

## CONSENT AGREEMENT

This Consent Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Town of Berthoud, the City of Broomfield, the Town of Erie, the City of Fort Lupton, the City of Fort Morgan, the Town of Hudson, Little Thompson Water District, Central Weld County Water District, the City of Longmont, the City of Louisville, Morgan County Quality Water District, Platte River Power Authority, Superior Metropolitan District No. 1, and Tri-State Generation and Transmission Association, Inc. (collectively, "SWSP Participants"); and the Southern Water Supply Project Water Activity Enterprise ("SWSP Enterprise"), a government-owned business within the meaning of Article X, Section 20(2)(d) of the Colorado Constitution, that is organized pursuant to C.R.S. §§ 37-45.1-101, et seq. and owned by the Northern Colorado Water Conservancy District (a quasi-municipal entity and political subdivision of the State of Colorado, hereinafter described as “Northern”), and whose address is 220 Water Ave., Berthoud, Colorado, 80513.

### RECITALS

A. WHEREAS, Erie and Broomfield are among the Participants in the Southern Water Supply Project (“SWSP”), a project conducted by the Enterprise to construct a pipeline to convey Colorado-Big Thompson Project and Windy Gap Project water supplies from the Carter Lake outlet works to Participants’ service areas (“SWSP Pipeline”);

B. WHEREAS, in 1994, the SWSP Participants entered into individual, but substantially similar, allotment contracts with the Enterprise, under which each Participant was allocated capacity in the SWSP Pipeline subject to certain terms and conditions, and as amended in 2003 (“SWSP Allotment Contracts”);

C. WHEREAS, paragraph 4(e)(ii) of the SWSP Allotment Contracts provides that the rights-of-way acquired in connection with the SWSP Pipeline (“Project ROW”) are retained by the Enterprise; however, an entity may secure a right to use a portion of the Project ROW for purposes not related to the SWSP upon approval of Northern’s Board of Directors and reimbursement payment to the Participant(s) which paid for the portion of the Project ROW for such use;

D. WHEREAS, paragraph 4(e)(ii) of the SWSP Allotment Contracts provide that an entity seeking a right to use a portion of the Project ROW for purposes not related to the SWSP shall pay either a) the appraised value of the right to so use the Pipeline right-of-way at that time, or b) one-half of the actual cost of acquisition of the permanent Pipeline right-of-way plus all carrying costs including interest at nine percent (9%) from the date of acquisition of the right-of-way through the date of conveyance;

E. WHEREAS, paragraph 4(e)(ii) of the SWSP Allotment Contracts does not specify whether the nine percent interest described therein is to be calculated based on a compounding annual 9% interest rate, or a simple non-compounding annual 9% interest rate;

F. WHEREAS, Erie currently seeks the right to use a portion of the Project ROW ("Erie ROW") within which it will construct a pipeline to be used as part of Erie's municipal water supply system;

G. WHEREAS, the Erie ROW will be located within a portion of the Project ROW associated with SWSP Pipeline Segment B6 ("Segment B6"), as defined in the SWSP Allotment Contracts, the capacity of which segment of pipeline is allocated only to Erie and Broomfield under the SWSP Allotment Contracts

H. WHEREAS Erie and Broomfield desire to calculate any reimbursement payments for the grant of right-of-ways to one another within Segment B6 ("Segment B6 ROWs") based on applying a simple non-compounding, annual 9% interest rate to one half of the original cost of acquiring the Segment B6 ROW, rather than a compounding annual 9% interest rate.

I. WHEREAS, Erie, Broomfield, and the Enterprise desire to obtain the SWSP Participants' consent to those terms for any conveyances of Segment B6 ROWs.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, the SWSP Participants and the Enterprise hereby agree as follows:

1. Consent to Use of Simple, Non-Compounding Annual Interest rate.  
The SWSP Participants and the Enterprise hereby consent to Erie and Broomfield

applying and interpreting the 9% interest rate described in paragraph 4(e)(ii) of the SWSP Allotment Contracts as a simple non-compounding, annual 9% interest rate rather than a compounding annual 9% interest rate, for any conveyances of Segment B6 ROWs.

2. No modification. Nothing herein modifies the SWSP Allotment Contracts.

3. Consent Limited. The consent granted under this Agreement shall be strictly limited to the terms described herein, and shall not be deemed as consent to any segments of the SWSP Pipeline except Segment B6.

4. Miscellaneous.

a. Warranty of authority. The signatories hereto warrant that they are authorized to execute this agreement on behalf of their respective SWSP Participant entity, and to bind said entity to the terms agreed upon in this agreement.

b. Governing law. This Agreement will be governed and construed in accordance with the laws of the State of Colorado.

c. Counterparts and electronic signatures. This Agreement may be executed in counterparts, each of which will be deemed to be an original, and all of which will constitute one and the same instrument. This Agreement may be executed and delivered by email transmission, and counterparts executed and delivered in such a manner will be fully binding and enforceable as if an original had been executed and delivered.

5. Binding effect. This Agreement, with the burdens and benefits it imposes, is binding upon the parties and their representatives, successors, and assigns.

The authorized representatives of the SWSP Enterprise and Participants have executed this Agreement as of the day and year first set forth above.

SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE

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

Name: Bradley D. Wind

Title: General Manager

TOWN OF BERTHOUD

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

Name: \_\_\_\_\_

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

THE CITY AND COUNTY OF  
BROOMFIELD,  
a Colorado municipal corporation and  
county

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Mayor  
One Descombes Drive  
Broomfield, CO 80020

ATTEST:

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City & County Clerk

APPROVED AS TO FORM:

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City & County Attorney

CENTRAL WELD COUNTY WATER DISTRICT

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

Name: Stan Linker

Title: District Manager

THE TOWN OF ERIE

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

Name: Jennifer Carroll

Title: Mayor



CITY OF FORT LUPTON

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

Name: Zo Stieber

Title: Mayor

CITY OF FORT MORGAN

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

Name: Ron Shaver

Title: Mayor

TOWN OF HUDSON

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

Name: \_\_\_\_\_

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

LITTLE THOMPSON WATER DISTRICT

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

Name: William R. Szmyd

Title: Board President

THE CITY OF LONGMONT,

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

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form by:

\_\_\_\_\_  
Atasi Bhavsar  
Assistant City Attorney

\_\_\_\_\_  
Date

Approved as to content:

\_\_\_\_\_  
Dale Rademacher  
Deputy City Manager

\_\_\_\_\_  
Date

Proof Read:

\_\_\_\_\_  
C.A. #

CITY OF LOUISVILLE

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

Name: Heather Balser

Title: City Manager

MORGAN COUNTY QUALITY WATER DISTRICT

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

Name: Kip Barthlana

Title: Board President

PLATTE RIVER POWER AUTHORITY

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

Name: \_\_\_\_\_

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



SUPERIOR METROPOLITAN DISTRICT NO. 1

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

Name: \_\_\_\_\_

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

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

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

Name: Duane Highley

Title: Chief Executive Officer