONTRACT BETWEEN THE WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE, MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AND [*ACTUAL ALLOTTEE NAME*], FOR CAPACITY IN THE WINDY GAP FIRING PROJECT

This Allotment Contract (“Contract”) for an allotment of capacity in the hereinafter defined and described Windy Gap Firing Project is entered into this ____ day of _____, 2020, by and between the Windy Gap Firing Project Water Activity Enterprise (“WGFP Enterprise”) and [*Actual Allottee Name*] (“[Actual Allottee Name*]”), pursuant to C.R.S. § 37-45-131 and C.R.S. §§ 37-45.1-103(4), 106(4).

RECITALS

A. The WGFP Enterprise is a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District (the “Subdistrict”), and whose address is 220 Water Avenue, Berthoud, Colorado 80513. The WGFP Enterprise is a water activity enterprise that will exercise the authorities granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, for the purpose of the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project.

B. [Actual Allottee Name*] is a [add description of party (enterprise)*].

C. The Windy Gap Firing Project (“WGFP”) is described in general in the U.S. Bureau of Reclamation Record of Decision, together with supporting documents for the WGFP dated December 2011, as may be amended from time to time.

D. The WGFP has not, as of the date of this Contract, been financed, constructed, and completed. This Contract therefore includes provisions that address the WGFP before and after completion of construction and commencement of project operation. This Contract also includes provisions that apply only if and to the extent that [Actual Allottee Name*] satisfies all or a portion of its Capital C&E Funding Obligations through either Capital C&E Funding Cash Payments or participation in WGFP Financing.

- **PART I**, “Contract Definitions,” consists of **Section 1**, which includes definitions that apply to this entire Contract.
- **Part II**, “Provisions Applicable to All WGFP Allottees,” consists of Sections 2 through 6 and applies to [Actual Allottee Name*] regardless of its chosen means of satisfying its Capital C&E Funding Obligations, unless specifically provided otherwise. **Section 2** is an allotment by the WGFP Enterprise to [Actual Allottee Name*] of capacity in the WGFP. **Section 3** includes provisions that are applicable prior to WGFP Completion, as that term is defined herein. **Section 4** includes provisions that are relevant to the operation of the WGFP after WGFP Completion. **Section 5** includes other general terms and conditions, including terms on Default and forfeiture under this Contract. **Section 6** includes provisions relating to [Actual Allottee Name*]’s obligations to pay for the WGFP.

- **PART III**, “Provisions Applicable to Cash Allottees,” consists of **Section 7**, which includes provisions that apply to [Actual Allottee Name*] only to the extent that it satisfies all or a portion of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, and then only for the term of any payments for Capital C&E using proceeds from such Capital C&E Funding Cash Payments.
- **PART IV**, “Provisions Applicable to Loan Allottees,” consists of **Section 8**, which includes provisions that apply to [Actual Allottee Name*] only to the extent that it satisfies all or a portion of its Capital C&E Funding Obligations through participation in a WGFP Financing, and then only for the term of repayment of the WGFP Financing (including any refinancing of the same) in which [Actual Allottee Name*] participates. The terms of Section 8 are not in effect at such times as there is no outstanding WGFP Financing in which [Actual Allottee Name*] participates.

The effective date and terms of each Section of this Contract are provided in Section 5.1.

AGREEMENT

THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

PART I – CONTRACT DEFINITIONS

1. **Definitions.** The following definitions shall apply to this Contract unless expressly modified herein.
 - 1.1. **“Acre-foot”** means 43,560 cubic feet of water.
 - 1.2. **“Capital C&E Funding Cash Payment”** means the payment by [Actual Allottee Name*] of any Capital C&E Funding Obligations in cash to the WGFP Enterprise.
 - 1.3. **“Capital C&E Funding Obligations”** means [Actual Allottee Name*]’s pro rata obligation, based on the WGFP Participation Percentages, to fund Capital C&E, which obligation shall equal the product of the Capital C&E multiplied by [Actual Allottee Name*]’s WGFP Participation Percentage. For reference purposes, each WGFP Allottee’s Capital C&E Funding Obligation for Initial C&E pursuant to Section 6.2.1 is set forth in **Exhibit A** opposite each WGFP Allottee’s name, which exhibit the WGFP Enterprise may update from time to time as needed. For reference purposes, the amount of each WGFP Allottee’s Capital C&E Funding Obligations for any additional Capital C&E under Sections 6.2.2 and 6.2.3 will be set out in **Exhibit B** (with separate tables for each additional Capital C&E), which exhibit the WGFP Enterprise may update from time to time as needed. [Actual Allottee Name*] may fulfill its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof.
 - 1.4. **“Carriage Contract”** means that Amendatory Contract, 2014 Contract No. 15XX650003, entered into on December 19, 2014, between the Subdistrict, the District, and the United States of America for the purpose of utilizing the unused capacity of the facilities of the Colorado–Big Thompson Reclamation Project for

the carriage of Windy Gap Project Water, and any subsequent amendments or successor contracts for the same purpose.

- 1.5. **“C-BT Project Water”** means water from the Colorado–Big Thompson Reclamation Project.
- 1.6. **“Chimney Hollow Reservoir”** means that reservoir to be located in Sections 4, 5, 8, and 9, T4N, R70W, and Sections 33 and 34, T5N, R70W, 6th P.M., Larimer County, Colorado, and generally described in the U.S. Bureau of Reclamation Record of Decision, together with supporting documents, for the WGFP.
- 1.7. **“Contract”** means this contract.
- 1.8. **“Costs and Expenses”** or **“C&E”** means any and all costs and expenses incurred for the WGFP, all of which are encompassed by one of the following defined terms:
 - 1.8.1. **“Capital C&E”** means and includes any and all Initial C&E, Completion C&E, and Future Extraordinary C&E, including if applicable any and all WGFP Financing Costs associated with the same.
 - 1.8.1.1. **“Initial C&E”** means the WGFP Enterprise’s initial estimated costs of construction and completion of the WGFP with approximately 90,000 acre-feet of usable water storage capacity to be funded by the WGFP Allottees under Section 6.2.1.
 - 1.8.1.2. **“Completion C&E”** means the WGFP Enterprise’s costs in excess of Initial C&E, if any, that are necessary for the construction and completion of the WGFP with approximately 90,000 acre-feet of usable water storage capacity to be funded by the WGFP Allottees under Section 6.2.2.
 - 1.8.1.3. **“Future Extraordinary C&E”** means the WGFP Enterprise’s costs of any individual repair, replacement, rehabilitation, improvement, or regulatory compliance activities incurred after Initial C&E and Completion C&E that are required to be undertaken under Section 6.2.3 for the continued safe operation of the WGFP and that, because of the large amount of such costs, cannot be paid (1) using the Operating Reserve Fund or (2) by the WGFP Allottees through an annual payment for Operating C&E.
 - 1.8.2. **“Operating C&E”** means any and all costs, exclusive of Initial C&E, Completion C&E, and Future Extraordinary C&E, incurred by the WGFP Enterprise (1) to administer, operate, maintain, repair, replace, rehabilitate, and improve the WGFP; (2) attributable to the delivery and storage of water in Chimney Hollow Reservoir that are not paid pursuant to a WGFP Allottee’s Windy Gap Project allotment contract, including, without limitation, pumping costs, carriage costs, and power interference costs; and (3) to meet regulatory requirements associated with the WGFP. Operating

C&E specifically includes any and all “Costs and Expenses” that are not Capital C&E that may accrue after execution of this Contract.

- 1.9. **“Default”** means any event described in Sections 5.3.1 and 8.10 hereof.
- 1.10. **“District”** means the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado created under and having the powers provided in the Water Conservancy Act, C.R.S. §§ 37-45-101 *et seq.*
- 1.11. **“Enterprise Board”** means the Board of Directors of the WGFP Enterprise.
- 1.12. **“Final Default”** has the meaning provided in Section 5.3.5.
- 1.13. **“Financing Document”** means any indenture, trust agreement, loan agreement, installment purchase agreement, or other financing document entered into by the WGFP Enterprise in connection with any WGFP Financing Obligation (as defined in Section 8.2).
- 1.14. **“Fiscal Year”** means the fiscal year of the WGFP Enterprise, which currently begins on October 1 of each calendar year and ends on September 30 of each calendar year, or such other twelve-month period which may be designated by the WGFP Enterprise as its Fiscal Year.
- 1.15. **“Interim Agreements”** means previously executed agreements between [Actual Allottee Name*] and the WGFP Enterprise under which [Actual Allottee Name*] agreed to pay a pro rata portion, based on the WGFP Participation Percentages, for the operation, maintenance, legal, administrative, improvement, and other costs of developing the WGFP before execution of this Contract.
- 1.16. **“Liquidity Fund”** means a reserve fund established under Section 8.4.1.
- 1.17. **“Loan Allottee Financing Obligation”** means the obligation of a Loan Allottee to pay a percentage of the total WGFP Financing Costs (as defined in Section 8.2) that is equal to the Loan Allottee’s WGFP Financing Participation Percentage.
- 1.18. **“Operating Costs & Reserves”** means, collectively, Operating C&E and the amounts required to be deposited into the Operating Reserve Fund and such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E (if any) pursuant to Section 6.1.2.
- 1.19. **“Operating Fund”** means a fund established to provide for the payment of the Operating C&E of the WGFP.
- 1.20. **“Operating Reserve Fund”** means a reserve fund established to provide for the payment of Operating C&E if the moneys contained in the Operating Fund are insufficient to make such payments. The Operating Reserve Fund shall be maintained such that the amount of money in the fund shall equal the aggregate of two years of Operating C&E, as estimated by the WGFP Enterprise based on a five-year rolling average (except in the first five years of the Operating Reserve

Fund's existence, during which time the WGFP Enterprise will estimate based on available information) and taking into consideration the WGFP Enterprise's reasonable expectations as to future Operating C&E.

- 1.21. **“Prepositioned C-BT Project Water”** means C-BT Project Water stored in Chimney Hollow Reservoir pursuant to the Carriage Contract.
- 1.22. **“Prepositioned Windy Gap Project Water”** means Windy Gap Project Water stored in Chimney Hollow Reservoir as the result of C-BT Prepositioning pursuant to the Carriage Contract.
- 1.23. **“Subdistrict”** means the Municipal Subdistrict, Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado created under and having the powers provided in the Water Conservancy Act, C.R.S. §§ 37-45-101 *et seq.*
- 1.24. **“Water Year”** means the period from October 1 of one calendar year through September 30 of the next succeeding calendar year.
- 1.25. **“WGFP Allotment”** means the quantity of capacity in the WGFP, expressed in “WGFP Units,” granted to [Actual Allottee Name*] by this Contract, or if the context requires, granted to each WGFP Allottee by WGFP Allotment Contracts. Each WGFP Allottee's WGFP Allotment is shown in **Exhibit A**. A WGFP Allotment does not include an allotment of Windy Gap Project Water, which is granted by the Subdistrict in separate Windy Gap Project allotment contracts.
- 1.26. **“WGFP Allotment Contract”** means any contract between the WGFP Enterprise and a WGFP Allottee for a WGFP Allotment, including this Contract if the context requires.
- 1.27. **“WGFP Allottee”** means each entity that holds a WGFP Allotment pursuant to a WGFP Allotment Contract, including [Actual Allottee Name*]. **Exhibit A** lists all current WGFP Allottees.
 - 1.27.1. **“Cash Allottee”** means a WGFP Allottee that, under Section 6.2, satisfies all or a portion of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments pursuant to Section 7. A WGFP Allottee is a Cash Allottee to the extent that it satisfies its Capital C&E Funding Obligation through Capital C&E Funding Cash Payments, and then only for the term of any payments of Capital C&E using proceeds from Capital C&E Funding Cash Payments made by such WGFP Allottee.
 - 1.27.2. **“Loan Allottee”** means a WGFP Allottee that, under Section 6.2, satisfies all or a portion of its Capital C&E Funding Obligation through participation in a WGFP Financing pursuant to Section 8. A WGFP Allottee is a Loan Allottee to the extent that it satisfies its Capital C&E Funding Obligation through participation in WGFP Financing, and then only during the term of such WGFP Financing.

- 1.28. **“WGFP Completion”** means the determination pursuant to Section 3.3 of this Contract.
- 1.29. **“WGFP Enterprise”** has the meaning assigned to the term in the introductory paragraph of this Contract.
- 1.30. **“WGFP Financing”** means a financing by the WGFP Enterprise of Capital C&E through one or more loans, lines of credit, notes, bond issues, or other forms of indebtedness, and any refinancing of the same, on behalf of the Loan Allottees participating in such WGFP Financing. WGFP Financing includes the CWCB Loan (as defined in Section 8.2) and any other lien borrowings that may be subordinated to other financing.
- 1.31. **“WGFP Financing Participation Percentage”** means the quotient of a Loan Allottee’s Capital C&E Funding Obligations that are to be paid through a WGFP Financing divided by the total amount of Capital C&E Funding Obligations to be paid by the WGFP Allottees through a WGFP Financing. To the extent a WGFP Allottee is a Loan Allottee for the Initial C&E, the WGFP Allottee’s WGFP Financing Participation Percentage that is applicable to the WGFP Financing for such Initial C&E is set forth in **Exhibit A** opposite each WGFP Allottee’s name. The amount of each WGFP Allottee’s WGFP Financing Participation Percentage that is applicable to additional Capital C&E under Sections 6.2.2 and 6.2.3 will be set out in **Exhibit B**.
- 1.32. **“WGFP Participation Percentage”** means the quotient of the number of WGFP Units held by a WGFP Allottee divided by the total number of WGFP Units, as such WGFP Participation Percentage may be modified in accordance herewith. The WGFP Participation Percentages for each WGFP Allottee are set forth in **Exhibit A** opposite each WGFP Allottee’s name.
- 1.33. **“WGFP Unit”** means 1/90,000th of the usable water storage and conveyance capacity in the WGFP. There are 90,000 WGFP Units total.
- 1.34. **“Winding-Up Agent”** means the agent appointed by the Enterprise Board in accordance with Section 3.4 hereof.
- 1.35. **“Winding-Up Resolution”** means a resolution adopted by the Enterprise Board in accordance with and after making the determination required by Section 3.4.
- 1.36. **“Windy Gap Firming Project”** or **“WGFP”** means Chimney Hollow Reservoir and related or ancillary features constructed, operated and maintained by the WGFP Enterprise for the purpose of providing storage and delivery of water for use pursuant to WGFP Allotment Contracts.
- 1.37. **“Windy Gap Project”** means that project (including the acquisition and perfection of water rights) constructed by the Subdistrict for the diversion, carriage, and delivery of water from the Colorado River pursuant to the Carriage Contract.
- 1.38. **“Windy Gap Project Water”** means water from the Windy Gap Project and also is referred to in the Windy Gap Project allotment contracts as “Subdistrict water.”

Storage and conveyance of Windy Gap Project Water in the WGFP does not change such water's status as Windy Gap Project Water.

PART II – PROVISIONS APPLICABLE TO ALL WGFP ALLOTTEES

2. **Allotment of WGFP Units.** The WGFP Enterprise hereby allots and confirms to [Actual Allottee Name*] a WGFP Allotment of XX* WGFP Units commencing as of the date of execution of this Contract and for so long thereafter as [Actual Allottee Name*] fully complies with all the terms, conditions and obligations hereinafter set forth. This WGFP Allotment is subject to C.R.S. § 37-45-101 *et seq.*, C.R.S. § 37-45.1-101 *et seq.*, the Carriage Contract, and the rules and regulations of the WGFP Enterprise, as may be established or amended from time to time. This Allotment is a complete substitute for the grant to [Actual Allottee Name*] of rights in the WGFP in any prior or current Interim Agreements between the WGFP Enterprise and [Actual Allottee Name*]. For reference purposes, each WGFP Allottee's WGFP Allotment is shown in **Exhibit A**.

3. **Construction and Completion of WGFP.**
 - 3.1. **Obligation of WGFP Enterprise to Construct and Complete the WGFP.** The WGFP Enterprise agrees to diligently pursue the WGFP in good faith and to pursue the construction, completion, and operation of the WGFP provided that the WGFP Allottees provide all required funding under their respective WGFP Allotment Contracts, the WGFP Enterprise has the ability, and the WGFP is feasible and practical. By entering into this Contract and accepting payments from [Actual Allottee Name*], the WGFP Enterprise does not warrant that it will construct and complete the WGFP.

 - 3.2. **Prior Agreements.** All prior Interim Agreements and amendments thereto, including the [Xth*] Amendment to the [Xth*] Interim Agreement, dated *, are terminated and of no further force and effect upon the effective date of this Contract under Section 5.1. Any unexpended funds made available to the WGFP Enterprise pursuant to such Interim Agreements shall be transferred into the Operating Fund and credited by the WGFP Enterprise to amounts payable by [Actual Allottee Name*] under this Contract for Operating C&E, or into the Operating Reserve Fund.

 - 3.3. **WGFP Completion.** The WGFP shall be deemed to be complete for purposes of this Contract upon the Colorado State Engineer's final certification of Chimney Hollow Reservoir for storage of water to its full capacity.

 - 3.4. **WGFP Termination Before WGFP Completion.** The WGFP may be terminated before WGFP Completion in the following manner:
 - 3.4.1. If the Enterprise Board determines that the WGFP will be terminated before WGFP Completion because of infeasibility, impracticality, inability, or failure of the WGFP Allottees to fund the WGFP as provided in Section 3.1, it shall first adopt a WGFP Winding-Up Resolution.

 - 3.4.2. Upon the adoption of a WGFP Winding-Up Resolution by the Enterprise Board under Section 3.4.1, and consistent with the rights, if any, of Larimer

County, the WGFP Enterprise shall first offer to the Subdistrict to sell to it, at fair market value as determined by a majority of a panel of three licensed appraisers (one selected by the WGFP Allottees, one selected by the Subdistrict, and the third selected by these two selected appraisers), (1) the Chimney Hollow Reservoir site, (2) any partially constructed or completed physical works or assets that divert water into or release water from the Chimney Hollow Reservoir site, and (3) any other non-physical rights, interests, or obligations related to the WGFP. If the Subdistrict accepts such offer for any or all of the offered interests, then it shall close upon such interests within 180 days of the appraiser panel's determination of fair market value. The WGFP Enterprise and [Actual Allottee Name*] specifically agree that the Subdistrict is a third-party beneficiary to this Contract for purposes of this Section 3.4.2 and Section 5.10.

- 3.4.3. Upon adoption of a Winding-Up Resolution by the Enterprise Board, the Enterprise Board shall appoint a WGFP Winding-Up Agent. The WGFP Winding-Up Agent shall, upon expiration of the time for the Subdistrict to accept the offer described in Section 3.4.2 above, prepare a plan for disposition of WGFP, and upon approval of the Enterprise Board, implement the disposition of WGFP assets pursuant to the plan, including the disposition of unexpended and unobligated funds of the WGFP Enterprise. Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable manner. Proceeds from the disposition of WGFP Enterprise assets and any other cash or cash equivalents then held by the WGFP Enterprise shall be first used, based on the WGFP Participation Percentages, to both (1) distribute cash to the WGFP Allottees that satisfied their Capital C&E Funding Obligations through Capital C&E Funding Cash Payments and (2) repay debts of the WGFP Enterprise incurred for WGFP Financing; provided, however, that any moneys contributed by a Cash Allottee and held at the time of winding-up in such Cash Allottee's subaccount in a fund or reserve fund established under Section 6.1, or in such Cash Allottee's Escrow Fund under Section 7 and the terms of such Cash Allottee's Escrow Agreement, shall not be used to repay debts of the WGFP Enterprise incurred for WGFP Financing. Any remaining funds shall then be distributed to the WGFP Allottees based on their respective WGFP Participation Percentages. [Actual Allottee Name*] shall be entitled to copies of any work products developed by the WGFP Enterprise or its consultants on behalf of the WGFP Allottees, and the WGFP Enterprise shall convey to [Actual Allottee Name*], as a tenant in common with all other WGFP Allottees who are not in Default of their respective WGFP Allotment Contracts, a pro rata interest in all real and personal property remaining after implementation of the plan for disposition of WGFP Assets pursuant to this Section 3.4.
- 3.4.4. Upon completion of the winding-up process described in this Section 3.4, the Enterprise Board shall adopt a resolution of termination of the WGFP. Upon the adoption of such resolution, all WGFP Allotments shall be terminated.

4. **WGFP Operation After WGFP Completion.**

- 4.1. **Use of WGFP Allotment.** [Actual Allottee Name*] agrees that its WGFP Allotment shall only be used for the storage and delivery of Windy Gap Project Water to which [Actual Allottee Name*] is entitled, storage of Prepositioned C-BT Project Water under the terms of the Carriage Contract, or storage and delivery of such other legally available water as the Enterprise Board shall authorize for storage and delivery in the WGFP, which authorization shall not be unreasonably withheld. [Actual Allottee Name*]'s receipt and use of Windy Gap Project Water also is subject to the Carriage Contract and [Actual Allottee Name*]'s Windy Gap Project allotment contract(s). [Actual Allottee Name*] shall have the right to assign or otherwise agree to the use of [Actual Allottee Name*]'s WGFP Allotment by one or more WGFP Allottees.
- 4.2. **Prepositioning.** The Subdistrict shall have the right to preposition C-BT Project Water in any portion of the WGFP not used by [Actual Allottee Name*] for the storage of water in [Actual Allottee Name*]'s WGFP Allotment under Section 4.1. Prepositioned C-BT Project Water shall become Prepositioned Windy Gap Project Water when Windy Gap Project Water is available and designated for storage in Chimney Hollow Reservoir. Prepositioned C-BT Project Water shall be allocated to WGFP Allottees that have ordered and paid for the delivery of Windy Gap Project Water into Chimney Hollow Reservoir in the then current Water Year. Further details of allocation of Prepositioned C-BT Project Water will be developed in the operating criteria described in Section 4.7.
- 4.3. **Estimate of Charges.** The WGFP Enterprise shall furnish [Actual Allottee Name*] with an estimated statement of anticipated C&E required to be paid in the following year under this Contract on or before the last business day in August of each year, which statement may be used by [Actual Allottee Name*] for budgeting purposes.
- 4.4. **Estimated Demand and Delivery Schedule.** On or before the last business day in September of each year, [Actual Allottee Name*] shall provide the WGFP Enterprise with an estimated demand and delivery schedule for Windy Gap Project Water that will be stored in or delivered from the WGFP for the following Water Year, which schedule will be used by the WGFP Enterprise for purposes of submitting a proposal to the U.S. Bureau of Reclamation in accordance with the Carriage Contract. The schedule shall contain the time, delivery points, and quantities of water which [Actual Allottee Name*] estimates it shall require. This schedule may be modified from time to time as the need warrants within the physical capabilities of the C-BT Project, Windy Gap Project, and WGFP.
- 4.5. **Billing Statement.** On or before the last business day of December of each year, the WGFP Enterprise shall render a billing statement to [Actual Allottee Name*] for C&E required to be paid in the following year under this Contract. The billing statement shall be based upon actual C&E incurred by the WGFP Enterprise during the current Water Year and planned C&E for the upcoming Water Year. Any credit from the previous Water Year or any additional C&E from the previous Water Year shall be included in the billing statement rendered. Each billing statement shall be accompanied by reasonable supporting documentation showing the basis and

derivation of C&E shown in the billing statement. After receipt of the billing statement, [Actual Allottee Name*] shall pay the net C&E charges shown on the billing statement of estimated C&E on or before the last business day of January of the succeeding calendar year.

- 4.6. **Billing Statement Dispute Resolution.** If [Actual Allottee Name*] disputes the correctness of any billing statement by the WGFP Enterprise, it shall pay the WGFP Enterprise the full amount billed when due and shall, before or contemporaneously with such payment, inform the WGFP Enterprise that such payment is made wholly or partially under protest and request an explanation of the billing statement from the WGFP Enterprise. If the bill is determined to be incorrect, the WGFP Enterprise shall issue a corrected billing statement to [Actual Allottee Name*]. Any overpayment shall be refunded to [Actual Allottee Name*] within sixty (60) days. If the WGFP Enterprise and [Actual Allottee Name*] fail to agree on the correctness of a bill within one hundred twenty (120) days after [Actual Allottee Name*] gives notice to the WGFP Enterprise that a payment is made wholly or partially under protest, then the parties may agree to submit the dispute to binding arbitration or, failing such agreement, proceed to protect and enforce their respective rights by appropriate judicial proceeding.
- 4.7. **Operating Criteria.** [Actual Allottee Name*] acknowledges and understands that the storage and delivery of water in the WGFP will require and will be implemented pursuant to operating criteria agreed upon between the WGFP Allottees and the WGFP Enterprise that will address additional operational, financial, and other details of the WGFP. [Actual Allottee Name*]'s WGFP Allotment will be operated on substantially the same terms as all other WGFP Allottees. The operating criteria shall not modify or amend this Contract or result in a material adverse effect on [Actual Allottee Name*]'s rights under this Contract to control its WGFP Allotment, or its ability to have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees.
- 4.8. **Delivery Points.** The WGFP Enterprise's liability and responsibility to [Actual Allottee Name*] to deliver a quantity of water ordered for delivery by release from the WGFP under this Contract shall end and cease at the moment that such quantity of water is released out of WGFP structures or facilities. The WGFP Enterprise agrees to cooperate with [Actual Allottee Name*] in the coordination and accomplishment of conveyance and delivery of water from that point to [Actual Allottee Name*] through structures or facilities not owned by the WGFP Enterprise.
- 4.9. **Capacity Limitations.** In the event that orders of water from the WGFP exceeds available delivery capacity at any WGFP structure or facility, the available capacity at such structure or facility shall be allocated between the WGFP Allottees requiring delivery through such structure or facility in proportion to their respective WGFP Participation Percentages.

5. Other General Terms.

- 5.1. **Effective Date and Term.** No provision of this Contract shall take effect until each WGFP Allottee identified in **Exhibit A** duly authorizes, executes, and delivers to the WGFP Enterprise its respective WGFP Allotment Contract, and the WGFP Enterprise duly authorizes, executes, and delivers to the WGFP Allottees their respective WGFP Allotment Contracts. Sections 1, 2, 4, 5, and 6 of this Contract shall be perpetual unless terminated pursuant to this Contract. Section 3 shall be in effect until WGFP Completion. Section 7 of this Contract shall be in effect during the term of any payments of Capital C&E using proceeds from Capital C&E Funding Cash Payments made by such WGFP Allottee. Section 8 of this Contract shall be in effect during the term of any WGFP Financing in which [Actual Allottee Name*] participates.
- 5.2. **Transfer of a WGFP Allotment.**
- 5.2.1. **Transfer to Existing WGFP Allottee.** Subject to the terms and conditions set forth in any Financing Documents, the Enterprise Board shall approve a requested transfer of WGFP Units constituting all or a portion of [Actual Allottee Name*]'s WGFP Allotment to one or more other WGFP Allottees that have a WGFP Allotment as of the time of the transfer if the Enterprise Board determines that (1) the WGFP Allottee receiving the additional WGFP Units has an existing or future need for additional WGFP Units, (2) the WGFP Allottee receiving the additional WGFP Units has sufficient financial capacity, and (3) the transfer will not create a material risk under applicable law.
- 5.2.2. **Transfer to Other Parties.** [Actual Allottee Name*] may transfer all or a portion of its WGFP Allotment to an entity that will use the WGFP Allotment within the Subdistrict that is not an existing WGFP Allottee at the time of the proposed transfer but that holds, or has the legal ability to acquire, an allotment of Windy Gap Project Water with the approval, in its discretion, of the Enterprise Board; provided, however, that the Enterprise Board shall disclose, in writing, the basis for a decision to not approve a proposed transfer under this Section 5.2.2.
- 5.2.3. If [Actual Allottee Name*], with approval of the Enterprise Board as required by this Section 5.2, transfers a part of its WGFP Allotment to another entity, then [Actual Allottee Name*] shall be relieved of its obligations hereunder to the extent of said transfer, except as otherwise provided herein, specifically including in Section 8. If [Actual Allottee Name*], with approval of the Enterprise Board as required by this Section 5.2, transfers all of its WGFP Allotment to another entity, then [Actual Allottee Name*] shall no longer participate in the WGFP and [Actual Allottee Name*] shall be relieved of its obligations, except as otherwise provided herein, specifically including in Section 8.

5.3. **Default.**

5.3.1. **Event of Default.** An event of Default shall occur upon any breach of this Contract, including, without limitation:

5.3.1.1. Capital C&E Funding Cash Payments. The failure of [Actual Allottee Name*] to pay when due amounts payable pursuant to Sections 6.2 and 7 of this Contract for Initial C&E. As provided in Section 6.2.2.1, if [Actual Allottee Name*] elects to pay its Capital C&E Funding Obligations for Completion C&E or Future Extraordinary C&E under this Contract through Capital C&E Funding Cash Payments, then failure to timely make its Capital C&E Funding Cash Payment for such Completion C&E or Future Extraordinary C&E after so electing shall not constitute an event of Default, but in such event [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E or Future Extraordinary C&E through participation in a WGFP Financing in the same manner as provided in Section 6.2.2.2 and Section 8.

5.3.1.2. WGFP Financing. The failure of [Actual Allottee Name*] to pay when due amounts payable pursuant to Sections 6.2 and 8 of this Contract.

5.3.1.3. Operating Costs & Reserves. The failure of [Actual Allottee Name*] to pay when due amounts payable pursuant to Section 6.3 of this Contract.

5.3.1.4. The violation of C.R.S. § 37-45-101 *et seq.*, C.R.S. § 37-45.1-101 *et seq.*, or the rules and regulations of the WGFP Enterprise, as may be established or amended from time to time.

5.3.2. **Notice of Default.** Upon a Default, the WGFP Enterprise in the case of a Default by [Actual Allottee Name*], or [Actual Allottee Name*] in the case of a Default by the WGFP Enterprise, shall give the defaulting party and all other WGFP Allottees written notice of the Default in accordance with Section 5.16 and, if applicable, Section 5.4.3 or Section 5.5.4, on or before the first business day of March following the Default.

5.3.3. **Use of WGFP Allotment While in Section 5.3.1 Default.** Beginning on the day notice is received under Section 5.3.2 and continuing for so long as [Actual Allottee Name*] is in Default under this Section 5.3, [Actual Allottee Name*] may place water into storage in its WGFP Allotment but shall have no rights to take water out of storage from or otherwise use any water stored therein; provided, however, that if [Actual Allottee Name*] is in Default under Section 5.3.1.4 for violation of a rule or regulation of the WGFP Enterprise and such rule or regulation authorizes a WGFP Allottee to take water out of storage from or otherwise use any water stored in its WGFP Allotment during the term of any Default for violation of the rule or

regulation, those terms of the rule or regulation shall control. [Actual Allottee Name*] may continue to use and exercise its rights in the Windy Gap Project during any time it is in Default under this Section 5.3. Water in storage under [Actual Allottee Name*]'s WGFP Allotment shall continue to be assessed evaporative and other losses during any period of Default under this Section 5.3. The Subdistrict may continue to use the WGFP Allotment of [Actual Allottee Name*] under this Section 5.3.3 for storage of Prepositioned C-BT Project Water; however, other WGFP Allottees shall have no right to use the WGFP Allotment of [Actual Allottee Name*] under this Section 5.3.3 for the term of the Default. Upon [Actual Allottee Name*]'s cure of its Default under Section 5.3.4, [Actual Allottee Name*]'s rights to use its WGFP Allotment and any water stored therein shall be restored, subject to any operational limitations that may exist.

- 5.3.4. **Cure.** For events of Default other than those Defaults under Sections 5.3.1.1 (Capital C&E Funding Cash payments), 5.3.1.2 (WGFP Financing payments), and 5.3.1.3 (payments of and into Operating Costs & Reserves), [Actual Allottee Name*] or the WGFP Enterprise, as the case may be, shall have 60 days from receipt of a Notice of Default given under Section 5.3.2. to cure a Default by performance or acceptance by the non-defaulting party of an alternate means of or plan for cure of the Default. In the case of a proposed alternate means of or plan for cure of a Default by [Actual Allottee Name*], the WGFP Enterprise shall give notice of the proposed alternate means or plan for cure to all other WGFP Allottees before taking formal action rejecting or accepting the same. A non-defaulting party's acceptance of a plan for cure of a Default under this Section 5.3.4 shall not constitute a waiver of any rights, claims, defenses, or remedies under this Contract. [Actual Allottee Name*]'s rights to cure events of Default under (1) Sections 5.3.1.1 and 5.3.1.2 are as provided in Section 5.4.5 and (2) Section 5.3.1.3 are as provided in Section 5.5.5.
- 5.3.5. **Final Default.** For events of Default other than those Defaults under Sections 5.3.1.1 (Capital C&E Funding Cash payments), 5.3.1.2 (WGFP Financing payments), and 5.3.1.3 (payments of and into Operating Costs & Reserves), a Final Default shall occur upon (i) the expiration of the period for cure of a Default if [Actual Allottee Name*] or the WGFP Enterprise, as the case may be, does not cure the Default or the non-defaulting party does not accept, within the period for cure, a plan for an alternate means of or plan for cure of the Default, or (ii) failure of [Actual Allottee Name*] or the WGFP Enterprise, as the case may be, to perform under a duly accepted alternate means of or plan for cure of the Default. Notice of a Final Default under this Section 5.3.5 shall be given to the WGFP Enterprise and all WGFP Allottees no later than the first business day of the first February after the cure period terminates. Final Default with respect to events of Default under (1) Sections 5.3.1.1 and 5.3.1.2 shall occur as provided in Section 5.4.6, and (2) Section 5.3.1.3 shall occur as provided in Section 5.5.6.
- 5.3.6. **Consequences of Final Default.** The consequences of Final Default shall be as specified in this Contract.

- 5.3.6.1. Capital C&E Funding Cash Payments. The consequence of [Actual Allottee Name*]'s Final Default under Section 5.3.1.1 shall be as described in Section 5.4 of this Contract.
- 5.3.6.2. WGFP Financing. The consequence of [Actual Allottee Name*]'s Final Default under Section 5.3.1.2 shall be as described in Section 5.4 of this Contract.
- 5.3.6.3. Operating Costs & Reserves. The consequence of [Actual Allottee Name*]'s Final Default under Section 5.3.1.3 shall be as described in Section 5.5 of this Contract.
- 5.3.6.4. The consequence of [Actual Allottee Name*]'s Final Default for any breach of this Contract other than a failure to pay amounts due under this Contract shall be as described in Section 5.5.6 and Section 5.5.7 of this Contract, except that Final Defaults for violations of the rules and regulations of the WGFP Enterprise shall be remedied as provided in such rules and regulations and shall result in forfeiture and termination of [Actual Allottee Name*]'s WGFP Allotment in accordance with Section 5.5.6 and Section 5.5.7 only if the violated rule or regulation so provides.
- 5.3.6.5. A Final Default by [Actual Allottee Name*] shall not terminate any obligation to pay amounts due under this Contract as established by Sections 6, 7, and 8 of this Contract.
- 5.3.6.6. Upon a Final Default for any breach of this Contract by the WGFP Enterprise, [Actual Allottee Name*] and the WGFP Enterprise agree to confer in good faith to attempt to resolve the Final Default, and if conferral fails to resolve the Final Default, then to participate in nonbinding mediation.
- 5.3.7. **Enforcement of Remedies.** In addition to the other remedies set forth herein, including in this Section 5.3, upon the occurrence of a Final Default as defined herein, the WGFP Enterprise or [Actual Allottee Name*], as the case may be, shall be entitled to proceed to protect and enforce the rights vested in such party by this Contract by such appropriate judicial proceeding as such party shall deem most effectual, either by action of law or by suit in equity, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in such party by this Contract or by law, and the prevailing party shall be entitled to an award of its reasonable costs and attorney fees.
- 5.4. **Default on Capital C&E Funding Obligations Under Sections 5.3.1.1 and 5.3.1.2.**
 - 5.4.1. **Capital C&E Funding Obligations Default.** Failure of [Actual Allottee Name*] to pay amounts due under Section 6.2 and in accordance with

Section 7 or Section 8, as applicable, shall constitute an event of Default under Section 5.3.1.1 or Section 5.3.1.2, as applicable.

- 5.4.2. **Grace Period.** If [Actual Allottee Name*] is in Default under Section 5.4.1 and fully pays its defaulted payments within 30 days after such payments are due, then [Actual Allottee Name*] shall no longer be considered in Default under Section 5.4.1 and no interest, penalties, or other Default obligations or consequences shall attach.
- 5.4.3. **Notice of Default.** On the first business day after the grace period under Section 5.4.2 runs, the WGFP Enterprise shall notify each WGFP Allottee of the names of all WGFP Allottees, if any, in Default under Section 5.4.1.
- 5.4.4. **WGFP Financing Liquidity Fund.** For each Loan Allottee in Default under Section 5.4.1, the WGFP Enterprise shall on the first business day after the grace period under Section 5.4.2 runs apply such Loan Allottee's Liquidity Fund to cover that Loan Participant's defaulted payment.
- 5.4.5. **Cure Period.** [Actual Allottee Name*] has until the last business day of January of the succeeding calendar year to cure any Default under Section 5.4.1. A Loan Allottee cures a Default under Section 5.4.1 by reimbursing the Liquidity Fund, plus a late-fee penalty of 5%, and by reimbursing any other expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. A Cash Allottee cures a Default under Section 5.4.1 by paying the defaulted Capital C&E Funding Cash Payment and reimbursing any expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. If [Actual Allottee Name*] timely cures a Default under this Section 5.4.5, then no part of [Actual Allottee Name*] WGFP Allotment shall be forfeited and reallocated under Section 5.4.6.
- 5.4.6. **Final Default; Penalties and Reallocation of WGFP Allotment.** If [Actual Allottee Name*] does not timely cure a Default under Section 5.4.5, then Final Default shall be deemed to have occurred and all or a portion of [Actual Allottee Name*]'s WGFP Allotment shall be permanently forfeited and reallocated as follows:
- 5.4.6.1. For purposes of this Section 5.4.6, to the extent that [Actual Allottee Name*] is a Loan Allottee for Initial C&E and Completion C&E (if any) and in Default under Section 5.3.1.2, "**Vested Allotment**" shall mean that proportion of [Actual Allottee Name*]'s WGFP Allotment attributable to its participation in a WGFP Financing for Initial C&E and Completion C&E (if any) that is equal to the quotient of the amount of its Capital C&E Funding Obligations (not including WGFP Financing Costs other than principal) paid by [Actual Allottee Name*] immediately prior to the date of the Default under Section 5.4.1 divided by the total amount of [Actual Allottee Name*]'s Capital C&E Funding Obligations for Initial C&E and Completion C&E (if any) satisfied through

participation in a WGFP Financing (not including WGFP Financing costs other than principal), rounded down to the nearest whole WGFP Unit; and “**Unvested Allotment**” shall mean the remainder of [Actual Allottee Name*]’s WGFP Allotment attributable to [Actual Allottee Name*]’s participation in a WGFP Financing for Initial C&E and Completion C&E (if any).

- 5.4.6.2. For purposes of this Section 5.4.6, to the extent that [Actual Allottee Name*] is a Cash Allottee for Initial C&E and in default under Section 5.3.1.1, “**Vested Allotment**” shall mean that proportion of [Actual Allottee Name*]’s WGFP Allotment attributable to its satisfaction of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments that is equal to the quotient of the amount of such Capital C&E Funding Obligations for Initial C&E paid by [Actual Allottee Name*] through Capital C&E Funding Cash Payments, if any, immediately prior to the date of the Default under Section 5.4.1 divided by the total amount of such WGFP Allottee’s Capital C&E Funding Obligations for Initial C&E satisfied through Capital C&E Funding Cash Payments, rounded down to the nearest whole WGFP Unit; and “**Unvested Allotment**” shall mean the remainder of [Actual Allottee Name*]’s WGFP Allotment attributable to [Actual Allottee Name*]’s satisfaction of such Capital C&E Funding Obligations through Capital C&E Funding Cash Payments.
- 5.4.6.3. Upon [Actual Allottee Name*]’s satisfaction of all Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 and Completion C&E under Section 6.2.2, [Actual Allottee Name*]’s “Vested Allotment” shall be considered to be all (100%) of [Actual Allottee Name*]’s WGFP Allotment, and any other Capital C&E Funding Obligations for Future Extraordinary C&E under Section 6.2.3 shall have no effect on [Actual Allottee Name*]’s “Vested Allotment.”
- 5.4.6.4. A WGFP Allottee in Final Default under this Section 5.4.6 shall forfeit any and all right, title, claim, or interest, whether express or implied, in or to its Unvested Allotment plus fifty percent (50%) of its Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment. The WGFP Enterprise shall give notice to all WGFP Allottees of such forfeiture by the first business day of February of the calendar year in which such forfeiture occurs. [Actual Allottee Name*], by executing this Agreement, certifies that it has fully disclosed to the governing body of [Actual Allottee Name*] the existence and consequence of this Contract, and agrees that but for its acceptance of the forfeiture of a WGFP Allotment pursuant to this Section 5.4.6.4, the WGFP Enterprise would not have entered into this Contract or any other agreement related to

WGFP. [Actual Allottee Name*] waives any and all legal or equitable claims, in any forum, to WGFP, WGFP Allotments, or WGFP assets, or against the WGFP Enterprise, arising out of a Final Default under this Section 5.4 by [Actual Allottee Name*]. Irrespective of such forfeiture, a WGFP Allottee shall remain liable to the WGFP Enterprise to pay the full amount of its Capital C&E Funding Obligations.

5.4.6.5. A defaulting Loan Allottee's forfeited Unvested Allotment and Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment, shall be reallocated under Section 5.4.6.6 to all Loan Allottees that step up in proportion to the amounts each Loan Allottee stepped up thereunder. A defaulting Cash Allottee's forfeited Unvested Allotment and Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment, shall be reallocated to all non-defaulting WGFP Allottees by the WGFP Enterprise under the terms of Section 5.5.7.

5.4.6.6. **Loan Allottee Step-Up.**

5.4.6.6.1. **Voluntary Step-Up.** By March 15 following any Final Default under Section 5.4.6 that is subject to this Section 5.4.6.6, any Loan Allottee may voluntarily step up to (1) make all or part of the defaulted payment (including replenishment of the Liquidity Fund), and (2) assume the obligation for all future annual debt service and Operating C&E payments for that portion of a defaulting Loan Allottee's obligation. If two or more Loan Allottees volunteer to step up under this Section 5.4.6.6, then each will assume a pro rata portion (based on their respective WGFP Financing Participation Percentages), or agreed upon amount, of the defaulted payment.

5.4.6.6.2. **Mandatory Step-Up.** If not all defaulted payments are covered by Loan Allottees who choose to voluntarily step up under Section 5.4.6.6.1, then for any portion of the defaulted payment not voluntarily assumed under Section 5.4.6.6.1, the following mandatory step-up process is initiated on the first business day of April.

5.4.6.6.3. All Loan Allottees, including all Loan Allottees who voluntarily stepped up under Section 5.4.6.6.1, shall be assessed pro rata, based on the WGFP Financing Participation Percentages of the Loan Allottees not then in Default, to make up the defaulted payment (plus late fees and other expenses) by payment to the WGFP Enterprise on or before the first business day of July and must make all future annual payments for that pro rata portion of the defaulting Loan Allottee's WGFP Allotment.

5.4.6.6.4. For each non-defaulting Loan Allottee, mandatory step-up in any single year under Section 5.4.6.6.2 shall not exceed thirty-five percent (35%) of the Loan Allottee's then-existing Loan Allottee Financing Obligation.

5.5. Default on Operating C&E Payments Under Section 5.3.1.3.

- 5.5.1. **Operating Costs & Reserves Default.** [Actual Allottee Name*]'s failure to fully pay its payments due under Section 6.3.1 by the last business day of January of each calendar year shall constitute an event of Default.
- 5.5.2. **Operating Reserve Fund to Cover Deficiency.** In the event that [Actual Allottee Name*] fails to fully and timely pay its pro-rata share of Operating C&E under Section 6.3.1, the WGFP Enterprise may draw upon [Actual Allottee Name*]'s portion of the Operating Reserve Fund or such other reserves as the Enterprise Board may establish and maintain in relation to Operating C&E pursuant to Section 6.1.2 to make up any deficiency as a result of the failure of [Actual Allottee Name*] to make a payment required under Section 6.3.
- 5.5.3. **Grace Period.** If [Actual Allottee Name*] is in Default under Section 5.5.1 and fully makes its payments due under Section 6.3 by the last business day of February, then [Actual Allottee Name*] shall no longer be considered in Default under Section 5.5.1 and no penalties or other Default obligations or consequences shall attach.
- 5.5.4. **Notice of Default.** On the first business day of March of each calendar year, the WGFP Enterprise shall notify [Actual Allottee Name*] of the names of all WGFP Allottees, if any, whose payments due under Section 6.3 remain in Default after the grace period provided in Section 5.5.3.
- 5.5.5. **Cure.** [Actual Allottee Name*] may cure a Default under this Section 5.5 by paying, on or before the last business day of January of the succeeding calendar year, an amount equal to (1) any Operating C&E then due or in Default; (2) a late-fee penalty of 1.5% of the amount of Operating C&E in Default for each month in Default after the grace period provided in Section 5.5.3 terminates, which shall be deposited into the Operating Reserve Fund in addition to any other amounts owed to such fund under this Contract; and (3) any other expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. Alternatively, [Actual Allottee Name*] may cure a Default under this Section 5.5.5 by obtaining the WGFP Enterprise's acceptance, on or before the last business day of January of the succeeding calendar year, of an alternate means of or plan for cure of the Default and thereafter fully performing under such alternate means of or plan for cure; the WGFP Enterprise shall give notice of the proposed alternate means or plan for cure to all other WGFP Allottees before taking formal action rejecting or accepting the same. The WGFP Enterprise's acceptance of a plan for cure of a Default under this Section

5.5.5 shall not constitute a waiver of any rights, claims, defenses, or remedies under this Contract.

5.5.6. **Final Default and Forfeiture.** Final Default shall occur if [Actual Allottee Name*] fails to cure its defaulted payment under Section 5.5.5 by the date provided therein or fails to fully perform under a duly accepted alternate means of or plan for cure of the Default. If [Actual Allottee Name*] has committed a Final Default under this Section 5.5.6, then [Actual Allottee Name*] shall completely forfeit any and all right, title, claim, or interest, whether express or implied, in or to WGFP, including, without limitation, any and all WGFP Allotments or rights to WGFP assets under this Contract or any other agreement related to the WGFP. Any water in storage under a forfeited WGFP Allotment at the time of forfeiture shall not be available to the defaulting party and shall be reallocated along with the WGFP Allotment as provided in Section 5.5.7. [Actual Allottee Name*], by executing this Contract, certifies that it has fully disclosed to the governing body of [Actual Allottee Name*] the existence and consequence of this Contract, and agrees that but for its acceptance of the termination of a WGFP Allotment and the consequences of Default, the WGFP Enterprise would not have entered into this Contract or any other agreement related to WGFP. Except for claims of breach under the express terms of this Contract, [Actual Allottee Name*] waives any and all legal or equitable claims, in any forum, to WGFP, WGFP Allotments, or WGFP Assets, or against the WGFP Enterprise, arising out of a Final Default under this Contract by [Actual Allottee Name*]. Irrespective of such termination, [Actual Allottee Name*] shall remain liable to the WGFP Enterprise to pay the full amount of its Capital C&E Funding Obligations under this Contract. The WGFP Enterprise shall send a notice of forfeiture under this Section 5.5.6 to all WGFP Allottees on the first business day of February in the calendar year in which the cure period terminates.

5.5.7. **Reallocation of Forfeited WGFP Allotment.** WGFP Allotments forfeited under Section 5.3.6.4 or Section 5.5.6 shall be reallocated by the WGFP Enterprise through a sealed-bid auction open to all non-defaulting WGFP Allottees. Auction bids to purchase all or a portion of the forfeited WGFP Allotment shall be submitted to the WGFP Enterprise on or before the first business day of April of the calendar year in which the cure period terminates and the WGFP Allotment is forfeited. In the event that the WGFP Enterprise receives one or more successful bids, closing on the sale of WGFP Allotments to such successful bidders shall occur by the first day in July of the same calendar year. The proceeds of any auction sale shall be applied first to cover the cure amount described in Section 5.5.5, except any monthly penalty, and second to cover any Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment. Any excess proceeds shall be distributed to [Actual Allottee Name*], less the monthly penalty provided in Section 5.5.5 if applicable. In the event the proceeds of any auction sale do not cover the cure amount described in Section 5.5.5, except any monthly penalty, and all Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment, the successful bidder(s) purchasing the WGFP

Allotment shall pay the deficiency attributable to the amount of WGFP Units purchased at such auction sale.

5.5.7.1. In the event that the entire WGFP Allotment forfeited under Section 5.5.6 is not reallocated through the auction described in Section 5.5.7, the WGFP Enterprise shall in its discretion offer the remaining WGFP Allotment to other entities that are not existing WGFP Allottees at the time of the proposed transfer but that hold an allotment of Windy Gap Project Water. In the event that the WGFP Enterprise's offer is accepted by one or more entities under this Section 5.5.7.1, closing on the sale shall occur by the first business day in September of the same calendar year. The proceeds of any such sale shall be applied first to cover the cure amount described in Section 5.5.5, except any monthly penalty, and second to cover any Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment. Any excess proceeds shall be distributed to [Actual Allottee Name*], less the monthly penalty provided in Section 5.5.5 if applicable. In the event the proceeds of any sale under this Section 5.5.7.1 do not cover the cure amount described in Section 5.5.5, except any monthly penalty, and all Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment, the purchaser(s) of the WGFP Allotment shall pay the deficiency attributable to the amount of WGFP Units purchased.

5.5.7.2. In the event that the entire WGFP Allotment forfeited under Section 5.5.6 is not reallocated through the auction described in Section 5.5.7 or under Section 5.5.7.1, the WGFP Enterprise shall reallocate such remaining WGFP Allotment to the non-defaulting WGFP Allottees pro rata based on the WGFP Participation Percentages. The WGFP Allottees who receive a portion of the reallocated WGFP Allotment under this Section 5.5.7.2 shall pay the amount then owing (except for the monthly cure penalty if applicable) on the WGFP Allotment on or before the first business day of November of the same calendar year in which the WGFP Allotment is forfeited.

5.5.8. If, in a particular Fiscal Year, [Actual Allottee Name*] is in Default under the terms of this Section 5.5 with respect to payments to cover its pro-rata share of Operating C&E due under Section 6.3.1 and also in Default under the terms of Section 5.4, then the terms of this Section 5.5, and not Section 5.4, shall govern.

5.6. Liability of WGFP Enterprise and [Actual Allottee Name*].

5.6.1. **WGFP Enterprise Liability.** Any and all obligations of the WGFP Enterprise that may arise under this Contract, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by the WGFP Enterprise. Nothing herein shall be deemed

to prevent the WGFP Enterprise from making any payments from any other legally available source. In no event shall the WGFP Enterprise be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Contract or which would cause the WGFP Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, neither the WGFP Enterprise, the Subdistrict, nor the District shall be required to expend any funds or impair any assets of the Subdistrict or the District in the performance of any of the WGFP Enterprise's obligations under this Contract. The obligations of the WGFP Enterprise under this Contract do not constitute a debt or indebtedness of the WGFP Enterprise, the Subdistrict, or the District within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of the WGFP Enterprise, the Subdistrict or the District.

5.6.2. **Allottee Liability.** Any and all obligations of [Actual Allottee Name*] that may arise under this Contract whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by [Actual Allottee Name*] from the operation of its [water activity] enterprise. Nothing herein shall be deemed to prevent [Actual Allottee Name*] from making any payments from any other legally available source. In no event shall [Actual Allottee Name*] be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Contract or which would cause [Actual Allottee Name*] to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, [Actual Allottee Name*] shall not be required to expend any funds or impair any assets of its parent entity in the performance of its obligations under this Contract. The obligations of [Actual Allottee Name*] under this Contract do not constitute a debt, indebtedness or multiple fiscal year obligation of its parent entity within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of [Actual Allottee Name*] or of its parent entity.

5.6.3. [Actual Allottee Name*] shall not be liable to another WGFP Allottee or to the WGFP Enterprise, and the WGFP Enterprise shall not be liable to the WGFP Allottees, for consequential, indirect, punitive, or special damages arising under this Contract.

5.6.4. **Governmental Immunity.** The WGFP Enterprise and [Actual Allottee Name*] are each relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, defenses, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended from time to time.

5.7. **Amendments.** Except as otherwise provided in this Section 5.7, this Contract may be amended only with the written consent of (1) the WGFP Enterprise, (2) at least 75.0% of the WGFP Allottees, and (3) WGFP Allottees that collectively hold at

least 75.0% of all WGFP Units; provided, however, that if any WGFP Financing is outstanding, any amendment to this Contract will be subject to the terms and conditions set forth in any Financing Documents; and further provided that this Contract may not be amended without [Actual Allottee Name*]'s written consent in a manner that results in a material adverse impact on the rights of [Actual Allottee Name*] under this Contract to control its WGFP Allotment or have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees. As provided in Section 6.2.1.1, an amendment under the terms of this Section 5.7 is not required for certain modifications to the means of payment of [Actual Allottee Name*]'s Capital C&E Funding Obligations for Initial C&E, the proportional amounts of its Capital C&E Funding Obligations for Initial C&E to be paid through Capital C&E Funding Cash Payments and/or participation in a WGFP Financing, or its election under Section 8.18, which modifications shall instead be governed by Section 6.2.1.1.

5.8. **Limitations on Rights of Allottee.** In addition to all the other terms, conditions and covenants contained herein, it is specifically understood and agreed by and between the parties hereto that the rights of [Actual Allottee Name*] hereunder are subject to the following terms, conditions and limitations, to all intents and purposes as though set forth verbatim herein, and made a part hereof by reference:

5.8.1. The Water Conservancy Act of Colorado, C.R.S. § 37-45-101 *et seq.*;

5.8.2. The water activity enterprise statute, C.R.S. § 37-45.1-101 *et seq.*;

5.8.3. The Carriage Contract; provided that if any amendment to the Carriage Contract is proposed which would affect the right of [Actual Allottee Name*] to use or reuse its full allotment of Windy Gap Project Water, the approval of such amendment shall first be obtained from [Actual Allottee Name*];

5.8.4. The rules, regulations and policies of the Enterprise Board, as may be established and amended from time to time; provided, however, that any such rules, regulations or policies shall not result in a material adverse impact on the rights of [Actual Allottee Name*] under this Contract to control its WGFP Allotment or to have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees; and

5.8.5. The requirements or conditions of any state or federal law, permits or regulatory approvals for the WGFP.

5.9. **Future Participation.** Nothing herein shall be construed in any manner that will obligate [Actual Allottee Name*] to participate in any future or other project of the Subdistrict or the WGFP Enterprise that is not a part of the WGFP or preclude Allottee from participation therein.

5.10. **Third Party Beneficiaries.** Any WGFP Allottee shall have the right as a third-party beneficiary to initiate and maintain suit to enforce the obligations of other WGFP Allottees hereunder. The Subdistrict shall have the right as a third-party

beneficiary to initiate and maintain suit to enforce its rights under Section 3.4.2. Except as otherwise provided by this Section 5.10, Section 3.4.2, and Section 8.17, enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the parties.

- 5.11. **Authorization.** [Actual Allottee Name*] attaches hereto a true and correct copy of [Actual Allottee Name*]'s records authorizing the officers, whose names appear hereon, to enter into this Contract.
- 5.12. **Counterparts.** This Contract may be executed by the WGFP Enterprise and [Actual Allottee Name*] in separate counterparts, each of which when so executed and delivered shall be an original, and all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes.
- 5.13. **Entire Agreement; Merger of Prior Agreements.** This Contract, together with the statutes, contracts, rules, regulations and policies listed in Section 5.8, constitute the entire agreement and understanding of the parties and supersedes all prior agreements and understanding between the parties relating to the subject matter hereof. This Contract may not be interpreted, modified or changed by reference to other documents, understandings or agreements, whether written or oral, unless the interpretation, modification or change is subsequently agreed to in writing by the parties hereto.
- 5.14. **Severability.** If one or more clauses, sentences, Sections, paragraphs or provisions of this Contract shall be held to be unlawful, invalid or unenforceable, the remainder of this Contract shall not be affected thereby.
- 5.15. **Choice of Law; Venue.** This Contract shall be governed by the laws of the State of Colorado, and each party hereto consents and submits to venue in the District Court of Weld County, Colorado.
- 5.16. **Notices.** Notices authorized or required to be given under this Contract shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the relevant party's address set forth in **Exhibit C**, or to such other address as a party may provide to the other party and all other WGFP Allottees from time to time. If specified herein, notice required to be given to all WGFP Allottees shall be given to the addresses set forth in **Exhibit C** or to such other addresses as the WGFP Allottees may provide to the WGFP Enterprise and the other WGFP Allottees from time to time.
- 5.17. **Construction Reports and Meetings.** The WGFP Enterprise will provide [Actual Allottee Name*] with written monthly reports, together with financial reports regarding payment of charges and costs and expenditures during construction of Chimney Hollow Reservoir, on the progress of construction and the expenditure of funds. Among other items, the monthly written reports will include a breakdown and sum total of all known increases to the Chimney Hollow Reservoir construction contract amount due to projected, pending, or executed changes in work, including change orders, change directives, or field orders. In addition, the WGFP Enterprise shall schedule and hold meetings of all WGFP Allottees at the offices of the District

at least quarterly at which time the WGFP Enterprise shall present and discuss the financial reports regarding payment of charges and costs by the WGFP Allottees and the expenditure of funds. Notwithstanding the foregoing, if any single Chimney Hollow Reservoir construction contract cost change will exceed two and a half percent (2.5%) of the initial Chimney Hollow Reservoir construction contract amount, the WGFP Enterprise will provide [Actual Allottee Name*] with written notice of such anticipated cost changes before the cost change is executed and will hold a meeting of all WGFP Allottees as soon as practicable to discuss the drivers for such cost change, possible remedies, and budget impacts. In addition, the WGFP Enterprise will provide monthly updates regarding costs and potential changes for construction management, mitigation, enhancement, and other WGFP costs not included in the Chimney Hollow Reservoir construction contract.

- 5.18. **Financial Reporting Requirements; Audits.** The WGFP Enterprise shall furnish to [Actual Allottee Name*], as soon as available and in any event within one hundred eighty (180) days after the end of each Fiscal Year, the financial statements of the WGFP Enterprise as of the end of such Fiscal Year, all prepared in accordance with generally accepted accounting principles and in reasonable detail; provided that the WGFP Enterprise shall be in compliance with this reporting requirement when such information is published on the WGFP Enterprise's website or the Municipal Securities Rulemaking Board's Electronic Municipal Marketplace Access System (EMMA), or any service or services established by the Municipal Securities Rulemaking Board (or any of its successors) as a successor to EMMA. [Actual Allottee Name*] may request an independent audit of the WGFP Enterprise's financial statements for a Fiscal Year (as well as associated WGFP accounting records, supporting documentation, and billings to WGFP Allottees), to be paid for by [Actual Allottee Name*], by sending a written audit request to the WGFP Enterprise before the end of the succeeding Fiscal Year. If more than one WGFP Allottee requests an independent audit for a given Fiscal Year, then only one audit shall occur, and the audit shall be paid for by the WGFP Allottees that requested the audit based on their respective WGFP Participation Percentages.
- 5.19. **Most Favored Party.** The terms and provisions of the WGFP Allotment Contracts for each of the WGFP Allottees will be substantially similar and in no event shall the WGFP Enterprise offer an Allotment Contract to another WGFP Allottee with more favorable provisions based on all of the terms and conditions of the WGFP Allotment Contract as a whole without first offering to [Actual Allottee Name*] the opportunity to amend this Contract to contain such favorable provisions.

6. WGFP Funding.

6.1. Establishment of Funds.

- 6.1.1. In addition to the funds established in Sections 7.4 and Section 8.4, the WGFP Enterprise shall establish and maintain an Operating Fund and an Operating Reserve Fund, with segregated accounts for each WGFP Allottee, to be used for disbursements to pay for the Operating C&E of the WGFP under the WGFP Allotment Contracts.

6.1.2. The WGFP Enterprise may establish and maintain additional reserve funds as it shall determine are necessary for operation, maintenance, repair, replacement, rehabilitation, or improvement of WGFP structures or facilities, with segregated accounts for each WGFP Allottee.

6.2. **Payment of Capital C&E Funding Obligations.** [Actual Allottee Name*] agrees to pay its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments under the terms of Section 7, participation in a WGFP Financing under the terms of Section 8, or a combination thereof.

6.2.1. **Initial C&E.** The Initial C&E to be funded by the WGFP Allottees shall be \$[XXXXXXXX]*. [Actual Allottee Name*] agrees to pay its Capital C&E Funding Obligations for Initial C&E under this Section 6.2.1 through [Capital C&E Funding Cash Payments under the terms of Section 7] [participation in a WGFP Financing under the terms of Section 8]. **Exhibit A** indicates each WGFP Allottee's Capital C&E Funding Obligation for such Initial C&E and chosen means of payment for such Initial C&E.

6.2.1.1. Until the date noticed by the WGFP Enterprise under this Section 6.2.1.1, [Actual Allottee Name*] may, with the WGFP Enterprise's written consent and without the need to amend this Contract under the terms of Section 5.7, modify its chosen means of payment of its Capital C&E Funding Obligations for Initial C&E, including its proportional amounts between a Capital C&E Funding Cash Payment and participation in a WGFP Financing and its election under Section 8.18 (if participating in WGFP Financing), and upon such modification the WGFP Enterprise shall update **Exhibit A** to the WGFP Allotment Contracts. Before the date of sale of a WGFP Financing for Initial C&E other than the CWCB Loan, the WGFP Enterprise will provide written notice to [Actual Allottee Name*] setting forth the date by which [Actual Allottee Name*] must finalize its payment method and election under Section 8.18 (if participating in WGFP Financing) for Initial C&E, which date shall be no less than 3 months after the date of notice unless [Actual Allottee Name*] otherwise agrees. Any modification of payment method or election under Section 8.18 (if participating in WGFP Financing) for Initial C&E after the date provided in the notice shall require a contract amendment under the terms of Section 5.7.

6.2.2. **Completion C&E.** If the WGFP Enterprise determines that the WGFP Allottees' payment of their respective Capital C&E Funding Obligations to fund Initial C&E under Section 6.2.1 will be depleted and Completion C&E must be incurred to complete construction of the WGFP, then the WGFP Enterprise shall give notice as soon as reasonably practicable to the WGFP Allottees of the need to pay additional Capital C&E Funding Obligations under this Section 6.2, the estimated total amount of Completion C&E to be incurred, and whether the WGFP Enterprise will undertake additional

WGFP Financing for the Completion C&E. If the WGFP Enterprise offers the option to participate in additional WGFP Financing, then [Actual Allottee Name*] shall, within ninety (90) days of such notice, elect in writing to the WGFP Enterprise to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof. If no such election is made, [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E through participation in a WGFP Financing under Section 6.2.2.2. The WGFP Enterprise will update **Exhibit B** from time to time as needed under this Section 6.2.2.

6.2.2.1. To the extent that [Actual Allottee Name*] elects to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through Capital C&E Funding Cash Payments, then it shall make such payments in accordance with Section 7 and on substantially the same terms as other WGFP Allottees making Capital C&E Funding Cash Payments, and agrees to execute any documents and agreements necessary to bind [Actual Allottee Name*] to such terms. If [Actual Allottee Name*] fails to timely make its Capital C&E Funding Cash Payment for such Completion C&E after so electing, then [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E through participation in a WGFP Financing in the same manner as provided in Section 6.2.2.2.

6.2.2.2. To the extent that [Actual Allottee Name*] is obligated to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through participation in a WGFP Financing, then it shall make such payments and participate in such WGFP Financing in accordance with Section 8 and any applicable Financing Document and on substantially the same terms as any other WGFP Allottees participating in the WGFP Financing, and agrees to execute any documents and agreements necessary to bind [Actual Allottee Name*] to such terms.

6.2.3. Future Extraordinary C&E. If the WGFP Enterprise determines that Future Extraordinary C&E must be incurred, then the WGFP Enterprise shall give notice as soon as reasonably practicable to [Actual Allottee Name*] of the need to pay additional Capital C&E Funding Obligations under this Section 6.2 and the estimated total amount of Future Extraordinary C&E to be incurred. The Enterprise Board, in consultation with the WGFP Allottees, shall set a timeline for the WGFP Allottees to elect in writing to pay the Capital C&E Funding Obligations for such Future Extraordinary C&E under this Contract through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof in accordance with the process described in Sections 6.2.2.1 and 6.2.2.2, and for the WGFP Allottees to make such payments of their respective Capital C&E Funding Obligations for such Future Extraordinary C&E to the WGFP

Enterprise. If no such election is made, [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such Future Extraordinary C&E through participation in a WGFP Financing in accordance with the process described in Section 6.2.2.2.

6.2.3.1. Notwithstanding the foregoing in Section 6.2.3, if an emergency or natural disaster imminently threatens life, health, safety, or damage to the WGFP, the WGFP Enterprise may incur Future Extraordinary C&E to make reasonably necessary emergency repairs to mitigate threatened damage, provided that the WGFP Enterprise shall notify [Actual Allottee Name*] of such emergency and the need for such expenditures in advance (or if not possible in advance, then as soon as practicable), and whether the WGFP Enterprise will undertake additional WGFP Financing for the future Extraordinary C&E. In the event that the WGFP Enterprise incurs such emergency Future Extraordinary C&E, and if the WGFP Enterprise offers the option to participate in additional WGFP Financing, then [Actual Allottee Name*] shall have thirty (30) days to elect in writing to pay its Capital C&E Funding Obligations for such emergency Future Extraordinary C&E through Capital C&E Funding Cash Payments in accordance with the process described in Section 6.2.2.1. If no such election is made, then [Actual Allottee Name*] shall be obligated to pay its Capital C&E Funding Obligations for such emergency Future Extraordinary C&E through participation in a WGFP Financing in accordance with the process described in Section 6.2.2.2.

6.2.4. To the extent [Actual Allottee Name*] satisfies any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, other than Capital C&E Funding Cash Payments for emergency Future Extraordinary C&E incurred by the WGFP Enterprise prior to the giving of notice to [Actual Allottee Name*], the WGFP Enterprise may require that [Actual Allottee Name*] provide adequate assurance in advance of closing on the corresponding WGFP Financing that it will be able to provide the required Capital C&E Funding Cash Payment on the date such Capital C&E Funding Cash Payments are due to the WGFP Enterprise under Section 7.3 or such other date as is agreed to by the WGFP Enterprise and [Actual Allottee Name*].

6.3. **Payment of Operating C&E and into Reserve Funds.**

6.3.1. To the extent that [Actual Allottee Name*] meets its Capital C&E Funding Obligations under Section 6.2 through participation in WGFP Financing, [Actual Allottee Name*] hereby agrees to fund all of its portion of Operating Costs & Reserves during the term(s) of any debt incurred for WGFP Financing in which [Actual Allottee Name*] participates in accordance with Section 8 hereof. When [Actual Allottee Name*] is not participating in any WGFP Financing or no debt is outstanding on WGFP Financing in which [Actual Allottee Name*] participates, [Actual Allottee

Name*] agrees to fund its portion of Operating Costs & Reserves by paying to the WGFP Enterprise, on or before the last business day of January of each calendar year, the following amounts:

- 6.3.1.1. An amount equal to the product obtained by multiplying [Actual Allottee Name*]'s WGFP Participation Percentage by the total amount of all Operating C&E estimated by the WGFP Enterprise to be incurred by the WGFP Enterprise in the then current calendar year, which the WGFP Enterprise shall deposit in the Operating Fund to be drawn upon in proportion to the WGFP [Actual Allottee Name*]'s WGFP Participation Percentages to pay for Operating C&E as they are incurred;
- 6.3.1.2. Any amount needed to replenish any draws theretofore made on [Actual Allottee Name*]'s subaccount in the Operating Reserve Fund, which the WGFP Enterprise shall deposit in the Operating Reserve Fund;
- 6.3.1.3. An amount equal to the product obtained by multiplying [Actual Allottee Name*]'s WGFP Participation Percentage by the total amount needed to increase the amount on deposit in the Operating Reserve Fund to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20, which the WGFP Enterprise shall deposit in the Operating Reserve Fund to be drawn upon when the moneys contained in [Actual Allottee Name*]'s subaccount in the Operating Fund are insufficient to make payments on Operating C&E; and
- 6.3.1.4. An amount equal to the product obtained by multiplying [Actual Allottee Name*]'s WGFP Participation Percentage by the total amount needed to replenish and maintain such other reserves as the Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2.

6.4. **Funding.** In order to meet [Actual Allottee Name*]'s obligations under this Contract to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, [Actual Allottee Name*] agrees as follows:

- 6.4.1. [Actual Allottee Name*] shall to the fullest extent permitted by law fix rates, charges, or assessments so that [Actual Allottee Name*] will at all times have sufficient money to meet its obligations hereunder, and confirms (1) that, in accordance with C.R.S. § 31-35-402(1)(h), payments of its outstanding obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract (i) constitute special obligations of [Actual Allottee Name*], payable solely from the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)], and (ii) shall be treated as expenses of operating such [entity name/type (water activity enterprise/utility enterprise/etc.)]; and (2) that there are

either (i) no liens, charges or encumbrances on the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)], or (ii) no liens, charges or encumbrances on the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)] that include priority of payments with respect thereto that are prior to the payment of the expenses of operating such [entity name/type (water activity enterprise/utility enterprise/etc.)], including amounts hereunder. [Actual Allottee Name*] represents and warrants that it constitutes an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution (TABOR) and does not have the legal authority to levy a tax. [Actual Allottee Name*]’s outstanding obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations if any, under this Contract do not constitute a general obligation debt or indebtedness of [Actual Allottee Name*] within the meaning of any constitutional or statutory debt limitations or provisions, and are not payable in whole or in part from the proceeds of ad valorem property or other taxes of [Actual Allottee Name*].

- 6.4.2. Nothing herein shall be construed as prohibiting [Actual Allottee Name*] from (1) using any other funds and revenues legally available therefor for purposes of satisfying any provisions of this Contract or (2) incurring obligations payable on a parity with the obligations under this Contract so long as [Actual Allottee Name*]’s obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract continue to constitute special obligations of [Actual Allottee Name*], payable solely from the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)], and are treated as expenses of operating such [entity name/type (water activity enterprise/utility enterprise/etc.)].
- 6.4.3. [Actual Allottee Name*] shall make payments required by this Contract whether or not the WGFP is permitted, undertaken, completed, operable, operated or retired and notwithstanding the suspension, interruption, interference, reduction, or curtailment of operation of the WGFP in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by the WGFP Enterprise or any other WGFP Allottee under this Contract or any other agreement.
- 6.4.4. [Actual Allottee Name*] shall take all reasonable steps to maintain its status as an enterprise as defined in Section 20 of Article X of the Colorado Constitution.
- 6.4.5. [Actual Allottee Name*] shall not be liable under this Contract for the obligations of any other WGFP Allottee except as otherwise expressly set forth herein. Each WGFP Allottee shall be solely responsible and liable for performance of its obligations under its respective WGFP Allotment Contract. The obligation of each WGFP Allottee to make payments under

its respective WGFP Allotment Contract is a several obligation and not a joint obligation with those of the WGFP Allottees.

- 6.5. **Security.** [Actual Allottee Name*] hereby represents and warrants that the revenues of its [entity name/type (water activity enterprise/utility enterprise/etc.)] are pledged to pay the operation and maintenance expenses of such [entity name/type (water activity enterprise/utility enterprise/etc.)] along with any indebtedness incurred by [Actual Allottee Name*] for the purpose of financing or refinancing improvements to its [entity name/type (water activity enterprise/utility enterprise/etc.)]. Furthermore, [Actual Allottee Name*] hereby represents and warrants that, in accordance with C.R.S. § 31-35-402(1)(h), [Actual Allottee Name*]'s obligations to pay its pro rata portion of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract constitute special obligations of [Actual Allottee Name*], payable solely from the revenues and other moneys derived by [Actual Allottee Name*] from its [entity name/type (water activity enterprise/utility enterprise/etc.)], and shall be treated as expenses of operating such [entity name/type (water activity enterprise/utility enterprise/etc.)]. [Actual Allottee Name*] hereby covenants that it will not issue or otherwise incur any indebtedness or other obligation that has a lien on the revenues of its [entity name/type (water activity enterprise/utility enterprise/etc.)] prior or superior to its obligation to pay the operating expenses of its [entity name/type (water activity enterprise/utility enterprise/etc.)].
- 6.6. **Cooperation, Disclosure and Documents.** [Actual Allottee Name*] shall cooperate with the WGFP Enterprise for the purpose of expediting the issuance of WGFP Financing Obligations (as defined in Section 8.2) to finance the applicable portion of Capital C&E by providing such information and disclosure as may be reasonably required for such purpose, and by delivering all closing documents reasonably required by the WGFP Enterprise's counsel at the closing of each series of WGFP Financing Obligations. The WGFP Enterprise and [Actual Allottee Name*] will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to effect any financing and refinancing of Capital C&E and to allow the WGFP Enterprise to comply with reporting obligations, to assure the WGFP Enterprise of [Actual Allottee Name*]'s intention to perform hereunder and for the better assuring and confirming unto the WGFP Enterprise and any Lender (as defined in Section 8.2) the rights and benefits provided to them herein.
- 6.7. **Maintenance of Tax-Exempt Status of WGFP Financing Obligations.** Notwithstanding any other provision of this Contract, no WGFP Allottee will take any action or omit to take any action, directly or indirectly, in any manner, which would result in any of the WGFP Financing Obligations (as defined in Section 8.2), the interest on which was intended to be excludable from gross income for federal income tax purposes, being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1986, as amended, by reason of classification of such WGFP Financing Obligations as a "private activity bond" within the meaning of Section 141 of said Code, by reason of classification of such WGFP Financing Obligations as an "arbitrage bond" within the meaning of Section 148 of said Code, or for any other reason.

PART III – PROVISIONS APPLICABLE TO CASH ALLOTTEES

7. Provisions Applicable to Cash Allottees.

- 7.1. **Applicability.** This Section 7 shall, unless modified by express language in a subsequent agreement, be applicable to [Actual Allottee Name*] to the extent that it meets its Capital C&E Funding Obligations under Section 6.2 through Capital C&E Funding Cash Payments. [Actual Allottee Name*] is referred to herein as a Cash Allottee to the extent that it meets its Capital C&E Funding Obligations under Section 6.2 through Capital C&E Funding Cash Payments.
- 7.2. **Additional Definitions.** In addition to the definitions in Section 1, the following definitions shall apply to this Section 7.
- 7.2.1. **“Escrow Agreement”** means the escrow agreement between the WGFP Enterprise and Cash Allottee as more particularly described in this Section 7.
- 7.2.2. **“Escrow Fund”** means the escrow fund established under the Escrow Agreement.
- 7.3. **Payment of Capital C&E Funding Obligations.**
- 7.3.1. **Initial C&E.** To the extent [Actual Allottee Name*] meets its Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 through Capital C&E Funding Cash Payments, [Actual Allottee Name*] hereby agrees to provide its Capital C&E Funding Cash Payment for such Initial C&E to the WGFP Enterprise on or before the date of sale of any WGFP Financing, exclusive of a CWCB Loan (as defined in Section 8.2), for such amount of Capital C&E.
- 7.3.1.1. In the event that the WGFP Enterprise, in consultation with the WGFP Allottees, determines that a portion of the Initial C&E should be incurred before the date of sale of any WGFP Financing (exclusive of a CWCB Loan) and paid for using the CWCB Loan and Capital C&E Funding Cash Payments, the WGFP Enterprise shall give notice to the WGFP Allottees of its intent to incur such Capital C&E and, to the extent [Actual Allottee Name*] meets its Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 through Capital C&E Funding Cash Payments, [Actual Allottee Name*] agrees to provide a portion of its Capital C&E Funding Cash Payment corresponding to the proportion of the Initial C&E to be incurred before the date of sale of any WGFP Financing (exclusive of a CWCB Loan) to the WGFP Enterprise within sixty (60) days after WGFP Enterprise sends the notice described herein; in such event, the remainder of [Actual Allottee Name*]’s Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 shall still be due to the WGFP Enterprise on or before the date

of sale of any WGFP Financing for such amount of Capital C&E, exclusive of a CWCB Loan.

- 7.3.2. **Completion C&E and Future Extraordinary C&E.** To the extent [Actual Allottee Name*] elects to meet its Capital C&E Funding Obligations for Completion C&E under Section 6.2.2 or its additional Capital C&E Funding Obligations for Future Extraordinary C&E under Section 6.2.3, other than Capital C&E Funding Cash Payments for emergency Future Extraordinary C&E incurred by the WGFP Enterprise prior to the giving of notice to [Actual Allottee Name*], through Capital C&E Funding Cash Payments, [Actual Allottee Name*] hereby agrees to provide its Capital C&E Funding Cash Payment to the WGFP Enterprise on or before the date of sale of any associated WGFP Financing, or on such other date as agreed to by the WGFP Enterprise and [Actual Allottee Name*].
- 7.3.3. For sixty (60) days immediately before a Capital C&E Funding Cash Payment associated with Capital C&E is due to the WGFP Enterprise in accordance with this Section 7.3, Cash Allottee agrees to place the funds to be provided to WGFP Enterprise in an escrow account and schedule such funds for release to the WGFP Enterprise on the date such Capital C&E Funding Cash Payments are due to the WGFP Enterprise, except that Cash Allottee may release and provide such funds to the WGFP Enterprise in advance of such due date in its discretion.
- 7.3.4. To the extent [Actual Allottee Name*] meets any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, [Actual Allottee Name*] hereby represents, warrants, and covenants that such Capital C&E Funding Cash Payments shall and will be delivered to the WGFP Enterprise free and clear of any prior lien, including any pledge of the revenues of its [entity name/type (water activity enterprise/utility enterprise/etc.)].
- 7.4. **Escrow Agreement; Escrow Fund.** In addition to the funds established under Section 6.1, the WGFP Enterprise shall establish and maintain an Escrow Fund pursuant to an Escrow Agreement between the WGFP Enterprise and Cash Allottee in the form attached hereto as **Exhibit D**, with segregated accounts for each WGFP Allottee required to make payments into such Escrow Fund. The WGFP Enterprise shall deposit the proceeds of Cash Allottees' Capital C&E Funding Cash Payments into the Escrow Fund.
- 7.5. **Disbursements From Escrow Fund to Pay for Capital C&E.** Pursuant to the terms of the Escrow Agreement, the WGFP Enterprise shall disburse amounts from the Escrow Fund on a periodic basis for the payment of amounts due and owing on account of the Cash Allottee's Capital C&E Funding Obligations attributable to its Capital C&E Funding Cash Payment. Pursuant to the terms of the Escrow Agreement, such periodic disbursements from the Escrow Fund shall occur simultaneously with disbursements from the funds and accounts funded with proceeds provided by all other WGFP Allottees, whether through the provision of Capital C&E Funding Cash Payments or through participation in WGFP Financing, and each disbursement from the Escrow Fund shall be in an amount where the ratio

of such amount to the total disbursements for Capital C&E Funding Obligations for such period is equal to the Cash Allottee's pro-rata share of Capital C&E Funding Obligations attributable to its Capital C&E Funding Cash Payment at the time of any such disbursement.

- 7.6. To the extent [Actual Allottee Name*] satisfies any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, if the WGFP Enterprise holds any proceeds from [Actual Allottee Name*]'s payment of its Capital C&E Funding Obligations after the WGFP Enterprise determines that all Capital C&E have been paid in full, then the WGFP Enterprise shall, at [Actual Allottee Name*]'s option, either reimburse such proceeds to [Actual Allottee Name*] or transfer and credit such proceeds to [Actual Allottee Name*]'s payment of other C&E due under this Contract.

PART IV – PROVISIONS APPLICABLE TO LOAN ALLOTTEES

8. WGFP Financing.

- 8.1. **Applicability.** This Section 8 shall, unless modified by express language in a subsequent agreement, be applicable to [Actual Allottee Name*] to the extent that it participates in a WGFP Financing and for the term of repayment of any such WGFP Financing in which [Actual Allottee Name*] participates. [Actual Allottee Name*] is referred to herein as a Loan Allottee to the extent that it participates in any WGFP Financing.
- 8.2. **Additional Definitions.** In addition to the definitions in Section 1, the following definitions shall apply to WGFP Financing and this Section 8.
- 8.2.1. **“CWCB Loan”** means a loan or loans issued or to be issued to the WGFP Enterprise by the Colorado Water Conservation Board under an intergovernmental loan contract.
- 8.2.2. **“Debt Service Fund”** means a fund established under any Financing Document to provide for the payment of WGFP Financing Obligations.
- 8.2.3. **“Debt Service Reserve Fund”** means a reserve fund established under any Financing Document to provide for the payment of WGFP Financing Obligations when the moneys contained in the Debt Service Fund for such WGFP Financing Obligations are insufficient to make such payments.
- 8.2.4. **“Lender”** means any lender, bondholder, noteholder, lessee or other holder of any other obligation or indebtedness (including the State of Colorado, the United States of America, or any department, bureau or other affiliated entity thereof) issued in connection with a WGFP Financing of the WGFP Enterprise which constitutes a WGFP Financing Obligation.
- 8.2.5. **“Revenue Fund”** means a fund established to provide for the disbursement of annual payments made by Loan Allottees under the terms of Section 8.6.

- 8.2.6. **“Subordinated Lien Loan Fund”** means a fund established hereunder to provide for the payment of any lien borrowings that are subordinate to WGFP Financing Obligations, including the CWCB Loan.
- 8.2.7. **“Subordinated Lien Loan Reserve Fund”** means a reserve fund established under Section 8.4.
- 8.2.8. **“WGFP Financing Costs”** means any and all costs associated with a WGFP Financing, including but not limited to (a) the principal of and interest on all WGFP Financings, (b) fees payable to Lenders and others related to the issuance and administration of a WGFP Financing, and (c) reserves required in connection with a WGFP Financing, if any. WGFP Financing Costs are included in the definition of Capital C&E.
- 8.2.9. **“WGFP Financing Obligation”** means the obligation of the WGFP Enterprise to repay an amount of money borrowed from a Lender through a WGFP Financing.
- 8.3. **Issuance or Incurrence of WGFP Financing Obligations.** The WGFP Enterprise will use its best efforts to issue or cause to be issued WGFP Financing Obligations. The WGFP Enterprise may obtain such WGFP Financing in one or more transactions and by one or more means. The WGFP Financing Obligations shall be issued, in one or more issuances, only upon approval of the Enterprise Board. To the extent [Actual Allottee Name*] participates in any WGFP Financing, [Actual Allottee Name*] authorizes an initial WGFP Financing for the Initial C&E (less that amount funded by Capital C&E Funding Cash Payments) as described in Section 6.2.1, defined in **Exhibit A**, and in accordance with Section 8.18; and such WGFP Financing for Completion C&E or Future Extraordinary C&E as determined by the Enterprise Board to be necessary under Section 6.2.2 and Section 6.2.3, respectively.
- 8.4. **WGFP Financing Funds.** In addition to the funds established in Section 6.1, there shall be established and maintained either by the WGFP Enterprise or under any Financing Documents the following funds and reserve funds, with segregated accounts for each Loan Allottee, to be used under the terms of this Section 8: a Revenue Fund; a Debt Service Fund; a Debt Service Reserve Fund; a Subordinated Lien Loan Fund; a Subordinated Lien Loan Reserve Fund; and a Liquidity Fund.
- 8.4.1. **Liquidity Fund.** For each WGFP Financing undertaken by the WGFP Enterprise, whether senior lien or subordinate lien, in which [Actual Allottee Name*] participates, and to the extent of such participation, Loan Allottees shall, on a due date or due dates set by the WGFP Enterprise in its discretion and noticed to the WGFP Allottees, deposit with the WGFP Enterprise an amount equal to the product of Loan Allottee’s WGFP Financing Participation Percentage multiplied by 30% of the maximum annual debt service on such WGFP Financing, which the WGFP Enterprise shall deposit in the Liquidity Fund in segregated accounts for each Loan Allottee. Such Liquidity Fund shall be held by the WGFP Enterprise to be applied separately from any reserves required for the borrowings. Upon full repayment of a WGFP Financing, the WGFP Enterprise shall return the

amount each Loan Allottee deposited in the Liquidity Fund for such WGFP Financing to such Loan Allottee. Any interest accrued by the Liquidity Fund shall be transferred to the Operating Fund and credited, based on the WGFP Financing Participation Percentages, to each Loan Allottee's payment of amounts due to such fund under this Contract.

8.5. **Payment of Loan Allottee's Capital C&E Funding Obligations and Operating C&E.** To the extent [Actual Allottee Name*] participates in any WGFP Financing and for the term of any such WGFP Financing, Loan Allottee hereby agrees to pay, on or before the last business day of January of each calendar year, an amount equal to the sum of the following:

- 8.5.1. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount of all Operating C&E estimated by the WGFP Enterprise to become due in the then current calendar year;
- 8.5.2. Subject to Section 8.18 hereof, an amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount of principal of and interest to become due, on or prior to January 14 of the following calendar year, on all WGFP Financing;
- 8.5.3. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Operating Reserve Fund;
- 8.5.4. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in the Operating Reserve Fund to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20;
- 8.5.5. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Debt Service Reserve Fund;
- 8.5.6. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount needed to increase the amount on deposit in the Debt Service Reserve Fund to equal the amount required to be on deposit therein under any Financing Document;
- 8.5.7. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Subordinated Lien Loan Reserve Fund;
- 8.5.8. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount needed to increase the amount on deposit in the Subordinated Lien Loan Reserve Fund to equal the amount required to be on deposit therein under any Financing Document;

- 8.5.9. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccounts in such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2;
 - 8.5.10. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2 to equal the amount determined by the Enterprise Board to be necessary to be on deposit therein;
 - 8.5.11. An amount equal to Loan Allottee's obligation to contribute funds into the Liquidity Fund as provided in Section 8.4.1; and
 - 8.5.12. Any amount due from Loan Allottee pursuant to Voluntary Step-Up or Mandatory Step-Up under Section 5.4.6.6.
- 8.6. **Revenue Fund.** The WGFP Enterprise shall deposit all amounts paid by Loan Allottee under Section 8.5 into the Revenue Fund and credit such amounts to Loan Allottees' subaccounts therein. Monies in the Revenue Fund shall be disbursed periodically by the WGFP Enterprise to the following funds in the following order of priority:
- 8.6.1. To the Operating Fund, the full amount of the current Operating C&E attributable to all Loan Allottees;
 - 8.6.2. To the Debt Service Fund, an amount equal to the WGFP Financing Costs for such period, except for financing costs for any subordinated lien borrowing, including the CWCB Loan;
 - 8.6.3. To the Subordinated Lien Loan Fund, an amount necessary to pay the debt service for such period on all subordinated lien borrowings, including the CWCB Loan;
 - 8.6.4. To the Operating Reserve Fund, an amount necessary to replenish any prior draws made in respect of any and all Loan Allottees and to increase the amount on deposit therein to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20;
 - 8.6.5. To the Debt Service Reserve Fund, an amount necessary to replenish any prior draws made in order to pay WGFP Financing Costs and to increase the amount on deposit therein to equal the amount required to be on deposit therein under any Financing Document;
 - 8.6.6. To the Subordinated Lien Loan Reserve Fund, an amount necessary to replenish any prior draws made in order to pay any subordinated lien borrowings, including the CWCB Loan, and to increase the amount on

deposit therein to equal the amount required to be on deposit therein under any Financing Document;

- 8.6.7. To such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2, an amount necessary to replenish any prior draws made in order to pay Operating C&E and to increase the amount on deposit therein to equal the amount determined by the Enterprise Board to be necessary to be on deposit therein;
 - 8.6.8. To the Liquidity Fund, an amount necessary to maintain such fund at the amount described in Section 8.4.1; and
 - 8.6.9. If any amount remains, to a surplus fund established and maintained by the WGFP Enterprise to be used by the WGFP Enterprise in its discretion for any lawful purpose of the WGFP Enterprise.
- 8.7. **Billing Statement and Payment of WGFP Financing Costs and Operating C&E.** As a component of the Billing Statement described in Section 4.5, the WGFP Enterprise shall furnish Loan Allottee with a written statement of the estimated WGFP Financing Costs for each succeeding Fiscal Year, if any, taking into account applicable credits received by the WGFP Enterprise and estimated investment earnings on moneys, if any, related to WGFP Financing Obligations and held by the WGFP Enterprise. Allottee shall pay, or cause to be paid, to the WGFP Enterprise, on or before the last business day of January of each calendar year, 100% of the WGFP Financing Costs billed to Allottee in such written statement.
- 8.8. **Interest on Late Payment.** Any amount of the WGFP Financing Costs billed in a Fiscal Year by the WGFP Enterprise under Section 8.7 which remains unpaid after the last business day of February shall bear interest from such day at the per annum interest rate of eighteen percent (18%) until paid. To the extent [Actual Allottee Name*] is a Loan Allottee, interest paid by Loan Allottee shall not change the WGFP Participation Percentage or WGFP Financing Participation Percentage of Loan Allottee but shall be applied to the payment of WGFP Financing Costs of the Loan Allottees other than the Loan Allottee paying such interest in accordance with the applicable Financing Documents.
- 8.9. **WGFP Enterprise Responsibility Regarding Collected Funds.** The WGFP Enterprise shall apply the funds paid by Loan Allottee pursuant to Section 8.5 solely as provided in Section 8.6. The WGFP Enterprise shall keep amounts collected under this Contract from Loan Allottee in a designated account for the WGFP Financing Obligations, promptly pay when due the WGFP Financing Costs, provide WGFP Financing accounting and payment information to all WGFP Allottees, and take such other reasonable actions as may be requested by Loan Allottee and agreed to by the WGFP Enterprise; provided, that failure of the WGFP Enterprise or of Loan Allottee to make payment required by Section 8 of a WGFP Allotment Contract shall not relieve Loan Allottee of its obligation to pay all amounts owed under this Contract.

- 8.10. **Loan Allottee Bankruptcy or Insolvency.** In addition to a failure to pay any amounts due under Section 8.5, Default under Section 5.3.1.2 shall also include, without limitation, Loan Allottee's act of filing any petition or instituting any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby Loan Allottee asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or Loan Allottee's act of making a general or any assignment for the benefit of its creditors. A Default under this Section 8.10 shall be subject to the Default, forfeiture, and other provisions of Section 5.4.
- 8.11. **Future Financings.** In the event [Actual Allottee Name*] participates in any future borrowing or refinancing authorized by this Contract, [Actual Allottee Name*] agrees to undertake the same obligations as are set forth in this Section 8.
- 8.12. **Obligation Is Not Subject to Reduction.** Loan Allottee shall make payments under Section 8.5 of this Contract whether or not WGFP is permitted, undertaken, completed, operable, operated or retired and notwithstanding the suspension, interruption, interference, reduction, or curtailment of operation of WGFP or of water or storage contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by the WGFP Enterprise or any other Loan Allottee under this Contract or any other agreement. If and to the extent Loan Allottee transfers all or a part of its WGFP Allotment associated with any WGFP Financing under the terms of Section 5.2, Loan Allottee shall remain liable for its obligations to pay the WGFP Enterprise for the WGFP Financing associated with the transferred WGFP Allotment in the event and to the extent not paid by the transferee acquiring such WGFP Allotment.
- 8.13. **Severable Obligation.** No Loan Allottee shall be liable under its respective WGFP Allotment Contract for the obligations of any other Loan Allottee except as expressly set forth in Section 5.4 hereof. Each Loan Allottee shall be solely responsible and liable for performance of its obligations under its respective WGFP Allotment Contract. The obligation of each Loan Allottee to make payments under its respective WGFP Allotment Contract is a severable obligation and not a joint obligation with those of the other WGFP Allottees.
- 8.14. **Limited Obligations of WGFP Enterprise.** WGFP Financing Obligations incurred by the WGFP Enterprise pursuant to this authorization are special revenue obligations of the WGFP Enterprise payable solely from the amounts received by the WGFP Enterprise from the Loan Allottees under the WGFP Allotment Contracts. WGFP Financing Obligations do not constitute a general obligation debt or indebtedness of the WGFP Enterprise within the meaning of any constitutional or statutory debt limitations or provisions. The WGFP Enterprise does not have the legal authority to levy a tax.

- 8.15. **Allocation of Project Expenses; Disbursements.** Allottee agrees that all WGFP Financing Costs are to be paid solely from the amounts received by the WGFP Enterprise from the Loan Allottees under the WGFP Allotment Contracts, and are not the responsibility of the WGFP Enterprise, the WGFP Allottees that did not participate in WGFP Financing to the extent that they did not participate, or the District.
- 8.15.1. The Financing Documents relating to WGFP Financing Obligations shall provide that simultaneously at the time of the disbursement of any proceeds of WGFP Financing Obligations there will be a disbursement of proceeds from the funds holding cash payments made by WGFP Allottees not participating in WGFP Financing, and that in each instance the disbursement of proceeds of WGFP Financing Obligations and the disbursement of proceeds from the funds holding cash payments made by WGFP Allottee not participating in WGFP Financing shall be in proportion to the applicable WGFP Participation Percentage of each WGFP Allottee.
- 8.16. **Pledge or Assignment to Lender.** The WGFP Enterprise may pledge and assign to any Lender all or any portion of the payments received under this Contract from Allottee. Such pledge and assignment by the WGFP Enterprise shall be made effective for such time as the WGFP Enterprise shall determine and provide that the Lender shall have the power to enforce this Contract if an event of default occurs under the applicable Financing Document.
- 8.17. **Lender is Third Party Beneficiary.** Any Lender shall have the right as a third-party beneficiary to initiate and maintain suit to enforce this Contract to the extent provided in any Financing Document.
- 8.18. **Loan Allottees' Elections of Amortization Schedules.** All WGFP Allottees have been directly and substantially involved with the WGFP Enterprise in creating the form of this Contract. The WGFP Enterprise has advised all WGFP Allottees, among other things, that: (a) the WGFP is not a project amenable to being down-scaled in the event less than all currently anticipated WGFP Allottees participate; (b) the WGFP Enterprise intends to obtain for Initial C&E (i) a WGFP Financing in the form of a \$90 million, 30-year, low interest rate, subordinate lien, level debt service CWCB Loan, and (ii) a WGFP Financing in the form of a publicly-offered issue of revenue bonds for the balance of the WGFP Financing Obligation for Initial C&E with a 30-year, market-based interest rate, level debt service loan (the "Revenue Bond Financing"). Some Loan Allottees have informed the WGFP Enterprise that they prefer to participate in the Revenue Bond Financing to fund their individual Capital C&E Funding Obligation for Initial C&E if their payments are substantially based on an amortization schedule of 20 years, and other Loan Allottees have informed the WGFP Enterprise that their ability to participate in the Revenue Bond Financing to fund their individual Capital C&E Funding Obligation for Initial C&E requires a 30-year amortization. The WGFP Enterprise has determined that separate 20-year and 30-year bond issues are not a viable option. The WGFP Enterprise and WGFP Allottees are willing to accommodate a mixture of 20-year and 30-year amortization schedules if the accommodation does not adversely affect any WGFP Allottees or alter the obligations of all Loan Allottees under their WGFP Allotment Contracts (other than establishment of different

amortization schedules for Loan Allottees according to their preferences for 20-year or 30-year amortization schedules). The WGFP Enterprise has advised all WGFP Allottees, among other things, that: (a) the WGFP Enterprise must make determinations as to what is in the best interests of building the WGFP and in the best interests of all WGFP Allottees; and (b) it has sought, received and is relying on the advice of its financial advisor and its investment banker as to this Contract, including as to alternative financing structures, as well the advice of its bond counsel and general counsel on related legal matters. The WGFP Enterprise has determined its only currently viable financing course of action for Initial C&E is that: (A) if available, the CWCB Loan will have a 30-year level debt service amortization and all Loan Allottees shall participate in funding repayment of the CWCB Loan; and (B) the Revenue Bond Financing will have a 30-year amortization and will be structured in such a manner that (i) the Capital C&E Funding Obligations of those Loan Allottees who affirmatively elect to participate in the Revenue Bond Financing based on a 20-year amortization schedule will have 90% of their individual Capital C&E Funding Obligations amortized on a level debt service basis over the period of years 1 to 20 of the 30-year amortization of the Revenue Bond Financing, with the remaining 10% of their individual Capital C&E Funding Obligations amortized on a level debt service basis in years 21 to 30 of the 30-year amortization of the Revenue Bond Financing (the “90-10 arrangement”), and (ii) the Capital C&E Obligations of all Loan Allottees who do not affirmatively elect either amortization schedule will have 100% of their individual Capital C&E Funding Obligations amortized on a 30-year level debt service basis. If [Actual Allottee Name*] chooses the 90-10 arrangement, it means that [Actual Allottee Name*]: (A) has determined this arrangement is in its best interests; (B) agrees that the accommodation to allow Loan Allottees to elect between 20- and 30-year amortization schedules for the Revenue Bond Financing of their individual Capital C&E Funding Obligations and the other rights and interests created by this Contract are legally sufficient consideration for all obligations of [Actual Allottee Name*] under this Allotment Contract, including, without limitation, all step-up obligations of [Actual Allottee Name*] pursuant to Section 5.4.6.6.; (C) acknowledges that the 10% of [Actual Allottee Name*]’s individual Capital C&E Funding Obligations which does not begin to amortize until year 21 will bear current interest in years 1 to 20 and that [Actual Allottee Name*] is obligated to pay such interest on a current basis; (D) acknowledges that this arrangement does not change [Actual Allottee Name*]’s WGFP Financing Participation Percentage under this Allotment Contract in any way except in respect of the amount payable under Section 8.5.2; and (E) acknowledges that the step-up amounts, if any, payable in years 21 to 30, will not be adjusted for the 90-10 arrangement. Subject to all of the terms and conditions recited above in this Section 8.18, a Loan Allottee may choose the 90-10 arrangement by giving written notice to the WGFP Enterprise pursuant to Section 6.2.1.1.

[Remainder of Page Intentionally Left Blank]

DATED: _____

[ALLOTTEE]

By: _____

[NAME]

[TITLE]

ATTEST:

By: _____

Title: _____

DATED: _____

**WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE
MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY
DISTRICT**

By: _____

Name: Dennis Yanchunas

Title: President

ATTEST:

By: _____

Name: Bradley D. Wind

Title: Secretary

EXHIBIT A
Initial C&E

WGFP Allottee	WGFP Allotment (WGFP Units)	WGFP Participation Percentage	Capital C&E Funding Obligation (Initial C&E)	Capital C&E Funding Cash Payment (Initial C&E)	WGFP Units Attributable to Capital C&E Funding Cash Payment (Initial C&E)	WGFP Financing (Initial C&E)	WGFP Units Attributable to WGFP Financing (Initial C&E)	WGFP Financing Participation Percentage (Initial C&E)
Broomfield	26,464	29.40%	\$176,400,000	\$22,000,000	3,300	\$154,400,000	23,164	32.26%
Platte River Power Authority	16,000	17.78%	\$106,680,000	\$27,000,000	4,049	\$79,680,000	11,951	16.64%
Loveland	10,000	11.11%	66,660,000	\$20,000,000	3,000	\$46,660,000	7,000	9.75%
Greeley	9,189	10.21%	61,260,000		0	\$61,260,000	9,189	12.80%
Longmont	7,500	8.33%	49,980,000	\$49,980,000	7,500	0.00		0.00%
Erie	6,000	6.67%	40,020,000		0	\$40,020,000	6,000	8.36%
Little Thompson Water District	4,850	5.40%	32,400,000		0	\$32,340,000	4,850	6.75%
Superior	4,726	5.25%	31,500,000		0	\$31,500,000	4,726	6.58%
Louisville	2,835	3.15%	18,900,000		0	\$18,900,000	2,835	3.95%
Fort Lupton	1,190	1.32%	7,920,000		0	\$7,920,000	1,190	1.66%
Lafayette	900	1.00%	6,000,000		0	\$6,000,000	900	1.25%
Central Weld County Water District	346	0.38%	2,280,000	\$2,280,000	346	0.00	0	0.00%
Totals	90,000	100%	\$600,000,000	\$121,260,000	18,195	\$478,680.00	71,805	100.00%

EXHIBIT B#
Completion C&E/Future Extraordinary C&E

WGFP Allottee	Capital C&E Funding Obligation	Capital C&E Funding Cash Payment	WGFP Units Attributable to Capital C&E Funding Cash Payment	WGFP Financing	WGFP Units Attributable to WGFP Financing	WGFP Financing Participation Percentage
Broomfield	\$0.00	\$0.00	0	\$0.00	0	0.00%
Platte River Power Authority	0.00	0.00	0	0.00	0	0.00%
Loveland	0.00	0.00	0	0.00	0	0.00%
Greeley	0.00	0.00	0	0.00	0	0.00%
Longmont	0.00	0.00	0	0.00	0	0.00%
Erie	0.00	0.00	0	0.00	0	0.00%
Little Thompson Water District	0.00	0.00	0	0.00	0	0.00%
Superior	0.00	0.00	0	0.00	0	0.00%
Louisville	0.00	0.00	0	0.00	0	0.00%
Fort Lupton	0.00	0.00	0	0.00	0	0.00%
Lafayette	0.00	0.00	0	0.00	0	0.00%
Central Weld County Water District	0.00	0.00	0	0.00	0	0.00%
Totals	\$ 0.00	\$ 0.00	0	\$ 0.00	0	100.00%

EXHIBIT C

IF TO:	MAILING ADDRESS
Windy Gap Firming Project Water Activity Enterprise	c/o WGFP Project Manager 220 Water Avenue Berthoud, CO 80513
Broomfield	c/o David F. Allen Director of Public Works 1 DesCombes Drive Broomfield, CO 80020-2495
Central Weld County Water District	c/o Stan Linker District Manager 2235 2 nd Avenue Greeley, CO 80631-7203
Greeley	c/o Sean Chambers Director of Water & Sewer 1100 10 th Street, Ste 300 Greeley, CO 80631-3863
Erie	c/o Todd Fessenden Deputy Public Works Director PO Box 750 Erie, CO 80516-0750
Fort Lupton	City of Fort Lupton Attn: City Administrator 130 South McKinley Avenue Fort Lupton, CO 80621
Lafayette	c/o Jeff Arthur Public Works Director 1290 S Public Road Lafayette, CO 80026-2706
Little Thompson Water District	c/o Amber Kauffman District Manager 835 E State Hwy 56 Berthoud, CO 80513-9237
Longmont	c/o Ken Huson Water Resources Engineer 1100 S. Sherman Street Longmont, CO 80501-6550
Louisville	c/o Cory Peterson Water Resources Engineer 749 Main Street Louisville, CO 80027-1136

IF TO:	MAILING ADDRESS
Loveland	c/o Larry D. Howard Senior Civil Engineer – Water Resources 200 N. Wilson Avenue Loveland, CO 80537-6017
Platte River Power Authority	c/o Heather Banks Fuels & Water Manager 2000 E Horsetooth Road Fort Collins, CO 80525-5721
Superior	c/o Jim Widner Utilities Superintendent 124 E Coal Creek Drive Superior, CO 80027-9626

EXHIBIT D

[Form of Escrow Agreement]

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made effective as of _____, by and between the Windy Gap Firing Project Water Activity Enterprise (the “**WGFP Enterprise**”), and [Name of Cash Allottee] (the “**Cash Allottee**”), and is made with reference to the following facts:

RECITALS

A. The WGFP Enterprise is a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District, and whose address is 220 Water Avenue, Berthoud, Colorado 80513. The WGFP Enterprise is a water activity enterprise that will exercise the authorities granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, for the purpose of the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project (“WGFP”).

B. Cash Allottee is a [add description*].

C. Pursuant to the WGFP Allotment Contract between the WGFP Enterprise and Cash Allottee, Cash Allottee has elected to make an upfront cash payment (the “Capital C&E Funding Cash Payment”) to the WGFP Enterprise for the purpose of paying [a portion of] Cash Allottee’s pro rata obligation, based on the WGFP Participation Percentages, to fund [Initial C&E] (“Capital C&E Funding Obligations”). Specifically, Cash Allottee has elected to make a Capital C&E Funding Cash Payment of \$[XXXXXXXXXX], which is equal to [X%] of its Capital Funding Obligations for [Initial C&E].

D. In accordance with the WGFP Allotment Contract, the WGFP Enterprise has established and agreed to maintain an Escrow Fund with segregated accounts for each WGFP Allottee required to make a Capital C&E Funding Cash Payment into such Escrow Fund.

AGREEMENT

THEREFORE, in consideration of the facts recited above and of the covenants, terms, and conditions set forth herein, the parties agree as follows:

1. Definitions. Each and every definition set forth in the foregoing “introduction” and “recitals” is hereby incorporated into this Escrow Agreement by this reference. Capitalized terms not defined herein shall have the meanings assigned those terms in the WGFP Allotment Contract. To the extent the definition of a capitalized term herein conflicts with the definition of such term in the WGFP Allotment Contract, the definition in the WGFP Allotment Contract shall prevail.

2. Establishment of [Name of Cash Allottee] Proceeds Fund. Within the Escrow Fund, there is hereby created and established a special fund designated “[Name of Cash Allottee] – Capital C&E Funding Cash Payment Proceeds Fund” (the “[Name of Cash Allottee] Proceeds Fund”), which shall be held in trust by the WGFP Enterprise separate and apart from all other

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

funds of the WGFP Enterprise. The [Name of Cash Allottee] Proceeds Fund shall be a separate account from any other funds or accounts in the Escrow Fund funded with proceeds provided by other WGFP Allottees.

3. Deposit of Capital C&E Funding Cash Payment. The proceeds of the Capital C&E Funding Cash Payment paid by Cash Allottee to the WGFP Enterprise pursuant to the WGFP Allotment Contract shall be deposited in the [Name of Cash Allottee] Proceeds Fund and applied to the Cash Allottee's Capital Funding Obligations set forth under the WGFP Allotment Contract.

4. Disbursements From [Name of Cash Allottee] Proceeds Fund. The WGFP Enterprise shall disburse amounts from the [Name of Cash Allottee] Proceeds Fund on a periodic basis for the payment of amounts due and owing on account of the Cash Allottee's Capital C&E Funding Obligations. Such periodic disbursements from the [Name of Cash Allottee] Proceeds Fund shall occur simultaneously with disbursements from the funds and accounts funded with proceeds provided by all of the WGFP Allottees, whether through the provision of cash, through the participation in a financing by the WGFP Enterprise, or through both. Each disbursement from the [Name of Cash Allottee] Proceeds Fund shall be in an amount where the ratio of such amount to the total disbursement for [Initial C&E] at such time is equal to the Cash Allottee's WGFP Participation Percentage attributable to its Capital Funding Cash Payment at the time of any such disbursement.

5. Investment of Proceeds. Any moneys in the [Name of Cash Allottee] Proceeds Fund not presently needed for payment of the Cash Allottee's Capital Funding Obligations as set forth above may be invested in any legal investments for monies of the WGFP Enterprise maturing or otherwise available not later than the date upon which such moneys will be needed according to a schedule of anticipated payments from the [Name of Cash Allottee] Proceeds Fund prepared by the WGFP Enterprise in connection with the WGFP. Any such investments shall be made in accordance with the investment policies adopted by the WGFP Enterprise and shall be held by the WGFP Enterprise, in trust, for the account of the [Name of Cash Allottee] Proceeds Fund until maturity or until sold, and at maturity or upon such sale the proceeds received therefrom including accrued interest and premium, if any, shall be immediately deposited in the [Name of Cash Allottee] Proceeds Fund and shall be disposed of in the manner and for the purposes provided in the WGFP Allotment Contract.

6. Reporting. The WGFP Enterprise shall provide Cash Allottee with periodic (no less than quarterly) reports regarding the disbursement of funds from the [Name of Cash Allottee] Proceeds Fund under the terms of this Escrow Agreement.

7. Reimbursement or Transfer After [Initial C&E] Paid in Full. If the WGFP Enterprise holds any moneys in the [Name of Cash Allottee] Proceeds Fund after the WGFP Enterprise determines that all [Initial C&E] has been paid in full, then the WGFP Enterprise shall, at Cash Allottee's option, either reimburse such proceeds to Cash Allottee or transfer and credit such proceeds to Cash Allottee's payment of other costs due under its WGFP Allotment Contract.

8. Counterparts. This Escrow Agreement may be executed by the WGFP Enterprise and the Cash Allottee in separate counterparts, each of which when so executed and delivered shall

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes

9. Severability. If one or more clauses, sentences, paragraphs or provisions of this Escrow Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of this Escrow Agreement shall not be affected thereby.

10. Choice of Law. This Agreement shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the WGFP Enterprise and the Cash Allottee, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers as of the date set forth above.

[ALLOTTEE]

By: _____
[NAME]
[TITLE]

ATTEST:

By: _____
Title: _____

WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE

By: _____
[NAME]
[TITLE]

**STATE OF COLORADO
INTERGOVERNMENTAL LOAN CONTRACT
COVER PAGE**

State Agency Colorado Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	Loan Contract Number CMS 149229 CT2021-2039
Borrower's Name and Address Windy Gap Firming Project Water Activity Enterprise	Loan Contract Project Performance Beginning Date The Loan Effective Date Loan Contract Project Performance End Date One (1) year from the Project Performance Beginning Date or upon the Project Performance End Date stated within CWCB's "Notice of Project Substantial Completion."
Base Loan Amount (Amount in CORE) \$89,108,910.89 One Percent (1%) Loan Origination Fee \$891,089.11 Total Loan Amount (Includes One Percent (1%) Origination Fee) \$90,000,000.00	Loan Effective Date The date the State Controller or an authorized delegate signs this Loan Contract Loan Contract Terms 2.08% for 30 years
Project Name Windy Gap Firming Project	Contract Authority Authority to enter into this Contract exists in House Bill 17-1248, Windy Gap Firming Project-Authorization, Section 12, Page 5
Contract Purpose The Project is to increase the firm yield of the existing Windy Gap project by constructing Chimney Hollow Reservoir.	
Appendices and Order of Precedence The following Appendices are included with this Contract: <ol style="list-style-type: none"> 1. Appendix 1, Project Summary 2. Appendix 2, Sample Option Letter 3. Appendix 3, Promissory Note 4. Appendix 4, Resolutions or Ordinance 5. Appendix 5, Security Agreement In the event of a conflict or inconsistency between this Contract and any Appendices such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"> 1. Colorado Special Provisions in §24 of the main body of this Contract. 2. The provisions of the other sections of the main body of this Contract. 3. Appendix 3, Promissory Note 4. Appendix 5, Security Agreement 5. All other Appendices 	
Principal Representatives For the State: Cole Bedford Colorado Water Conservation Board 1313 Sherman St., Room 718 Denver, CO 80203 cole.bedford@state.co.us 303-866-3441 ext. 3234	For Borrower: Jeff Drager Windy Gap Firming Project Water Activity Enterprise 220 Water Ave. Berthoud, CO 80513 jdrager@northernwater.org 970-330-4540

800-369-7246

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p>BORROWER Windy Gap Firing Gap Firing Project Water Activity Enterprise</p> <p>By: _____ (Signature)</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director Colorado Water Conservation Board (CWCB)</p> <p>By: _____ (Signature)</p> <p>Name: Kirk Russell, P.E., Section Chief CWCB Finance Section</p> <p>Date: _____</p>
<p>ATTEST:</p> <p>By: _____ (Signature)</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>LEGAL REVIEW Phil Weiser, Attorney General</p> <p>By: _____ N/A Assistant Attorney General</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Effective Date: _____</p>	

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1. PARTIES

This Contract is entered into by and between Borrower named on the Cover Page for this Contract (the “Borrower”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Contract (the “State” or ”CWCB”). Borrower and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Loan Effective Date

The Loan Effective Date means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the signature page for this Contract. This Contract shall not be valid or enforceable until the Loan Effective Date. The State shall not be bound by any provision of this Contract before the Loan Effective Date, and

shall have no obligation to pay the Borrower for any expense incurred before the Loan Effective Date or after the expiration or sooner termination of this Contract.

B. Project Term

The Parties' respective performances, of the Project, under this Contract shall commence on the Contract Project Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Loan Contract Project Performance End Date shown on the Cover Page for this Contract unless sooner terminated or further extended in accordance with the terms of this Contract, specifically Appendix 1, Section 7.

If during the Project one-year period, the Borrower has issued a WGFP Financing in the form of senior lien indebtedness, then the Time of Performance shall be adjusted as necessary to cover the expected complete construction duration. If at the end of the one-year period a WGFP Financing has not been issued, the loan contract shall be substantially completed (closed out) at the disbursed amount (plus the 1% service fee).

This Project Term does not include the full repayment period for the Loan or this Contract.

C. Loan Expiration Date

The loan expiration date is the date on which this Contract expires. The loan expiration date is when the *full repayment period for the loan ends*.

D. Project Extension Term - State's Option

The State, at its discretion, shall have the option to extend the Project Performance End Date under this Contract under the same terms specified in the Contract (each such period a "Project Extension Term"). In order to exercise this option, the Borrower shall provide written justification to CWCB and CWCB will provide written authorization for the Project Extension Term.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Borrower, which shall be governed by **§18**.

i. Method and Content

The State shall notify Borrower of such termination in accordance with **§21**. The notice shall specify the effective date of the termination and whether it affects all or a portion

of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Borrower shall be subject to the rights and obligations set forth in §20.

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Borrower an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Allotment Contracts”** means the Allotment Contracts entered into between the Borrower and each of the Windy Gap Firing Project (WGFP) Allottees.
- B. **“Base Loan Amount”** means the amount disbursed to the Borrower, which does not include the one percent (1%) Loan Origination Fee.
- C. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Borrower, or the appointment of a receiver or similar officer for Borrower or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Borrower is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- D. **“Business Day”** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.
- E. **“Contract”** means this agreement, including all attached Appendices, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- F. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

- I. **“Loan Allottee”** means a WGFP Allottee that, under its Allotment Contract, satisfies all or a portion of its Capital C&E Funding Obligation (as defined in the Allotment Contracts) through participation in a WGFP Financing pursuant to its Allotment Contract. A WGFP Allottee is a Loan Allottee to the extent that it satisfies its Capital C&E Funding Obligation through participation in WGFP Financing, and then only during the term of such WGFP Financing.
- J. **“Loan Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract.
- K. **“Loan Origination Fee”** means CWCB’s Origination Fee of one percent (1%), added to the Base Loan Amount in accordance with CWCB Policy No. 16, resulting in the Total Loan Amount shown on the Cover page of this Contract.
- L. **“Party”** means the State or Borrower, and **“Parties”** means both the State and Borrower.
- M. **“Pledged Revenues”** means the annual payments received by the Borrower from the Loan Allottees under the Allotment Contracts, net of any Operating C&E (as defined in the Allotment Contracts) which are pledged for repayment of this loan, as defined in the Resolution and set forth in the Security Agreement.
- N. **“Project Extension Terms-State Option”** means the time period defined in **§2.D**.
- O. **“Project Term”** means the time period defined in **§2.B**.
- P. **“Promissory Note”** means the document issued to secure repayment of this loan.
- Q. **“Resolution” or “Ordinance”** means the Borrower’s written authority to enter into this Contract.
- R. **“Security Agreement”** means the document that provides a security interest in a specified revenue pledged to repay this loan.
- S. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Borrower which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Borrower without restrictions at the time of its disclosure to Borrower; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Borrower to the State; (iv) is disclosed to Borrower, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- T. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- U. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- V. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

- W. **“Subcontractor”** means third-parties, if any, engaged by Borrower to aid in performance of the Work.
- X. **“Total Loan Amount”** means the total of the Base Loan Amount plus the Origination fee of one percent (1%).
- Y. **“WGFP Allottee”** means each entity that holds a WGFP Allotment pursuant to a WGFP Allotment Contract.
- Z. **“WGFP Financing”** means a financing by the Borrower of Capital C&E (as defined in the Storage Allotment Contracts) through one or more loans, lines of credit, notes, bond issues, or other forms of indebtedness, and any refinancing of the same, on behalf of the pooled financing participants participating in such WGFP Financing. WGFP Financing includes this Loan and any other lien borrowings that may be subordinated to other financing.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. AMENDMENTS AND OPTION LETTERS

In the event that the Borrower does not use the full amount authorized, the Parties shall amend this Contract or the State may exercise an Option Letter (attached as Appendix 2) and incorporated herein, to decrease the Total Loan Amount including an adjustment of the Origination Fee to reflect 1% of the actual amount disbursed to the Borrower. An amendment to this Contract shall be executed for the following changes including, but not limited to, a change in Pledged Revenues, an increase in Total Loan Amount, and a decrease in Total Loan Amount with a change in the annual loan payment. Additionally, upon substantial completion of the Project, the following applies:

- A. **Upon substantial completion of the Project** with a decrease in the Total Loan Amount and if the Borrower requests a change in the annual loan payment; the Parties may amend this Contract to modify the annual loan payment accordingly.
- B. **Upon substantial completion of the Project** with a decrease in the Total Loan Amount but no change in the annual payment, which then results in a shortened term of the loan, the State may exercise an option and shall provide written notice to the Borrower in form substantially equivalent to Appendix 2 to decrease the term of the loan. If exercised, the provisions of the Option Letter and supporting documentation shall become part of and be incorporated into this Contract for the total duration of this Contract.

5. CONTRACT AMENDMENT SERVICE FEES

Under certain circumstances, the Borrower may be assessed a service fee for amending the Contract.

- A. A service fee may be imposed on the Borrower for amendments processed for the benefit of the Borrower and necessary for the Borrower’s course of business but not necessary for the CWCB, including, but not limited to, a change in the Borrower’s name, assignment of Contract, substitution of Pledged Revenues, loan payment deferrals in excess of three (3) per loan, and loan consolidation. Amendments in the course of CWCB business will be processed at no additional charge to the Borrower.

- B. The amount charged shall be in accordance with the service fee rate structure set forth in the CWCB Loan Service Charge Policy in effect at the time the Borrower shall request an amendment. The current service fee for an amendment is one thousand and no/100 dollars (\$1,000).
- C. The Borrower shall remit the service fee to the CWCB prior to initiation of the amendment. Any service fee remitted to the CWCB cannot be refunded.

6. PROMISSORY NOTE PROVISIONS

The Promissory Note shall identify the Total Loan Amount. The CWCB agrees to loan to the Borrower an amount not to exceed the Total Loan Amount and the Borrower agrees to repay the loan in accordance with the terms as set forth in the Promissory Note, (attached as Appendix 3) and incorporated herein.

7. INTEREST PRIOR TO PROJECT COMPLETION

For all loan funds disbursed by the CWCB to the Borrower prior to the Contract Project Performance End Date, interest shall accrue on the disbursed funds at the rate set by the CWCB for this loan. The CWCB shall calculate the amount of the interest that accrued prior to the Project's substantial completion (as determined by the CWCB) and notify the Borrower of such amount. The Borrower shall repay that amount to the CWCB either (1) within thirty (30) days from the date of notification from the CWCB, (2) at the CWCB's discretion, said interest shall be deducted from the final disbursement of loan funds that the CWCB makes to the Borrower, or (3) at the CWCB's discretion, said interest shall be rolled into the Total Loan Amount due.

8. RETURN OF UNUSED LOAN FUNDS

Any loan funds disbursed but not expended for the Project in accordance with the terms of this Contract shall be remitted to the CWCB within thirty (30) calendar days from notification from the CWCB of either (1) completion of the Project or (2) determination by the CWCB that the Project will not be completed. Any such loan funds so remitted to CWCB shall be applied to the principal payment of amounts due on the Loan.

9. BORROWER'S AUTHORITY TO CONTRACT

The Borrower warrants that it has full power and authority to enter into this Loan Contract. The execution and delivery of this Contract and the performance and observation of its terms, conditions and obligations have been duly authorized by all necessary actions of the Borrower. The Borrower's Authorizing Resolution(s) or Ordinance (attached as Appendix 4) and incorporated herein, include the authority to enter into this Loan Contract.

10. BOND COUNSEL'S OPINION LETTER

Prior to the final execution of this Contract the Borrower shall submit to the CWCB a letter from its bond counsel stating that it is the attorney's opinion that:

- A. The Contract has been duly executed by officers of the Borrower who are duly elected or appointed and are authorized to execute the Contract and to bind the Borrower; and
- B. The Resolutions (or Ordinances) of the Borrower authorizing the execution and delivery of the Contract were duly adopted by the governing bodies of the Borrower; and
- C. There are no provisions in the Borrower's articles of incorporation or bylaws or any state or local law that prevent this Contract from binding the Borrower; and

- D. The Contract will be valid and binding against the Borrower if entered into by the CWCB subject to typical limitations related to bankruptcy, police power and creditor's rights generally.
- E. The Borrower was formed as a water **activity enterprise** ~~authority~~ pursuant to the provisions of C.R.S. 37-45.1-101, et. seq., and is operated as a water activity enterprise pursuant to the provisions of C.R.S. 37-45.1-101, et. seq., and is a government-owned business authorized to issue its own revenue bonds and receiving fewer than 10% of annual revenue in grants from all Colorado state and local governments combined within the meaning of Article X, Section 20 of the Colorado Constitution.

11. PLEDGE OF REVENUES

The Borrower irrevocably (but not exclusively) pledges to the CWCB, for the purpose of repaying the Total Loan Amount, the Pledged Revenues, in such amount as is necessary to make each annual payment due under this Contract. Such pledge of the Pledged Revenues is on parity with outstanding and subsequently issued WGFP Financings issued as subordinated lien indebtedness but expressly subordinate and junior to WGFP Financings issued as senior lien indebtedness.

- A. **Segregation of Pledged Revenues.** The Pledged Revenues shall be accounted for and maintained in accounts separate from other Borrower revenues at all times. The Pledged Revenues shall be used first to pay debt service on WGFP Financings issued as senior lien indebtedness and second to pay debt service on the Total Loan Amount and all other WGFP Financings issued as subordinated lien indebtedness on an equal basis. Thereafter, the Pledged Revenues may be used for any and all other expenses.
- B. **Establish Security Interest.** The Borrower has duly executed a Security Agreement, attached as Appendix 5 and incorporated herein, to provide a security interest to the CWCB in the Pledged Revenues. The lien of this Contract on the Pledged Revenues shall have priority over all other competing claims with respect to the Pledged Revenues, except for the senior lien on the Pledged Revenues of any WGFP Financings issued as senior lien indebtedness and the parity lien on the Pledged Revenues of any WGFP Financings issued as subordinated lien indebtedness.
- C. **Allotment Contracts Covenant.** Pursuant to its statutory authority and as permitted by law, the Borrower shall take all necessary actions consistent therewith during the term of this Contract to enforce the obligations of the Loan Allottees under the Allotment Contracts, to establish, levy and collect rates, charges and fees in amounts sufficient to make their annual payments under the Allotment Contracts and the obligations of the Loan Allottees to make such payments under the Allotment Contracts, which such annual payments will be in amounts sufficient to pay any WGFP Financings issued as senior lien indebtedness and any WGFP Financings issued as subordinated lien indebtedness, including to pay this loan as required by the terms of this Contract and the Promissory Note, to cover all expenditures for operation and maintenance and emergency repair services for the Project, and to maintain adequate debt service reserves.
- D. **Debt Service Reserve Account or Fund.** To establish and maintain the debt service reserve account or fund, the Borrower shall deposit an amount equal to one-tenth (0.1) of an annual payment into its debt service reserve account or fund on the due date of its first annual loan payment and annually thereafter for the first ten years of repayment of this loan. In the event that the Borrower applies funds from this account to repayment of the loan, the Borrower shall replenish the account within ninety (90) days of withdrawal of the

funds. The debt service reserve account or fund requirement is in effect until the loan is paid in full.

- E. **Additional Debts.** The Borrower may issue WGFP Financings issued as senior lien indebtedness senior to this loan and WGFP Financings issued as subordinated lien indebtedness on a parity with this loan provided that:
- i. The Borrower is currently and at the time of the issuance of the WGFP Financings in substantial compliance with all of the obligations of this Contract, including, but not limited to, being current on the annual payments due under this Contract; and
 - ii. The Borrower certifies to the CWCB that all Loan Allottees are current with respect to their annual payments under the Allotment Contracts.
- F. **Annual Statement of Debt Coverage.** Each year during the term of this Contract, the Borrower shall promptly submit, to CWCB, a copy of the annual audit report of an audit performed on Borrower's records that relates to this Contract or the Project.
- G. **Pledged Revenues During Loan Repayment.** Other than as set forth above, the Borrower shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the Pledged Revenues, so long as any of the principal, accrued interest, and late charges, if any, on this loan remain unpaid, without the prior written concurrence of the CWCB.

12. RELEASE AFTER LOAN IS REPAYED

Upon complete repayment to the CWCB of the entire principal, all accrued interest, and late charges, if any, as specified in the Promissory Note, the CWCB agrees to release and terminate any and all of the CWCB's right, title, and interest in and to the Pledged Revenues.

13. WARRANTIES

- A. The Borrower warrants that, by acceptance of the loan under this Contract and by its representations herein, the Borrower shall be estopped from asserting for any reason that it is not authorized or obligated to repay the loan to the CWCB as required by this Contract.
- B. The Borrower warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Borrower, to solicit or secure this Contract and has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this Contract.
- C. The Borrower warrants that the Pledged Revenues for this loan are not encumbered by any other deeds of trust or liens of any party other than the CWCB or in any other manner, except for any existing or subsequently issued WGFP Financings as described in Section 11 hereof, which sets forth the position of the lien created by this Contract in relation to any existing lien(s). Documentation establishing the relative priorities of said liens, if necessary, is attached to the Project Summary and incorporated herein.

14. OPERATION OF PROJECT

The Borrower shall, without expense or legal liability to the CWCB, manage, operate, and maintain the Project continuously in an efficient and economical manner.

15. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Borrower shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Borrower shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in Writing by the State. Borrower shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Borrower or any of its Subcontractors will or may receive the following types of data, Borrower or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Borrower shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Borrower may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Borrower shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Borrower shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Borrower shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Borrower shall provide the State with access, subject to Borrower's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Borrower shall return State Records provided to Borrower or destroy such State Records and certify to the State that it has done so, as directed by the State. If Borrower is prevented by law or regulation from returning or destroying State Confidential Information, Borrower warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Borrower becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Borrower can establish that none of Borrower or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Borrower shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Borrower shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Borrower's sole expense, require Borrower to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Borrower shall provide the State with the results of such audit and evidence of Borrower's planned remediation in response to any negative findings.

E. Data Protection and Handling

Borrower shall ensure that all State Records and Work Product in the possession of Borrower or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

16. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Borrower shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Borrower under this Contract. Such a conflict of interest would arise when a Borrower's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Borrower acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Borrower shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Borrower's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Borrower is uncertain whether a conflict or the appearance of a conflict has arisen, Borrower 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 actual or apparent conflict constitutes a breach of this Contract.

17. INSURANCE

The Borrower is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Loan Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Borrower shall ensure that any Subcontractors maintain all

insurance customary for the completion of the work done by that Subcontractor and as required by the State Risk Manager, Department of Personnel and Administration or the GIA.

18. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within thirty (30) days after the delivery of written notice, the Party may exercise any of the remedies as described in §19., for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Borrower is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

19. REMEDIES

A. State's Remedies

i. Loan Default Remedies

Upon default in the payments to be made by the Borrower under this Contract, or default in the performance of any covenant or agreement contained herein, the CWCB, at its option, may do any of the following:

- a. Suspend this Contract and withhold further loan disbursements pending corrective action by the Borrower and if the Borrower does not cure the default as provided for below, permanently cease loan disbursements and deem the Project substantially complete.
- b. Declare the entire unpaid principal amount of the Promissory Note, accrued interest, and late charges, if any, then outstanding immediately due and payable.
- c. Exercise its rights under any appendices to this Contract, including, but not limited to, the Promissory Note and Security Agreement securing Pledged Revenues.
- d. Take any other action deemed appropriate by the CWCB.

The CWCB shall provide written notice to the Borrower of any such default and shall give the Borrower an opportunity to cure within sixty (60) days of receipt of such notice. All remedies described herein may be simultaneously or selectively and successively enforced. The CWCB may enforce the provisions of this Contract at its option without regard to prior waivers of previous defaults by the Borrower, through judicial proceedings to require specific performance of this Contract, or by such other proceedings in law or equity as may be deemed necessary by the CWCB to ensure compliance with provisions of this Contract and the laws and regulations under which this Contract is executed. The CWCB's exercise of any or all of the remedies described herein shall not relieve the Borrower of any of its duties and obligations under this Contract.

B. Borrower's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Borrower, following the notice and cure period in §19.A.i.d., and the dispute resolution process in §20., shall have all remedies available at law and equity.

20. DISPUTE RESOLUTION

A. Initial Resolution

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 the board for review, who will determine a resolution to the dispute.

B. Resolution of Controversies, Not Involving Loan Default

If the initial resolution described in §20.A., fails to resolve the dispute within ten (10) Business Days, Borrower shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Borrower wishes to challenge any decision rendered by the Procurement Official, Borrower's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Borrower pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

21. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

22. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Borrower under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Borrower agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Borrower's performance shall be subject to evaluation and review in accordance with the

terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

23. GENERAL PROVISIONS

A. Assignment

Borrower's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Borrower's rights and obligations approved by the State shall be subject to the provisions of this Contract

B. Binding Effect

Except as otherwise provided in §23.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

C. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

D. Captions and References

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

E. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

F. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

G. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

H. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications

permitted under this Contract, other than Contract amendments, shall conform to the policies issued by the Colorado State Controller.

I. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

J. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Borrower's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

K. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of this Contract.

L. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract shall survive the termination or expiration of this Contract and shall be enforceable by the other Party.

M. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §23.A., this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

N. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

O. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

P. Standard and Manner of Performance

Borrower shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Borrower's industry, trade, or profession.

Q. Licenses, Permits, and Other Authorizations.

Borrower shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

R. Indemnification

i. General Indemnification

Borrower shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Borrower, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Borrower in violation of §15., may be cause for legal action by third parties against Borrower, the State, or their respective agents. Borrower shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys’ fees and costs) incurred by the State in relation to any act or omission by Borrower, or its employees, agents, assigns, or Subcontractors in violation of §15.

iii. Intellectual Property Indemnification

Borrower shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

24. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State’s Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

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

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. 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, contained in these statutes.

D. 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 shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. 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. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall 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. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

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.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

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.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.

[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 State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., 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 (i) shall not use E-Verify Program or the program procedures of the Colorado

Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., 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 §§8-17.5-101, et seq., C.R.S., 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.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

Special Provisions
Version 0919

APPENDIX 1, PROJECT SUMMARY

Loan Contract Number CT2021-2039

Section 1 – Borrower’s Name Activity
Windy Gap Firming Project Water Activity Enterprise

Section 2 – Project Description

- A. **Description of Project:** The Borrower applied to the CWCB for a loan to be used for the Windy Gap Firming Project, located in Larimer County, at a total estimated Project cost of \$660 million. The Project is to increase the firm yield of the existing Windy Gap project by constructing Chimney Hollow Reservoir.
- B. **Description of Feasibility Report:** John Budde, CPA, Financial Services Manager for Northern Water, prepared the Loan Feasibility Study titled, “Windy Gap Firming Project Loan Feasibility Study,” dated October 1, 2017. The Feasibility Study relied on the extensive engineering and environmental studies performed including the April 1997 Feasibility Study by GEI Consultants, the March 2014 Preliminary Design Report by AECOM, the Final EIS and the Bureau of Reclamation’s December 2014 Record of Decision. The feasibility report was prepared in accordance with CWCB guidelines and includes an alternative analysis and construction cost estimates and is incorporated herein by this reference. Based upon the feasibility report, the CWCB determined the Project to be technically and financially feasible.

Section 3 – Authority

This loan is made pursuant to the provisions of §§37-60-119 and 37-60-120, C.R.S., which authorizes the CWCB to loan money for water projects from the CWCB Construction Fund for the benefit of the people of the state, provided that the Borrower assures repayment of that money.

Pursuant to House Bill 17-1248, Section 12. Windy Gap firming project-authorization, Page 5, the Colorado General Assembly authorized CWCB to loan to the Borrower an amount up to \$90,000,000.00 for the Project.

Section 4 - CWCB Approval

At its November, 2017 meeting the CWCB approved a Project Loan, from the CWCB Construction Fund, to the Borrower in an amount up to \$89,108,910.89 for Project Costs. CWCB’s Origination Fee of 1% in the amount of \$891,089.11, in accordance with CWCB Policy No. 16, added to the Base Loan Amount results in a Total Loan Amount of **\$90,000,000.00**, at an interest rate of 3.10% per annum for a repayment term of thirty (30) years. At its March 2020 meeting, the CWCB approved an updated interest rate of 2.08% per annum for a repayment term of thirty (30) years.

Section 5 – Schedule of Existing Debt

As of the date of the CWCB loan approval, no other debt, backed by the loan security described in Section 6 below, exists.

Section 6 – Loan Security

The Security for this loan, as evidenced by the executed Security Agreement (Appendix 5) and incorporated herein, shall be: (i) an irrevocable (but not exclusive) pledge, to the CWCB, of water activity enterprise revenues from the Loan Allottees under the Allotment Contracts, net of any Operating C&E (as defined in the Allotment Contracts) in such amount as is necessary to make each annual payment due under this Contract; and (ii) an assessment covenant as evidenced by annual financial reporting. This security is a variance from CWCB Policy No. 5.

Section 7 – Additional Conditions and Requirements

The loan contract’s Time of Performance shall be one year. If during that one-year period, the Borrower has issued a WGFP Financing in the form of senior lien indebtedness, then the Time of Performance shall be adjusted as necessary to cover the expected complete construction duration. If at the end of the one-year period a WGFP Financing has not been issued, the loan contract shall be substantially

Such pledge of the Pledged Revenues is on parity with outstanding and subsequently issued WGFP Financings issued as subordinated lien indebtedness but expressly subordinate and junior to WGFP Financings issued as senior lien indebtedness.

completed (closed out) at the disbursed amount (plus the 1% service fee). The loan funds (not disbursed) will remain eligible for a new and separate loan **contract** at a new CWCB Board approved interest. The **rate** shall be based on the market rate for a 30-year AA Bond at the time of a subsequent request.

The CWCB shall be provided the executed Allotment Contracts (12 in total) of each WGFP participant. The contracts shall include, but not be limited to, the following requirements:

- 1) Each Loan Allottee shall to the fullest extent permitted by law, fix rates, charges or assessments so that such Loan Allottee will at all times have sufficient money to meet its obligations under its Allotment Contract and confirms that payment of its obligations under its Allotment Contract constitutes an operation and maintenance expense of such Loan Allottee and that as an operation and maintenance expense there are no liens, charges or encumbrances thereon, or priority of payments with respect thereto, prior to the payment of amounts under its Allotment Contract.
- 2) All payments owed to the Borrower under the Allotment Contracts shall be subject to take-or-pay and step-up provisions.

This loan will be subordinate to the payments of the revenue bonds issued for the Windy Gap Firing Project's "Capital C&E." as that term is defined in the Allotment Contract.

as senior lien indebtedness

Section 8 – “Construction Fund Program” Procedures for Projects

- A. The Borrower shall employ an engineer, registered in the State of Colorado to prepare plans and specifications for the Project.
- B. Engineering contracts and the plans and specifications must be submitted to the CWCB staff for verification of compliance with the terms of this Contract when requested by CWCB. Any modifications, to the plans and specifications that effect changes to the construction costs must be approved in writing by CWCB.
- C. For plans and specifications for all jurisdictional dams and reservoirs, as defined by §37-87-105 C.R.S., the Borrower shall provide a letter of approval from the State Engineer's Office prior to construction.
- D. The Borrower shall notify CWCB of bid opening dates, times and locations. CWCB staff may elect to attend future bid openings.
- E. The Borrower shall contract for the construction of the work with responsible and capable Construction Firms, selected by the Borrower and found acceptable by the CWCB staff. CWCB must approve the award of the construction contract prior to disbursement of funds for construction.
- F. The Borrower must provide a copy of the following construction contract documents: executed contractor's proposal, executed construction contract, executed performance bond, executed payment bond, executed notice of award, proposed notice to proceed, sample change order, and sample field order, as well as the advertisement for bid. CWCB staff must verify that these documents comply with the terms of this Contract prior to disbursement of funds for construction.
- G. The Borrower shall conduct a pre-construction conference at which time the CWCB staff shall have the opportunity to review and approve the construction schedule.
- H. If the CWCB staff determines that the Project requires a resident inspector during construction, the Borrower shall employ an inspector who has been approved by the CWCB staff.
- I. The Borrower shall construct the Project in accordance with the approved plans and specifications.
- J. Upon completion of the Project construction, the Borrower shall provide as-built drawings of the Project to

- K. the CWCB staff, or, if required by §37-87-105, C.R.S., the Borrower shall provide the as-built drawings to the State Engineer's Office for approval and filing.
- L. Upon completion of the Project construction, the Borrower shall arrange a final inspection for the CWCB staff.
- M. The Borrower shall pay all of the expenses related to the Project when such bills are due.

Section 9 – Eligible Expenses

The Borrower shall initiate disbursement requests by invoice to CWCB, in a form and manner approved by CWCB. The following items are eligible for loan disbursements:

- A. Engineering associated with the feasibility report prepared as a requirement for this loan.
- B. Preparing final designs and specifications for the Project.
- C. Preparing bid and construction contract documents.
- D. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
- E. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.
- F. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.
- G. Actual construction as called for in the design documents and in change orders approved by the CWCB and the Borrower.
- H. Engineering services for construction management, including design and construction management for CWCB approved change orders.
- I. Interest prior to completion of the Project pursuant to Section 7., of the Contract.
- J. Legal services for reviewing engineering services contracts, reviewing this Contract, reviewing construction contract documents, and for complying with all federal, state, and local regulatory requirements.
- K. Project related expenses incurred prior to the Effective Date of this Contract in accordance with the approval of this loan.

Section 10 – Disbursement Schedule

For Project expenses: The Borrower shall prepare a periodic progress report that sets forth a statement of the Project costs expended for that period and shall forward said statement to the CWCB. After receipt of the periodic progress report from the Borrower, and review and acceptance of the items therein as eligible expenses, as described above, the CWCB will pay to the Borrower the amount set forth in the report or such portion as has been approved by the CWCB. Such payment shall be made within thirty (30) days from the CWCB's approval of each progress report.

Section 11 – Time for Performance

Project To Begin: Loan Effective Date.

Project To End: One (1) year from the Effective Date of this Contract or based upon the date stated within the CWCB Notice of Project Substantial Completion.

**APPENDIX 2, SAMPLE OPTION LETTER
(TO BE USED AT SUBSTANTIAL COMPLETION OF PROJECT)**

State Agency Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	Option Letter Number
Borrower	Original Contract Number CMS CT
	Option Contract Number
	Loan Contract Effective Date
	Loan Contract Expiration Date

1. OPTIONS:

- a. Option to decrease total Contract amount and revise Contract expiration date upon CWCB *Notice of Project Substantial Completion*.

2. REQUIRED PROVISIONS:

- a. The amount of the current Loan Contract Amount is decreased by (\$ amount of change) from \$_____ to \$_____ in consideration of substantial completion of the Project. The Total Loan Amount is hereby modified accordingly.
- b. This change does not include a change to the annual payment and interest rate.
- c. This Option Letter and supporting documentation shall become part of and be incorporated into this Contract for the total duration of the Loan Contract.
- d. This Option Letter shall include the written *Notice of Project Substantial Completion*.
- e. The Contract Maximum Amount table on the Contract Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

- a. The effective date of this Option Letter is upon approval of the State Controller or an authorized delegate.

<p align="center">STATE OF COLORADO Jared Polis, Governor Department of Natural Resources Dan Gibbs, Executive Director Colorado Water Conservation Board</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p align="center">In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Option Effective Date: _____</p>
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APPENDIX 3, PROMISSORY NOTE

Date: _____, 2020 Activity Enterprise
Borrower: Windy Gap Firing Project Water Conservancy District
Total Loan Amount: \$90,000,000.00
Interest Rate: 2.08% per annum
Term of Repayment: Thirty (30) years
Loan Contract Number: CT2021-2039
Annual Loan Payment: \$4,062,831.42
Payment Initiation Date*: _____
(To be filled in at Substantial Completion of Project)
Maturity Date*: _____
(To be filled in at Substantial Completion of Project)

* Payment Initiation Date and Maturity Date fields are filled in *after* the Project has been substantially completed.

1. For Value Received, the Borrower promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the Contract and this Promissory Note.
2. Principal and interest shall be payable in annual equal payments as set forth in "Annual Loan Payment" above, with the first payment due and payable one year from the Payment Initiation Date (the date the CWCB determines that the Project is substantially complete), and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 718, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of five percent (5%) of the annual payment if the CWCB does not receive the annual payment within sixty (60) calendar days of the due date. At the discretion of the CWCB, and if the Borrower requests in writing with sufficient justification, the late fee may be waived by the CWCB. CWCB will review the request from the Borrower, and may, in its sole discretion, choose to waive the late fee.
5. This Promissory Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. This Promissory Note is issued pursuant to the Contract between the CWCB and the Borrower. The Contract creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement of even date and amount herewith and cover the Pledged Revenues. The Contract and Security Agreement grant additional rights to the CWCB, including the right to accelerate the maturity of this Promissory Note in certain events.
7. If any annual payment is not paid when due or any default under the Contract or the Security Agreement securing this Promissory Note occurs, the CWCB may declare the entire outstanding principal balance of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of seven percent (7%) per annum from the date of default. The CWCB shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Borrower shall be considered in default for purposes of this Promissory Note.

8. The Borrower hereby agrees that if this Note or interest thereon is not paid when due or if suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
9. This Promissory Note is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State thereunto enabling. Specifically, but not by way of limitation, the Contract and this Promissory Note are authorized pursuant to and under the authority of Title 31, Article 35; Title 37, Article 45.1; and Title 11, Article 57, Part 2, C.R.S., and in full conformity therewith. Pursuant to Section 11-57-210, C.R.S., and Section 31-35-413, C.R.S., this recital shall be conclusive evidence of the validity and the regularity of the issuance of this Promissory Note and the Promissory Note shall be incontestable for any cause whatsoever after its delivery for value.

Activity Enterprise

Windy Gap Firing Project Water ~~Conservancy District~~

By: _____
Signature

Name: _____

Title: _____

Date: _____

Attest:

By: _____
Signature

Name: _____

Title: _____

Date: _____

APPENDIX 4

APPENDIX 5, SECURITY AGREEMENT

Date: _____, 2020 **Activity Enterprise**

Borrower: Windy Gap Firing Project Water **Conservancy District**

Secured Party: Colorado Water Conservation Board

Promissory Note: \$90,000,000.00

Terms of Repayment: 2.08% per annum interest for thirty (30) years

Loan Contract Number: CT2021-2039

Pledged Revenues: All pledged revenues from the Allotment Contract revenues, net of any Operating C&E (as defined in the Allotment Contracts) in such amount as is necessary to make each annual payment due under this Contract and all of Borrower's right to receive said revenues to repay the loan as described in Pledged Revenues provisions of the Contract and Borrower's Resolutions adopted _____, 20__.

To secure payment of the loan evidenced by the Promissory Note payable in accordance with the terms of repayment, or until all principal, interest, and late charges, if any, are paid in full, the Borrower grants to Secured Party a security interest in the above described Pledged Revenues.

BORROWER EXPRESSLY WARRANTS AND COVENANTS:

1. That except for the security interest granted hereby and any other security interests granted in respect of WGFP Financings issued as senior lien indebtedness and WGFP Financings issued as subordinate lien indebtedness described in Section 11 of the Loan Contract and Appendix 1, Project Summary, Section 6 and 7, the Borrower is the owner of the Pledged Revenues free from any adverse lien, security interest or encumbrances; and that the Borrower will defend the Pledged Revenues against all claims and demands of all persons at any time claiming the same or any interest therein.
2. That the execution and delivery of this agreement by the Borrower will not violate any law or agreement governing the Borrower or to which the Borrower is a party.
3. Except in accordance with Section **11.E.**, of the Loan Contract, to not permit or allow any adverse lien, security interest or encumbrance whatsoever upon the Pledged Revenues and not to permit the same to be attached or replevined.
4. That by its acceptance of the loan money pursuant to the terms of the Contract and by its representations herein, the Borrower shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the Pledged Revenues pursuant to the terms of this agreement.
5. To pay all taxes and assessments of every nature that may be levied or assessed against the Pledged Revenues.
6. That the Borrower's articles of incorporation and by-laws do not prohibit any term or condition of this agreement.

UNTIL DEFAULT Borrower may have possession of the Pledged Revenues, provided that Borrower keeps the Pledged Revenues in an account separate from other revenues of Borrower and does not use Pledged Revenues for any purpose not permitted by the Contract. Upon default, subject to the terms of any financing documents executed in connection with any WGFP Financings, Secured Party shall have the immediate right to the possession of the Pledged Revenues.

BORROWER SHALL BE IN DEFAULT under this agreement upon any of the following events or conditions:

- a. default in the payment or performance of any obligation contained herein or in the Promissory Note or Contract; or
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against the Borrower; or
- c. the making or furnishing of any warranty, representation or statement to Secured Party by or on behalf of the Borrower which proves to have been false in any material respect when made or furnished.

Upon such default and at any time thereafter, subject to the terms of any financing documents executed in connection with any WGFP Financings, Secured Party shall have the remedies of a secured party under Section 11-57-208, Colorado Revised Statutes. Subject to the terms of any financing documents executed in connection with any WGFP Financings, Secured Party may require the Borrower to deliver or make the Pledged Revenues available to Secured Party at a place to be designated by Secured Party, which is reasonably convenient to both parties. Expenses of retaking, holding, preparing for sale, selling or the like shall include Secured Party's reasonable attorney's fees and legal expenses.

The Secured Party shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) Business Days of receipt of such notice before the Borrower shall be considered in default for purposes of this Security Agreement. No default shall be waived by Secured Party except in writing, and no waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion. The taking of this Security Agreement shall not waive or impair any other security Secured Party may have or hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this Security Agreement; but Secured Party shall retain its rights of set-off against the Borrower. In the event court action is deemed necessary to enforce the terms and conditions set forth herein, said action shall only be brought in the District Court for the City and County of Denver, State of Colorado, and the Borrower consents to venue and personal jurisdiction in said Court.

All rights of Secured Party hereunder shall inure to the benefit of its successors and assigns; and all promises and duties of the Borrower shall bind its successors or assigns.

Activity Enterprise
Windy Gap Firing Project Water Conservancy District

By: _____
Signature

Attest:

By: _____
Signature

Name: _____

Title: _____

Name: _____

Date: _____

Title: _____

Date: _____

**WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE, MUNICIPAL
SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS**

RESOLUTION NO. MS-XXX-11-20

**REGARDING SUBORDINATE CWCB LOAN TO FUND A
PORTION OF THE COSTS OF WINDY GAP FIRING PROJECT**

WHEREAS, the Windy Gap Firing Project Water Activity Enterprise (the “WGFP Enterprise”) is a government-owned business within the meaning of Article X, § 20(2)(d), of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District (the “Subdistrict”); and

WHEREAS, in accordance with its statutory duties and powers granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, the WGFP Enterprise has pursued the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project (the “Project”), a project designed to, among other things, deliver a firm annual yield of about 30,000 acre feet of water from the existing Windy Gap project to meet a portion of the existing and future demands of the participants in the Project (the “Allottees”) by construction of approximately 90,000 acre feet of usable water storage capacity; and

WHEREAS, the staff and counsel of the WGFP Enterprise have made a presentation regarding the status of and planning for the Project, including the proposed financing of the costs of the Project, such financing to consist of (a) a publicly-offered issue of senior lien revenue bonds (the “Senior Lien Revenue Bonds”) and (b) a subordinate lien loan (the “Subordinate CWCB Loan”) being made by the Colorado Water Conservation Board (“CWCB”); and

WHEREAS, the Board hereby finds, determines and adjudicates, as follows:

1. Staff and counsel of the WGFP Enterprise have presented to the Board estimates of (a) the initial cost for the planning, financing, acquisition, construction, and improvement of the Project, (b) the annual operation and maintenance expenses of the Project, and (c) the annual revenues received by the WGFP Enterprise from the Allottees under the terms of the proposed Allotment Contracts by and between the Enterprise and each of the Allottees, which such Allotment Contracts will, among other things, allot and confirm to each Allottee a portion of the usable water storage and conveyance capacity of the Project pursuant to C.R.S. § 37-45-131 and C.R.S. §§ 37-45.1-103(4), -106(4); set out the Allottees’ respective obligations to pay for the Project; and provide details about operation of the Project upon completion of construction; and
2. Staff and counsel of the WGFP Enterprise have discussed fully with the Board the basis for and assumptions underlying such estimates; and
3. Such estimates are reasonable and demonstrate that such annual revenues exceed the sum of the annual operation and maintenance expenses in each calendar year and the combined annual principal of and interest on the Senior Revenue Bonds and the Subordinate CWCB Loan; and

4. The Subdistrict's and the WGFP Enterprise's bond counsel will provide CWCB with an opinion letter, in a form required by the proposed Loan Contract with CWCB, to the effect that:
- a. the Loan Contract with CWCB has been duly executed by officers of the WGFP Enterprise who are duly elected or appointed and are authorized to execute the Loan Contract with CWCB and to bind the WGFP Enterprise; and
 - b. the resolution of the WGFP Enterprise authorizing the execution and delivery of the Loan Contract with CWCB was duly adopted by the governing body of the WGFP Enterprise; and
 - c. there are no provisions in the Colorado Constitution or any other state or local law that prevent the Loan Contract from binding the WGFP Enterprise; and
 - d. the WGFP Enterprise is a water activity enterprise in accordance with C.R.S. §§ 37-45.1-101 *et seq.* for the purpose of pursuing the Project; and
 - e. the Loan Contract will be valid and binding against the WGFP Enterprise if entered into by the CWCB.

5. Staff and counsel have further discussed with the Board that the WGFP Enterprise will irrevocably pledge to the CWCB, for purposes of repayment of the Subordinate CWCB Loan, the net revenues from the Project, as defined below in Section 2 as Pledged Revenues; provided, however, that such pledge of the Pledged Revenues is on parity with outstanding and subsequently issued debt obligations of the WGFP Enterprise issued as subordinated lien indebtedness, but such pledge is expressly subordinate and junior to outstanding and subsequently issued debt obligations of the WGFP Enterprise issued as senior lien indebtedness, including the Senior Lien Revenue Bonds.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Windy Gap Firming Project Water Activity Enterprise, Municipal Subdistrict, Northern Colorado Water Conservancy District, as follows:

SECTION 1. The Loan Contract between The Department of Natural Resources, Colorado Water Conservation Board and Windy Gap Firming Project Water Activity Enterprise, in substantially the form presented in this meeting, with such changes and amendments as hereinafter provided for, is hereby authorized and approved. Said form may be changed and amended by mutual agreement of the General Manager and General Counsel of the WGFP Enterprise, provided that: the principal amount of the loan provided therein shall not exceed \$90 million dollars; the term of the loan shall not be less than 30 years or greater than 30 years; the interest rate on said loan shall not be greater than 2.08%; the amortization of such loan shall result in substantially level annual payments of aggregate principal and interest in each year in which principal shall be payable; and the covenants therein shall not be materially more burdensome to the WGFP Enterprise.

SECTION 2. For purposes of repayment of the Subordinate CWCB Loan, “Pledged Revenues” means the annual payments received by the WGFP Enterprise from the Loan Allottees under the Allotment Contracts, net of any Operating C&E (as defined in the Allotment Contracts). A “Loan Allottee” is an Allottee that elects to satisfy all or a portion of its obligations under its Allotment Contract through participation in a WGFP Financing (as defined in the Allotment Contracts).

SECTION 3. The President of the Board and the General Manager and Secretary of the WGFP Enterprise are each hereby authorized and directed to execute said Loan Contract for and on behalf of the WGFP Enterprise, with such execution being conclusive evidence of their respective approval of and agreement to the aforesaid changes and amendments, and they shall deliver the same to the CWCB.

SECTION 4. The Board of Directors hereby elects to apply to the issuance of the Loan Contract, the Promissory Note (as defined in the Loan Contract) and the Security Agreement (as defined in the Loan Contract) all of the provisions of Part 2 of Article 57 of Title 11 of the Colorado Revised Statutes.

SECTION 5. This resolution shall take effect immediately upon its adoption.

CERTIFICATE

I, Bradley D. Wind, do hereby certify that the above is a true and correct copy of a Resolution adopted by the Board of Directors of the Windy Gap Firing Project Water Activity Enterprise at a regular meeting of the Board of Directors held in Berthoud, Colorado, on November 12, 2020.

Dated: _____

Secretary

DEED OF DEDICATION

KNOW ALL MEN BY THESE PRESENTS that the **Windy Gap Firing Project Water Activity Enterprise** of **220 Water Avenue, Berthoud 80513, Larimer County, State of Colorado**, being all of the owner of the following described property in Larimer County, Colorado, to wit:

See attached Exhibit A attached hereto:

does hereby dedicate forever said property as a public highway, pursuant to Colorado Revised Statute 43-2-201(1)(a), free and clear of all liens and encumbrances, and warrants title to the same. Owner(s) acknowledge and agree that the compensation paid for the property is the fair market value of a fee simple interest notwithstanding that owner(s) are conveying a right-of-way for transportation purposes.

Bradley D. Wind, General Manager
Windy Gap Firing Project Water Activity Enterprise

STATE OF COLORADO)
)ss
COUNTY OF LARIMER)

Sworn to and subscribed before me this ____ day of _____, 20__, by **Bradley D. Wind, as General Manager**, of the **Windy Gap Firing Project Water Activity Enterprise**.

Notary Public

My Commission Expires: _____

ACCEPTANCE

The Board of County Commissioners hereby accepts the above dedication of property as a public highway pursuant to Colorado Revised Statute 43-2-201(1)(a).

Dated this ____ day of _____, 20__.

Board of Commissioners of
Larimer County, Colorado

By _____
Chair

ATTEST:

Deputy County Clerk

Date: _____
APPROVED AS TO FORM:

COUNTY ATTORNEY

EXHIBIT A
(1 OF 2)
PROPERTY DESCRIPTION

A strip of land, located in the Southwest Quarter (SW1/4) of Section Twenty-eight (28) and in the Northwest Quarter (NW1/4) of Section Thirty-three (33), both in Township Five North (T.5N.), Range Seventy West (R.70W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado, and being more particularly described as follows:

COMMENCING at the Southwest corner of said Section 28 and assuming the South line of the Southwest Quarter of said Section 28, being monumentalized by a 2" post with a 3 1/4" diameter brass cap stamped "BLM 1951" at both ends, as bearing South 89°19'38" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 2633.45 feet, with all other bearings contained herein relative thereto;

THENCE South 89°19'38" East along the South line of the Southwest Quarter of said Section 28 a distance of 802.15 feet to a point being Forty (40) feet, as measured at a right angle, Southwesterly of the approximate centerline of West County Road 18E, also known as Pole Hill Road, said point being the **POINT OF BEGINNING**;

THENCE North 62°38'24" West along a line being Forty (40) feet, as measured at a right angle, Southwesterly of and parallel with the approximate centerline of said West County Road 18E a distance of 64.26 feet to a Point of Curvature (PC);

THENCE along the arc of a curve, which is concave to the Northeast, a distance of 256.12 feet to a Point of Tangency (PT), said curve having a radius of 190.00 feet, a central angle of 77°14'00" and a long chord bearing North 24°01'24" West a distance of 237.16 feet;

THENCE North 14°35'36" East a distance of 9.55 feet to a point being Thirty (30) feet, as measured at a right angle, Westerly of the approximate centerline of said West County Road 18E, said point being the beginning point of a curve, said curve being non-tangent to aforesaid line, said point bearing North 69°17'52" East a distance of 695.80 feet from the Southwest corner of said Section 8;

The following Five (5) courses and distances are along lines and curves being Thirty (30) feet, as measured at a right angle or radially, Southwesterly of and Southerly of and parallel with or concentric with the approximate centerline of said West County Road 18E:

THENCE along the arc of said curve, which is concave to the Northeast, a distance of 254.93 feet to a Point of Tangency (PT), said curve having a radius of 189.12 feet, a central angle of 77°14'00" and a long chord bearing South 24°01'25" East a distance of 236.06 feet;

THENCE South 62°38'24" East a distance of 87.12 feet to the South line of the Southwest Quarter of said Section 28;

THENCE continuing South 62°38'24" East a distance of 118.58 feet to a Point of Curvature (PC);

THENCE along the arc of a curve, which is concave to the North, a distance of 168.23 feet to a Point of Tangency (PT), said curve having a radius of 209.01 feet, a central angle of 46°06'57" and a long chord bearing South 85°41'53" East a distance of 163.72 feet;

THENCE North 71°14'36" East a distance of 38.10 feet;

THENCE South 18°45'24" East a distance of 10.00 feet to a point being Forty (40) feet, as measured at a right angle, Southerly of the approximate centerline of said West County Road 18E;

The following Three (3) courses and distances are along lines and curves being Forty (40) feet, as measured at a right angle or radially, Southwesterly of and Southerly of and parallel with or concentric with the approximate centerline of said West County Road 18E:

THENCE South 71°14'36" West a distance of 38.10 feet to a Point of Curvature (PC);

THENCE along the arc of a curve, which is concave to the North, a distance of 176.27 feet to a Point of Tangency (PT), said curve having a radius of 219.00 feet, a central angle of 46°07'00" and a long chord bearing North 85°41'54" West a distance of 171.55 feet;

THENCE North 62°38'24" West a distance of 138.48 feet to the **POINT OF BEGINNING**.

Said described strip of land contains 5,618 sq. ft. or 0.129 acre, more or less (±), and may be subject to any rights-of-way or other easements of record or as now existing on said described strip of land.

SURVEYORS STATEMENT

I, Michael Chad Dilka, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking and that it is true and correct to the best of my knowledge and belief.



Michael Chad Dilka - on behalf of King Surveyors
Colorado Licensed Professional Land Surveyor #38106

KING SURVEYORS, 650 East Garden Drive, Windsor, Colorado 80550, (970) 686-5011

JN: 20160445

P:\20160445\PROPERTY DESCRIPTIONS\POLE HILL ROAD\ADDITIONAL ROW-POLE HILL ROAD.doc
9/23/2020 8:49 AM

EXHIBIT A (2 OF 2)

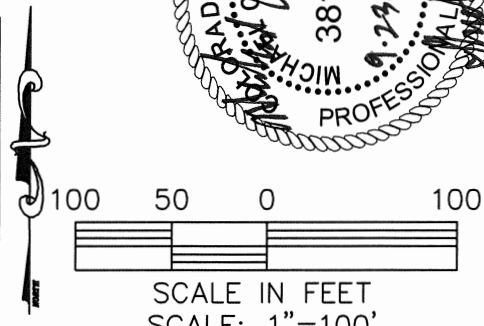
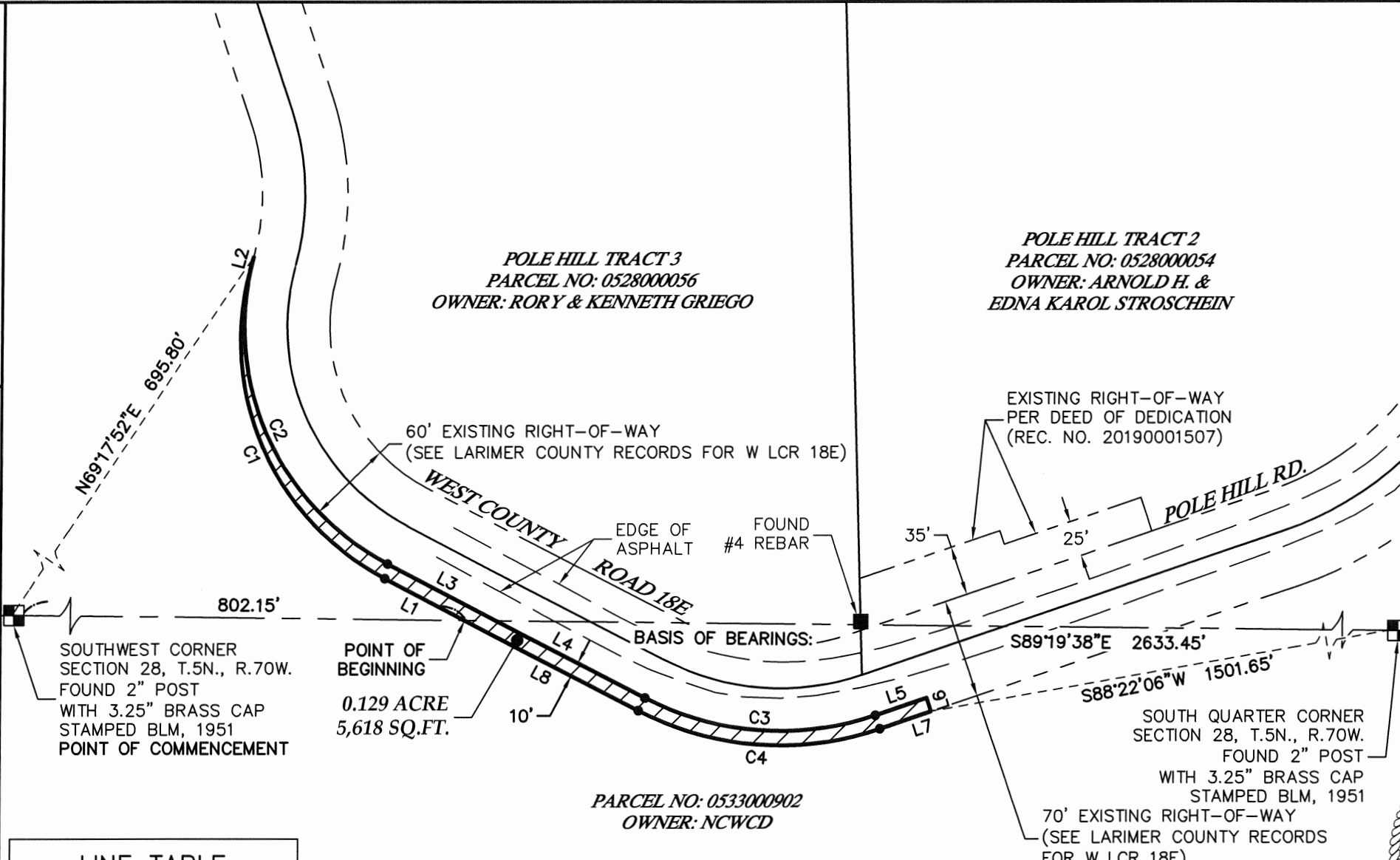
NW¼ SEC. 33 T.5N., R.70W.
SW¼ SEC. 28 T.5N., R.70W.

PROPERTY DEPICTION

LINE TABLE		
LINE	BEARING	LENGTH
L1	N62°38'24"W	64.26'
L2	N14°35'36"E	9.55'
L3	S62°38'24"E	87.12'
L4	S62°38'24"E	118.58'
L5	N71°14'36"E	38.10'

LINE TABLE		
LINE	BEARING	LENGTH
L6	S18°45'24"E	10.00'
L7	S71°14'36"W	38.10'
L8	N62°38'24"W	138.48'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	256.12'	190.00'	77°14'00"	237.16'	N24°01'24"W
C2	254.93'	189.12'	77°14'00"	236.06'	S24°01'25"E
C3	168.23'	209.01'	46°06'57"	163.72'	S85°41'53"E
C4	176.27'	219.00'	46°07'00"	171.55'	N85°41'54"W



NOTE: This exhibit drawing is not intended to be a monumentalized land survey. It's sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (13-80-105 C.R.S. 2012)

POLE HILL TRACT 3
PARCEL NO: 0528000056
OWNER: RORY & KENNETH GRIEGO

POLE HILL TRACT 2
PARCEL NO: 0528000054
OWNER: ARNOLD H. & EDNA KAROL STROSCHIEIN

PARCEL NO: 0533000902
OWNER: NCWCD

SOUTHWEST CORNER SECTION 28, T.5N., R.70W.
FOUND 2" POST WITH 3.25" BRASS CAP STAMPED BLM, 1951
POINT OF COMMENCEMENT

POINT OF BEGINNING
0.129 ACRE
5,618 SQ.FT.

BASIS OF BEARINGS:

S89°19'38"E 2633.45'
S88°22'06"W 1501.65'
SOUTH QUARTER CORNER SECTION 28, T.5N., R.70W.
FOUND 2" POST WITH 3.25" BRASS CAP STAMPED BLM, 1951
70' EXISTING RIGHT-OF-WAY (SEE LARIMER COUNTY RECORDS FOR W LCR 18E)



KING SURVEYORS

650 E. Garden Drive | Windsor, Colorado 80550
phone: (970) 686-5011 | fax: (970) 686-5821
email: contact@KingSurveyors.com

PROJECT NO: 20160445
DATE: 9/23/2020
CLIENT: STANTEC
DWG: 20160445PHR_ROW
DRAWN: SMF CHECKED: MCD



Contract Summary Form

Name of Project	Financial Planning Services
Project Description	Enterprise Cost Allocation Analysis Amendment No. 2. Adds additional scope to consider policy implications and participant impact analysis.
Entity or Enterprise	Northern Water - Fund 10
Agreement Number	2951-0-AGRE
Starting Date	3/22/2019
New or Amended	Amendment to existing contract
Final Completion Date	9/30/2021
Contract Expiration Date	9/30/2021
NW Project Manager	Jonathan Hernandez
Legal Approval by	N/A
Legal Approval Date	N/A
Vendor Name	Jacobs Engineering Group, Inc
Vendor Key Contact	Dennis Jackson, P.E.
Vendor Address	9191 South Jamaica St., Englewood, CO 80112
Vendor Phone	720-286-1376
Vendor Email	Dennis.Jackson@jacobs.com
Procurement Type	Negotiated Purchase
Contract Amount	\$ 98,000 original, \$ 97,811.10 amended, \$ 195,811 total
Insurance Requirements as per contract	Standard insurance requirements
Bond Requirements	Bonds not required
Other risks	Not Applicable

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DOCUMENT MUST BE REVIEWED, SERVICED AND EXECUTED
BY NORTHERN WATER'S CONTRACT DEPARTMENT MANAGER**

**AMENDMENT NO. 2
TO
CONSULTING SERVICES AGREEMENT
2951-0-AGRE**

GENERAL

This Amendment No. 2 is made and entered into as of _____, 2020, by and between the Northern Colorado Water Conservancy District, whose address is 220 Water Avenue, Berthoud, Colorado 80513 ("Northern Water") and Jacobs Engineering Group Inc., whose address is 9191 South Jamaica Street, Englewood, Colorado 80112 ("Consultant"), and amends the Consulting Services Agreement 2951-0-AGRE dated March 22, 2019 (the "Agreement") between Northern Water and Consultant regarding Financial Planning Studies. All provisions of the Agreement and Amendment No. 1 not specifically modified in this Amendment No. 2 shall remain in full force and effect in accordance with their terms.

DESCRIPTION OF CHANGES

The Agreement is modified as described below.

- I. AGREEMENT, Paragraph 1. Scope of Work.** Add sentence: Consultant agrees to provide the additional services described in Exhibit A-1 attached hereto and incorporated herein by this reference.
- II. AGREEMENT, Paragraph 2. Time of Commencement and Completion of Services.** Add sentence: Consultant's services shall be performed in accordance with the revised schedule set out in Exhibit B-1 attached hereto and incorporated herein by this reference.
- III. AGREEMENT, Paragraph 4. Compensation.** Compensation under this Agreement is increased by \$97,811.10, as set forth in Exhibit C-1 attached hereto and incorporated herein by this reference, for a total not-to-exceed amount of \$195,811.00. Total compensation under this Agreement shall not exceed \$195,811.00 without the prior written approval of the Northern Water.

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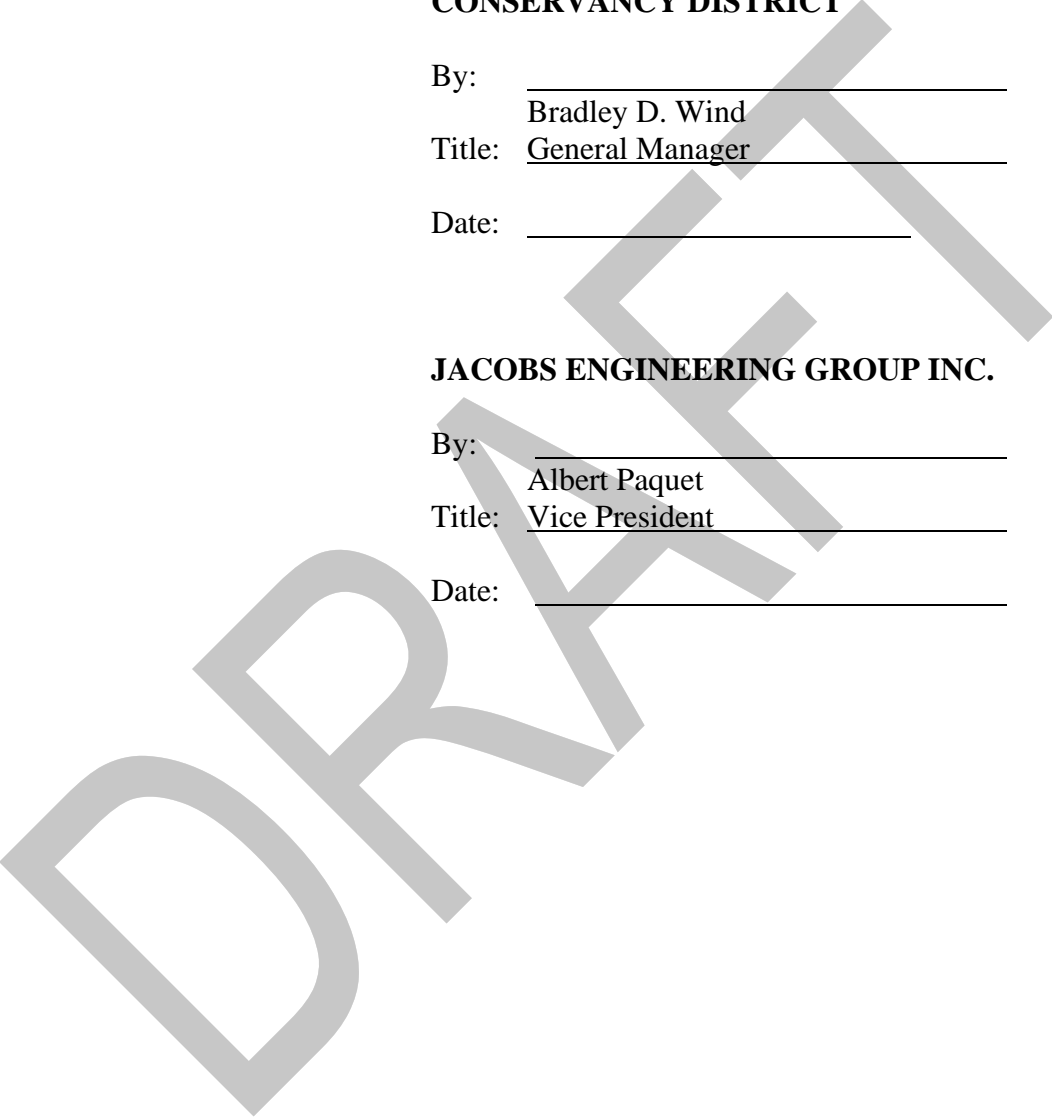
IN WITNESS WHEREOF, Northern Water and Consultant have executed this Amendment No. 2 on the date first set out above.

**NORTHERN COLORADO WATER
CONSERVANCY DISTRICT**

By: _____
Bradley D. Wind
Title: General Manager
Date: _____

JACOBS ENGINEERING GROUP INC.

By: _____
Albert Paquet
Title: Vice President
Date: _____



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EXHIBIT A-1

SCOPE OF SERVICES (Amendment No. 2)

On March 22, 2019, The Northern Colorado Water Conservancy District (Northern Water) and Jacobs Engineering Group Inc. (Consultant) entered into Contract 2951-0-AGRE (Contract) for financial planning services. The Contract described four separate tasks, all to be performed by September 30, 2020:

- Task 1: Reserve Policy Support
- Task 2: Enterprise Cost Allocation Analysis
- Task 3: Rate Study Update
- Task 4: Project Management

As of September 30, 2020, a total of \$80,919 has been expended against the total not-to-exceed cost of \$98,000. In the course of the Consultant's work, Northern Water's legal counsel identified several board policy issues that required additional discussion and input. This was unanticipated and affected both timeline and budget for the Agreement. The parties have since executed Amendment No. 1 (dated September 11, 2020) to the Agreement, which extends the deadline for completion to September 30, 2021.

This revised scope of services addresses changes in scope and budget, pursuant to Northern Water's September 24, 2020 Memorandum regarding "Proposed Amendments to contract 2951-0-AGRE." The task objective, original estimated level of effort and budget, and the amended scope and budget are described below. Budget and expenditure amounts are actual amounts incurred and billed through September 30, 2020.

Task 1: Reserve Policy Support

Objective

The Consultant will provide technical support to the Northern Water staff and Board in development of a reserve policy.

Original Estimated Level of Effort and Budget

The estimated level of effort to complete this task was 60 hours at a blended labor rate of \$200 per hour (\$12,000).

Amended Scope of Work and Budget

There are no revisions to this task; the task is complete. The amount of support needed was less than originally anticipated \$12,000 and \$7,352.39 remains in the budget. This balance will be reallocated to Tasks 2 and 4, which were overspent due to the unanticipated effort described above.

Task 2: Enterprise Cost Allocation Analysis

Objective

Analyze and support modifications to (if necessary) methods, practices and policies used to allocate labor, overhead, facility and fleet costs to enterprises.

Original Estimated Level of Effort and Budget

The estimated level of effort to complete this task was 190 hours at a blended labor rate of approximately \$190 per hour (\$36,000).

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Amended Scope of Work and Budget

This task is on-going. A total of \$70,039.29 was expended against the original budget. \$7,119.89 of the unspent budget from Task 1 will be reallocated to this task, leaving this task \$26,919.40 over budget. The parties attribute the overage to difficulty in developing cost allocation policy as well as the unforeseen legal issues that were presented by legal counsel.

Amendment No. 2 will increase the task budget by \$26,919.40 to align budget to expenditures to date, and it will add additional scope and budget of \$64,936.70 necessary to bring this task to completion, for a total additional amount of \$91,856.10.

Consultant will perform the following additional services:

- Participate in a workshop with Northern Water staff to confirm the cost allocation methodology applied to the activity code structure.
- Assist Northern Water staff in developing the mechanics of applying the cost allocation methodology, which includes one additional in-person staff workshop session to explore alternative strategies. For example, the cost allocation could be applied to costs as they are incurred, or it could be applied as an overhead to direct labor. There may be other alternatives or combinations of alternatives that may be explored. Consultant will work with Northern Water staff to select a final strategy.
- Prepare an impact analysis that describes the additional costs that would have been incurred by the enterprises had the indirect cost methodology been in place for select past years (up to 3 historical years). This impact analysis will be based on actual data and will give insight to Northern Water's Board and to project participants as to the fiscal impact of cost allocation.
- Attend and make presentations at four Northern Water participant meetings (Windy Gap/Windy Gap Firing participants monthly meeting, NISP participants monthly meeting, SWSP participants special meeting, PVP participants special meeting).
- Attend and make presentations at up to two Northern Water Board meetings.
- Adjust impact analyses based on comments on modifications that may arise out of participant and Board meetings.
- Attend monthly progress meetings/strategy sessions with Northern Water staff via video conference.
- Prepare final draft of Indirect Cost Study report.

Meetings

Two remote workshops with Northern Water staff will be required. Four presentations to Northern Water participants will be required. And up to two presentations at Northern Water Board meetings will be required. Six additional remote meetings with Northern Water staff will be required (approximately one per month). It is understood that in the current public health uncertainty (regarding the COVID-19 virus) both Northern Water and Consultant will likely conduct meetings and workshops remotely via videoconference to the greatest extent possible. Of the 14 meetings, workshops, and presentations described above, two (yet to be determined) may be conducted in-person and in Berthoud, Colorado at Northern Water's discretion.

The revised estimated level of effort to recover overbudget amounts and to complete this task is 479 hours at a blended labor rate of approximately \$191 per hour (\$91,574) plus direct expenses (\$283).

Task 3: Rate Study Update

Objective

Update financial data, modeling and cost-of-service analyses conducted during the 2014 Rate Study completed by CH2M HILL Engineers, Inc. to develop a rate design and assessment projections for the next 10 years with a focus on the next 5 years.

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Original Estimated Level of Effort and Budget

The estimated level of effort to complete this task is 246 hours at a blended labor rate of \$180 per hour (\$44,280).

Amended Scope of Work and Budget

There are no revisions to this task; it has not started. The cost estimate of \$44,000.00 for this task will remain unchanged. The parties anticipate significant progress on this task during the winter months so that rate changes can be communicated to affected parties no later than the start of Northern Water's FY2022 budget process in March 2021.

Task 4: Project Management

Project management activities include preparing for and conducting monthly progress meetings, recordkeeping, accounting support, preparation of invoices, reporting requirements, and QA/QC reviews. Project management deliverables will include monthly invoices and associated reporting including a brief scope and schedule status report with each invoice if requested by Northern Water.

Original Estimated Level of Effort and Budget

The estimated level of effort to complete this task was 30 hours at a blended labor rate of \$200 per hour (\$6,000).

Amended Scope of Work and Budget

This task was overspent by \$232.50. Amendment No. 2 will allocate \$232.50 from the unspent budget from Task 1 to align budget to expenditures to date, and it includes the following additional scope of services:

- Preparation of Amendments No. 1 and No. 2 to the Agreement.
- Additional project management activities proportionate to the additional scope for previous tasks.

The revised estimated level of effort to complete this task is 30 hours at a blended labor rate of \$199 per hour (\$5,955).

Assumptions

It is understood that in the current public health uncertainty (regarding the COVID-19 virus) both Northern Water and Consultant will likely conduct meetings and conferences remotely via videoconference to the greatest extent possible. In-person meetings typically held at the project or task kickoff included in the budget estimate will depend on national, state and local public health directives at that time.

Given the urgency to make significant progress during the winter months of 2020-2021, Northern Water will provide historical data to Consultant as required, preferably within 7-10 calendar days after receipt of requested information, to assist with timely completion of the tasks. Historical data could include technical and financial data, as well as forecasted CIP expenditures. Consultant will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by Northern Water.

All documents, reports, memoranda, agendas, minutes, invoices and other submittals will be transmitted to Northern Water electronically unless otherwise specified.

In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for Projects, Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs;

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BY NORTHERN WATER'S CONTRACT DEPARTMENT MANAGER**

competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, Consultant makes no warranty that the Northern Water's actual Project costs, economic feasibility, or schedules will not vary from Consultant' opinions, analyses, projections, or estimates.

Consultant will obtain written approval before accepting additional tasks under this agreement.

This scope of work is limited to consulting services, no direct supervision of Northern Water Employees or Contractors will occur.

Consultant may reasonably rely upon the accuracy of the information provided by Northern Water Employees and Contractors.

DRAFT

**FOR REVIEW PURPOSES ONLY
DOCUMENT MUST BE REVIEWED, SERVICED AND EXECUTED
BY NORTHERN WATER'S CONTRACT DEPARTMENT MANAGER**

EXHIBIT B-1

SCHEDULE (Amendment No. 2)

Task 1 Reserve Policy Support – Complete

Task 2 Enterprise Cost Allocation Analysis

- Notice to Proceed – October 2020
- Data and background – Complete (analysis will rely on current data)
- Participate in initial strategy workshops with Northern Water staff – November through December 2020
- Participate in workshops with Northern Water Board and Participants – February through August 2021
- Develop draft recommendations and documentation – January through August 2021
- Finalize recommendations and documentation – September 2021

Task 3 Rate Study Update

- Notice to Proceed – October 2020
- Completion of initial model enhancements – December 2020
- Updated revenue requirements – January 2021
- Updated rate comparison and financial performance measures – January 2021
- Updated cost-of-service analysis and initial rate design – February 2021
- Presentations and Hearings – March through May 2021
- Final rate design – June through August 2021
- Final model enhancements and documentation – August 31, 2021

**FOR REVIEW PURPOSES ONLY
DOCUMENT MUST BE REVIEWED, SERVICED AND EXECUTED
BY NORTHERN WATER'S CONTRACT DEPARTMENT MANAGER**

EXHIBIT C-1

COMPENSATION (Amendment No. 2)

Compensation shall be on a basis of Consultant's hourly rates and direct expenses as follows:

HOURLY RATES

Representative Job Title	Jan 1, 2020 - Dec 31, 2020
Project Officer / QA/QC	\$270
Project Manager / Director	\$235
Project Advisor / Principal Technologist	\$219
Senior Economist	\$209
Senior Financial Analyst / Senior Engineer	\$185
Financial Analyst / Modeler	\$161
Associate Engineer/Planner	\$128
Staff Engineer 2/Planner	\$117
Office/Clerical/Accounting	\$92

Hourly rates beyond December 31, 2020 shall be increased to reflect staff compensation adjustments. No overtime premium applies to this scope of services.

DIRECT EXPENSES

Expense Type	
Auto Mileage	Current IRS Rate
Postage/Freight	Actual
Other Expenses	Actual

The total compensation under this Agreement shall not exceed \$195,811.00 without prior written consent from the Northern Water, as provided below. It is understood that the amounts by task are budget estimates only and subject to change (but shall remain within the total not-to-exceed amount).

**FOR REVIEW PURPOSES ONLY
DOCUMENT MUST BE REVIEWED, SERVICED AND EXECUTED
BY NORTHERN WATER'S CONTRACT DEPARTMENT MANAGER**

Financial Planning Services

Budget Estimate

Task	Original	Spent*	Remaining*	Reallocation	Additional	New Budget	Agreement
						Amendment 2	Total
1. Reserve Policy Support (Complete)	\$12,000.00	\$ 4,647.61	\$ 7,352.39	\$ (7,352.39)	\$ -	\$ -	\$ 4,648.00
2. Enterprise Cost Allocation Analysis	\$36,000.00	\$70,039.29	\$ (34,039.29)	\$ 7,119.89	\$91,856.10	\$ 64,936.70	\$ 134,976.00
3. Rate Study Update	\$44,000.00	\$ -	\$ 44,000.00	\$ -	\$ -	\$ 44,000.00	\$ 44,000.00
4. Project Management	\$ 6,000.00	\$ 6,232.50	\$ (232.50)	\$ 232.50	\$ 5,955.00	\$ 5,955.00	\$ 12,188.00
Total	\$98,000.00	\$80,919.40	\$ 17,080.60	\$ -	\$97,811.10	\$ 114,891.70	\$ 195,811.00

* Spent and Remaining amounts are actual as of September 30, 2020

TOTAL NOT-TO-EXCEED \$195,811.00

It is understood that services in addition to those specified in Scope of Services, if required, may be proposed and will be provided by the Consultant if authorized in writing or otherwise confirmed by Northern Water. The Consultant shall be entitled to an equitable adjustment to its compensation for performing such additional services.

DRAFT



Contract Summary Form

Name of Project	NISP Appraiser Selection for Budget Expenditure Approval
Project Description	The Northern Integrated Supply Project requires appraisal services for the NISP conveyance system, properties related to Glade Reservoir and the HWY 287 relocation. These appraisals are required for the acquisition of the parcels required to construct these projects.
Entity or Enterprise	Northern Integrated Supply Project Water Activity Enterprise - Fund 40
Agreement Number	3500-0-AGRE
Starting Date	1/1/2021
New or Amended	New contract
Final Completion Date	12/31/2021
Contract Expiration Date	12/31/2021
NW Project Manager	Jim Struble
Legal Approval by	Michael Kopp
Legal Approval Date	Pending
Vendor Name	<i>Axton Realty Consulting</i>
Vendor Key Contact	<i>Alan Axton</i>
Vendor Address	<i>5021 W. 23rd Street, Greeley, CO 80634</i>
Vendor Phone	<i>970-352-1115</i>
Vendor Email	<i>aaaxton@gmail.com</i>
Procurement Type	Request for Proposals
Contract Amount	\$ 100,000
Insurance Requirements as per contract	standard
Bond Requirements	none
Other risks	none

November 5, 2020

Board Agenda item: NISP Appraiser Selection for Budget Expenditure Approval
Scope of Work

The Real Estate services department is seeking approval from the Board to hire both appraisers that responded to the RFP that was issued in September. We are requesting \$100,000 for each annual contract, or a total of \$200,000. The two appraisers are Alan Axton and Bonnie Roerig. Both appraisers are well qualified to handle the various types of parcels required for appraisal, and both have condemnation experience.

While NISP has over 180 parcels requiring appraisal services, we do not expect all of those parcels to require appraisal in 2021. We believe it is reasonable to expect each appraiser to complete between 25 and 30 appraisals over the course of a year. Each appraisal will be billed according to complexity. We are expecting roughly one quarter of appraised parcels will go to condemnation based on reports from representatives working on the City of Thornton's pipeline project that follows a very similar alignment to ours.

These two Appraisers will allow us to move forward and acquire the necessary parcels to construct NISP.



Contract Summary Form

Name of Project	NISP Appraiser Selection for Budget Expenditure Approval
Project Description	The Northern Integrated Supply Project requires appraisal services for the NISP conveyance system, properties related to Glade Reservoir and the HWY 287 relocation. These appraisals are required for the acquisition of the parcels required to construct these projects.
Entity or Enterprise	Northern Integrated Supply Project Water Activity Enterprise - Fund 40
Agreement Number	3499-0-AGRE
Starting Date	1/1/2021
New or Amended	New contract
Final Completion Date	12/31/2021
Contract Expiration Date	12/31/2021
NW Project Manager	Jim Struble
Legal Approval by	Michael Kopp
Legal Approval Date	pending
Vendor Name	<i>Bonnie Roerig and Associates LLC</i>
Vendor Key Contact	<i>Bonnie Roerig</i>
Vendor Address	<i>1873 S. Bellaire Street Suite 1222 Denver, Colorado 80222</i>
Vendor Phone	<i>303-757-5525</i>
Vendor Email	<i>bonnie@coloradoappraiser.net</i>
Procurement Type	Request for Proposals
Contract Amount	\$ 100,000
Insurance Requirements as per contract	standard
Bond Requirements	none
Other risks	none

November 5, 2020

Board Agenda item: NISP Appraiser Selection for Budget Expenditure Approval
Scope of Work

The Real Estate services department is seeking approval from the Board to hire both appraisers that responded to the RFP that was issued in September. We are requesting \$100,000 for each annual contract, or a total of \$200,000. The two appraisers are Alan Axton and Bonnie Roerig. Both appraisers are well qualified to handle the various types of parcels required for appraisal, and both have condemnation experience.

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These two Appraisers will allow us to move forward and acquire the necessary parcels to construct NISP.



Contract Summary Form

Name of Project	Northern Water Data Management System - WISKI Software Implementation Phase III
Project Description	Migration of Northern Water Environmental Data to WISKI System
Entity or Enterprise	Northern Water - Fund 10
Agreement Number	3496-0-AGRE
Starting Date	11/12/2020
New or Amended	New contract
Final Completion Date	4/15/2021
Contract Expiration Date	4/15/2021
NW Project Manager	Matthew Gloe
Legal Approval by	Michael Kopp
Legal Approval Date	10/29/2020
Vendor Name	Kisters North America
Vendor Key Contact	Matt Ables
Vendor Address	1520 Eureka Road – Suite 102 Roseville, CA 95661
Vendor Phone	916-723-1626
Vendor Email	Matt.ables@kisters.net
Procurement Type	Other as described
Contract Amount	\$ 84,937.50
Insurance Requirements as per contract	Standard Insurance Requirements
Bond Requirements	n/a
Other risks	n/a



Project Statement of Work

KISTERS North America
7777 Greenback Lane – Suite 209
Citrus Heights, CA 95610
Phone: 916-723-1441
Fax: 916-723-1626
Website: www.kisters.net

Date:
October 30th, 2018

Services Performed By:
KISTERS North America
1520 Eureka Road - Suite 102
Roseville, CA 95661

Services Performed For:
Northern Colorado Water Conservancy
District

1. Introduction

The purpose of the Phase 3 Northern Colorado Water Conservancy District (Northern Water) WISKI implementation project is to replace five water quality and biological database with the KISTERS Water Quality Module (KiWQM) and the KISTER Ecological Module (KiECO). The

This SOW outlines this project that have been defined by Northern Water in the DMS Implementation Tasks document and is presented below.

2. Scope of Work

a. Phase 3 Scope of work

- KISTERS will perform the scope of work for Phase 3 of this project that will include:
- Setup, configuration, and migration of five water quality and biological databases:
 - WQ Lakes and Fish
 - NW_EC Database
 - NW_DS_NISP
 - NW_WQFlowingSites
 - NW_WQLakes

b. Phase 3 Assumptions and Constraints

Below are a list of general assumptions and constraints for the project.

- Northern Water and all third-party contractors will be available as they are needed throughout the project execution.
- Required hardware resources will be available when and as they are needed.
- Scope modifications could negatively affect the scheduled delivery date of the project.
- All data provided to KISTERS will be imported without the requirement of any pre-processing or value manipulation.

c. Phase 3 Project deliverables

1. Setup, configuration, and migration of discrete water quality lab data (metals, nutrients emerging contaminants).
2. Setup, configuration, and migration of biological water quality data (benthic, fish, phytoplankton, zooplankton)
3. Configuration of lab report importers and sampling forms
4. Configuration of QAQC methods for lab data
5. Configuration of external data access portal, station maps, and web services

Phase 3 -KISTERS KiWQM and KiECO Implementation	days/Quantity	\$/Count	Total
System Configuration			
Setup, configuration, and migration of real-time field services data not in RiverTrak (in Gardens system).	3.00	\$ 1,500.00	\$ 4,500.00
KiWQM Build and Migration	1	\$ 1,500.00	\$ 1,500.00
WQ Lakes and Fish			
KiWQM Build and Migration	3	\$ 1,500.00	\$ 4,500.00
KiECO Build/Taxa - Census	2	\$ 1,500.00	\$ 3,000.00
KiECO Build/Taxa - Build and Import for 3 different data types	5	\$ 1,500.00	\$ 7,500.00
KiECO Migrate	1	\$ 1,500.00	\$ 1,500.00
NW_EC Database			
KiWQM Build and Migration	5	\$ 1,500.00	\$ 7,500.00
NW_DS_NISP			
WQ Build and Migration into WISKI	2	\$ 1,500.00	\$ 3,000.00
NW_WQFlowingSites			
- Assumptions: Calculations expected to be done by labs and imported			
KiECO Build/Taxa - Census and Taxa	6	\$ 1,500.00	\$ 9,000.00
KiECO Migration	4	\$ 1,500.00	\$ 6,000.00
KiWQM	3.5	\$ 1,500.00	\$ 5,250.00
- Assumptions: Calculations expected to be done by labs and imported			
KISTERS Portal configuration for KiWQM data	10	\$ 1,500.00	\$ 15,000.00
Training for users of the system.	2	\$ 1,500.00	\$ 3,000.00
System Configuration			\$ 71,250.00
Training			\$ 3,000.00
Project Management (15%)			\$ 10,687.50
Phase 3 Cost			\$ 84,937.50

d. Phase 3 Project Timeline Estimate

Task #	Phase 3	Target Completion Date
1	Kickoff Meeting	2-Nov-20
2	Setup, configuration, and migration of real-time field services data not in Rivertrak (in Gardens system). This includes buoy data and some weather data.	8-Jan-21
3	Setup, configuration, and migration of discrete water quality data from WQ Lakes and Fish database	15-Jan-21
4	Setup, configuration, and migration of biological data from WQ Lakes and Fish database	29-Jan-21
5	Setup, configuration, and migration of discrete water quality data from NW_EC database	5-Feb-21
6	Setup, configuration, and migration of discrete water quality data from NW_DS_NISP database	5-Feb-21
7	Setup, configuration, and migration of discrete water quality data from NW_WQFlowingSites database	19-Feb-21
8	Setup, configuration, and migration of biological data from NW_WQFlowingSites database	26-Feb-21
9	Configuration of import of lab reports, COC's, and sampling forms	5-Mar-21
10	Configuration of external data access portal, station maps, and web services	23-Apr-21

Principal Contacts

KISTERS Primary Contact
Name: Matt Ables
Phone: 916-723-1441
E-Mail: matt.ables@kisters.net

KISTERS	CLIENT:
Date: 2018-03-16	Date:
Printed Name:	Printed Name:
Signature:	Signature:

**EXCERPTS FROM DAVIS GRAHAM & STUBBS, LLP'S 2020/2021
LEGAL SERVICES AGREEMENT 3466-0-AGRE**

HOURLY RATE INCREASES

(No Changes in Scope of Services or Compensation from last year's Contract.)

1. Scope of Services. DG&S agrees to provide legal services to Northern Water (the "Services") upon the request of authorized representatives of Northern Water. DG&S is customarily engaged in the profession of providing legal services to clients. DG&S shall not be obligated to work exclusively for Northern Water during the term of this Agreement; provided, however, that DG&S will not provide legal services to Northern Water or any other client in violation of the Colorado Rules of Professional Conduct. DG&S will provide adequate professional time for the performance of legal services requested by Northern Water hereunder. DG&S is responsible for providing its own offices, equipment, training and tools for the performance of the legal services.

4. Compensation.

A. DG&S will perform legal services on behalf of Northern Water at the following billing rates per hour of time recorded.

Rachel R. James	\$400.00 <u>\$430.00</u>
Nathalie Bleuzé	\$335.00 <u>\$365.00</u>
Lauren Ellison	\$200.00

B. Customary expenses shall be billed at actual cost or estimated cost when actual costs cannot be readily determined, without markup. Such expenses include copying, FAX charges, long-distance telephone charges, and specialized computer research charges.

C. Reasonable travel-related expenses incurred by Consultant in providing the Services shall be reimbursed by Northern Water. Such travel-related reimbursement will be specifically limited to travel expenses, lodging expenses and/or meal expenses that are necessary to accomplish the Services herein and that are furthermore uniquely identified in a single invoice line item. Northern Water strictly prohibits reimbursement for alcoholic beverages. Consultant must have documentary evidence (a receipt) for each travel-related reimbursement expenditure. At any time, and for any reason, Northern Water may request such receipts be provided to Northern Water to verify reimbursement expenses are in compliance with this Agreement. If any such expenses are deemed unreasonable or inapplicable, Northern Water will not reimburse Consultant for such expenses. Total compensation under this Agreement, including reimbursement of reasonable travel-related expenses, shall not exceed the amount identified in Paragraph 4 without the prior written approval of Northern Water.

SATISFACTION, DISCHARGE, AND RELEASE OF LEASEHOLD MORTGAGE AND INDENTURE OF TRUST AND LEASE PURCHASE AGREEMENT

THIS SATISFACTION, DISCHARGE, AND RELEASE OF LEASEHOLD MORTGAGE AND INDENTURE OF TRUST AND LEASE PURCHASE AGREEMENT dated October __, 2020, is made by and between the Northern Colorado Water Conservancy District Building Corporation, a nonprofit corporation duly organized and existing under the laws of Colorado, the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision organized and existing under the laws of Colorado, and U.S. Bank, National Association, a national banking association, as Trustee and Mortgagee, having a corporate trust office in Denver, Colorado and duly organized and existing under the laws of the United States of America.

DEFINITIONS

“Certificates” means the Certificates of Participation, Series 2012, dated October 31, 2012 and Series 2002, dated April 1, 2002, sold by the Corporation and executed and delivered by the Trustee, as the Corporation’s assignee, pursuant to the Indenture.

“Corporation” means the Northern Colorado Water Conservancy District Building Corporation.

“District” means the Northern Colorado Water Conservancy District.

“Indenture” means the Leasehold Mortgage and Indenture of Trust dated April 1, 2002 and recorded in the Larimer County, Colorado property records at Reception No. 2002043432, as supplemented by the Supplemental Leasehold Mortgage and Indenture of Trust No. 1 dated October 31, 2012 and recorded in the Larimer County, Colorado property records at Reception No. 20120077191.

“Lease Purchase Agreement” means the Lease Purchase Agreement dated April 1, 2002, and recorded at Reception No. 2002043431 of the Larimer County, Colorado property records, between the Corporation, as Lessor, and the District, as Lessee, as amended by Amendment No. 1 dated October 31, 2012 and recorded in the Larimer County, Colorado property records at Reception No. 20120077192.

“Leased Property” and “Mortgaged Property” means the property as described in Exhibit A, attached hereto, and all real property improvements located or to be constructed thereon and the tenements, hereditaments, appurtenances, rights, privileges, and immunities thereto belong or appertaining and any portion thereof, as more fully described in the Lease Purchase Agreement and Indenture.

“Trustee” means U.S. Bank, National Association.

RECITALS

WHEREAS, the Corporation and Trustee entered into the Indenture to provide for the execution and delivery by the Trustee of the Certificates, and the District agreed to certain disclosure requirements under Article 12 of the Indenture; and

WHEREAS, the Corporation and District entered into the Lease Purchase Agreement, where the Corporation leased the Leased Property to the District under the terms of that agreement; and

WHEREAS, the Corporation assigned and transferred its rights under the Lease Purchase Agreement and in the Leased Property to the Trustee on April 1, 2002, as evidenced in Lease Purchase Agreement; and

WHEREAS, pursuant to section 6.01 of that portion of the Indenture dated April 1, 2002, the District has paid the principal and interest on all the Certificates executed and delivered under the Indenture together with all compensation due to Trustee and all other sums payable under the Indenture thereby terminating all right, title, and interest of the Trustee in the Mortgaged Property; and

WHEREAS, in connection therewith, and pursuant to section 6.01, the Trustee must release the Indenture and discharge the lien of the Indenture on the Mortgaged Property; and

WHEREAS, in connection therewith, and pursuant to section 6.01 of the Indenture, the Trustee must convey the Leased Property to the District as provided in Article 12 of the Lease Purchase Agreement.

SATISFACTION, RELEASE, AND DISCHARGE OF THE INDENTURE AND LEASE PURCHASE AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and in consideration of other good and valuable consideration, the Corporation, District, and Trustee hereby acknowledge that all obligations of the Corporation and District under the Indenture are satisfied and discharged and the lien of the Trustee upon the Mortgaged Property is hereby terminated and released. Additionally, the Trustee hereby acknowledges that any and all right, title, and interest of the Trustee in the Leased Property automatically terminated and good and marketable title in the Leased Property automatically vested in the District. Accordingly, the covenants and agreements of the Corporation, District, and Trustee under the Indenture and Lease Purchase Agreement are hereby terminated and are of no further force and effect.

**NORTHERN COLORADO WATER
CONSERVANCY DISTRICT
BUILDING CORPORATION**

By: _____

Dale Trowbridge, President

**NORTHERN COLORADO WATER
CONSERVANCY DISTRICT**

By: _____

Mike Applegate, President

**U.S. BANK, NATIONAL
ASSOCIATION, as Trustee and Mortgagee**

By: _____

Gretchen L. Middents,

Vice President

DRAFT

**TERMINATION OF PURCHASE AND LEASE AGREEMENT AND GROUND LEASE
AND ACKNOWLEDGMENT OF VESTED TITLE**

THIS TERMINATION OF PURCHASE AND LEASE AGREEMENT AND GROUND LEASE AND ACKNOWLEDGMENT OF VESTED TITLE dated October ____, 2020, is made by and between the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision organized and existing under the laws of Colorado and the Northern Colorado Water Conservancy District Building Corporation, a Colorado nonprofit corporation.

DEFINITIONS

“Certificates” means the Certificates of Participation, Series 2012, dated October 31, 2012 and Series 2002, dated April 1, 2002, sold by the Corporation and executed and delivered by the Trustee, as the Corporation’s assignee, pursuant to the Indenture.

“Corporation” means the Northern Colorado Water Conservancy District Building Corporation.

“District” means the Northern Colorado Water Conservancy District.

“Ground Lease” means the Ground Lease dated April 1, 2002, and recorded at Reception No. 2002043430 of the Larimer County property records, from the District to the Corporation transferring a leasehold interest in the Site to the Corporation.

“Indenture” means the Leasehold Mortgage and Indenture of Trust dated April 1, 2002 and recorded in Larimer County, Colorado at Reception No. 2002043432, as supplemented by the Supplemental Leasehold Mortgage and Indenture of Trust No. 1 dated October 31, 2012 and recorded in the Larimer County, Colorado property records at Reception No. 20120077191.

“Leased Property” and “Mortgaged Property” means the property as described in Exhibit A, attached hereto, and all real property improvements located thereon and the tenements, hereditaments, appurtenances, rights, privileges, and immunities thereto belong or appertaining and any portion thereof, as more fully described in the Lease Purchase Agreement and Indenture.

“Lease Purchase Agreement” means the Lease Purchase Agreement dated April 1, 2002, and recorded at Reception No. 2002043431 of the Larimer County property records, between the Corporation, as Lessor, and the District, as Lessee, as amended by Amendment No. 1 dated October 31, 2012 and recorded in the Larimer County, Colorado property records at Reception No. 20120077192.

“Parties” means the parties to this agreement, the Corporation and the District.

“Site” means the property as described in Exhibit A, attached hereto.

“Trustee” means U.S. Bank, N.A, as Trustee under the Indenture.

RECITALS

WHEREAS, the Parties entered into a Ground Lease, where the District leased the Site to the Corporation under the terms of that agreement; and

WHEREAS, the Parties also entered into a Lease Purchase Agreement, where the Corporation leased the Leased Property to the District under the terms of that agreement; and

WHEREAS, the Corporation and Trustee entered into the Indenture to provide for the execution and delivery by the Trustee of the Certificates; and

WHEREAS, pursuant to section 6.01 of that portion of the Indenture dated April 1, 2002, the District has paid the principal and interest on all the Certificates executed and delivered under the Indenture together with all compensation due to Trustee and all other sums payable under the Indenture thereby terminating all right, title, and interest of the Trustee in the Mortgaged Property; and

WHEREAS, pursuant to Article 4 of the Lease Purchase Agreement, upon the District's satisfaction of the Indenture, the Lease Purchase Agreement shall terminate upon the Corporation's conveyance of the Leased Property to the District.

WHEREAS, pursuant to Article 2 of the Ground Lease, the Ground Lease shall terminate upon the Corporation's conveyance of the Leased Property to the District.

TERMINATION AND ACKNOWLEDGMENT OF VESTED TITLE

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and in consideration of other good and valuable consideration, the Parties hereby acknowledge that (1) all obligations of the Parties under the Lease Purchase Agreement are satisfied, discharged, and hereby terminated, (2) all obligations of the Parties under the Ground Lease are satisfied, discharged, and hereby terminated, and (3) any and all right, title, and interest of the Corporation in the Leased Property automatically terminated and good and marketable title in the Leased Property automatically vested in the District.

**NORTHERN COLORADO WATER
CONSERVANCY DISTRICT
BUILDING CORPORATION**

By: _____

Dale Trowbridge, President

**NORTHERN COLORADO WATER
CONSERVANCY DISTRICT**

By: _____

Mike Applegate, President