

AGREEMENT FOR SALE AND PURCHASE OF WINDY GAP UNITS

THIS AGREEMENT FOR SALE AND PURCHASE OF WINDY GAP UNITS (“Agreement”) is made and entered into this ____ day of _____, 2017 by and between the Town of Erie, Colorado, a municipal corporation organized under the laws of the State of Colorado and acting by and through its Erie Water Activity Enterprise (a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101)(“Erie”) and the Platte River Power Authority (“Platte River”), a political subdivision of the State of Colorado (jointly, the “Parties”).

RECITALS

- A. Platte River obtained an allotment of 160 units in the Windy Gap Project, a water diversion and storage project operated by the Municipal Subdistrict of the Northern Colorado Water Conservancy District.
- B. Erie operates a municipal water system within the boundaries of the Northern Colorado Water Conservancy District and within the boundaries of the Municipal Subdistrict.
- C. Platte River is willing to sell six (6) Units in the Windy Gap Project to Erie, and Erie desires to purchase those units from Platte River, in accordance with the terms and conditions of this Agreement.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the promises and covenants contained herein, the Parties agree as follows:

1. **Definitions.** The following definitions shall apply herein.
 - a. “Board” shall mean the Board of Directors of the Municipal Subdistrict.
 - b. “Municipal Subdistrict” shall mean the Municipal Subdistrict of the Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado.

c. “NCWCD” shall mean the Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado.

d. “Windy Gap Firming Project” shall mean the water storage project being developed by the Windy Gap Firming Project Water Activity Enterprise (“WGF Enterprise”) for storing water produced by the Windy Gap Project, defined below.

e. “Windy Gap Project” shall mean the water diversion and storage project operated by the Municipal Subdistrict pursuant to various agreements with participants, including the Windy Gap Reservoir, pumping plant, pipeline, water rights and associated works.

f. “Windy Gap Units” shall mean the six (6) units of Windy Gap Water, as defined below, that are currently owned by Platte River and that Erie will purchase from Platte River under this Agreement. One unit of Windy Gap Water equals 1/480ths of the annual water supply of the Municipal Subdistrict. The use of the Windy Gap Units shall also include:

- (i) all rights, privileges, credits, and benefits attributable to the Windy Gap Units, and
- (ii) a pro rata share, based on the number of Windy Gap Units, of Platte River’s interests in all amounts, monies, proceeds, or funds held by or for the benefit of the Municipal Subdistrict, including but not limited to the operation and maintenance fund and any other funds established for the Windy Gap Project or the Windy Gap Firming Project by the Municipal Subdistrict.

g. “Windy Gap Water” shall mean the quantity of water acquired and obtained by the Municipal Subdistrict from the development and construction of the Windy Gap Project pursuant to applicable state law, and which the Municipal Subdistrict introduces into the Windy Gap Project system either directly or by exchange and which is or will be deliverable to the Municipal Subdistrict through the Windy Gap Project works, including the Windy Gap Firming Project.

h. “In Lieu Operations” means use of Colorado-Big Thompson Project Units in lieu of Windy Gap water pursuant to NCWCD’s Resolution Regarding Integrated Operation of The Colorado-Big Thompson and Windy Gap Projects dated December 13, 1991, the Criteria for Integrated Operation of the Colorado-Big Thompson and Windy Gap Projects dated December 13, 1991, and the Windy Gap Project Prepay Water use Policy dated July of 2002.

2. **Sale of Windy Gap Units.** Effective as of the closing date, Platte River shall sell and convey to Erie the Windy Gap Units free and clear of all encumbrances, including but not limited to prior preemptive rights to purchase, assessments, leases or other pending sales agreements or first rights of refusal (“Encumbrances”) under the following terms and conditions.

a. **Purchase Price.** Erie shall pay Platte River the sum of \$1,500,000.00 per unit, for a total purchase price of \$9,000,000.00 for the Windy Gap Units (“Purchase Price”).

b. **Continuing Obligations.** As of the closing date, Erie shall be solely responsible for all of Platte River’s continuing obligations due and owing on the Windy Gap Units purchased hereunder.

c. **Conveyance of Storage Capacity.** As further consideration for the Windy Gap Units, and in contemplation of the closing on this Agreement, Erie has previously assigned to Platte River Erie’s entire pro-rata portion of unsubscribed storage capacity in the Windy Gap Firming Project in the amount of 301 acre feet. Effective as of the date this Agreement is executed, Platte River shall be responsible for paying any pro-rata share of costs or assessments that NCWCD may require Windy Gap Firming Project participants to pay in association with said unsubscribed storage capacity. In the event that closing does not occur pursuant to Paragraph 8 hereof, Platte River shall assign said storage capacity back to Erie pursuant to the assignment attached hereto as Exhibit A, and Erie shall reimburse Platte River the amount of all costs or assessments paid by Platte River related to said storage capacity.

d. **Right of First Refusal.** Erie hereby grants Platte River a right of first refusal to lease any surplus water available to Erie under Erie’s Colorado-Big Thompson Project Units on an annual basis, at a cost equal to the assessment for such surplus water as collateral for In Lieu Operations, until the date on which the Windy Gap Firming Project becomes operational or October 31, 2022,

whichever occurs first, pursuant to the Right of First Refusal attached hereto as Exhibit B and incorporated by reference herein.

3. **Payment Terms.** Upon the execution of this Agreement and the Exhibits hereto, Erie shall pay Platte River the sum of \$10,000.00 as earnest money (the "Earnest Money Deposit"). The balance of the Purchase Price shall be paid to Platte River on the closing date. If all conditions precedent and contingencies herein have not been satisfied and the closing does not occur by July 10, 2017, Platte River shall return the Earnest Money Deposit to Erie.

4. **Conditions Precedent and Contingencies.** The following shall be conditions precedent to the obligations of Platte River and Erie hereunder and this Agreement is expressly contingent upon the occurrence of following:

(1) Municipal Subdistrict's approval of the release of the Windy Gap Units to Erie from Platte River's existing Allotment Contract with the Municipal Subdistrict pursuant to an Application, Agreement and Order in substantially the form of the documents attached hereto as Exhibit C, subject to approval by the Municipal Subdistrict; and

(2) Municipal Subdistrict's approval of the transfer of the Windy Gap Units to Erie, and execution of an Allotment Contract(s) between the Municipal Subdistrict and Erie for the Windy Gap Units pursuant to a Petition and Order in substantially the form of the documents attached hereto as Exhibit D, subject to approval by the Municipal Subdistrict.

(3) The waiver or refusal of Platte River's member municipalities under any right of first refusal or similar right that may exist in and to the Windy Gap Units.

If any of these conditions precedent are not satisfied on or before July 10, 2017, this Agreement shall be void and of no effect, and each party hereto shall be released from all rights and obligations hereunder.

5. **Further Assurances.** Platte River and Erie shall take all reasonable actions which may be necessary to secure the release of the Windy Gap Units from the Municipal Subdistrict allotment contract issued to Platte River and to approve the transfer of the Windy Gap Units to Erie, and any other necessary approvals required to facilitate the transactions contemplated hereunder.

6. **Warranty to Title.** Platte River expressly represents and warrants that, as of the date of closing, the title to the Windy Gap Units shall be free and clear of all Encumbrances. Said warranty shall survive the Closing hereof and the transfer by the Municipal Subdistrict of the Windy Gap Units from Platte River to Erie.

7. **Transfer Fees.** Erie shall pay any transfer fees charged by the Municipal Subdistrict for issuance of the allotment contract evidencing the Windy Gap Units in the name of Erie.

8. **Closing.** Closing shall occur at a place and time mutually agreeable to the parties within ten (10) days of satisfaction of all conditions precedent and contingencies set forth in Paragraph 4, but in no event later than July 10, 2017. At or before the time of the closing, Erie shall remit payment to Platte River of the remaining Purchase Price for the Windy Gap Units, and the parties shall execute and deliver any additional documents required to complete the transfer of the Windy Gap Units from Platte River to Erie.

9. **Default/Disputes.** In the event that either party defaults in making or performing any obligation provided for in this Agreement, the other party shall give written notice of the default by mailing or delivering same to the defaulting party. If the default is not cured within thirty (30) days after mailing the notice, then the non-defaulting party shall have the right to pursue whatever remedies are available under this Agreement and Colorado law including, but not limited to, specific performance. The non-defaulting party may commence an action in the District Court for Larimer County, Colorado. The parties expressly waive the right to a trial by jury in any action to interpret or enforce the terms of this Agreement, and it is agreed that the prevailing party in such action shall be entitled to an award of its reasonable costs and attorney's fees in addition to any other relief that may be awarded.

10. **Notice.** Any notice required hereunder shall be in writing and:

(a) Delivered by personal service to the person or persons whose rights, remedies, or obligations are sought to be affected; or

(b) Mailed by prepaid United States certified mail, return receipt requested, addressed to the respective and appropriate party as follows:

To Platte River: Platte River Power Authority

c/o Fuels and Water Manager
2000 E. Horsetooth Road
Fort Collins, CO 80525

with copy to: Joe Wilson, Esq.
Platte River Power Authority
2000 E. Horsetooth Road
Fort Collins, CO 80525

To Erie: Town of Erie
c/o Town Administrator
645 Holbrook
P. O. Box 750
Erie, CO 80516

with copy to: Paul J. Zilis, Esq.
Vranesh and Raisch, LLP
Special Water Counsel
1720 14th Street, Suite 200
Boulder, CO 80302

Any party, by notice properly given to the others, may change its address to which notice may be mailed.

11. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes and replaces any prior agreements or understandings between the parties concerning the subject matter herein. Erie and Platte River expressly represent and warrant that they have not relied upon any statement, representation, or promise made by any party or the agent of any party concerning the subject matter of this Agreement that that is not set forth herein..

12. Rights Not Assignable. The rights, obligations, or duties of either party to this Agreement may not be assigned in whole or in part without the prior consent of the other party, which consent shall not be unreasonably withheld.

13. Modifications. This Agreement may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by the parties.

14. **Severability.** Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word, or the application thereof in any given circumstances, shall not affect the validity of any other provision of this Agreement, and all remaining provisions of this Agreement shall remain in full force and effect.

15. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

16. **Governmental Immunity.** The parties understand and agree that the monetary limitations and all other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended from time to time, may apply to actions arising from or related to this Agreement. This Agreement in no way constitutes a waiver for either party or their rights, immunities, and other protections provided for by law.

17. **Headings.** The headings, captions, and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope of intent of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first written above.

TOWN OF ERIE, STATE OF COLORADO,
acting by and through its ERIE WATER
ACTIVITY ENTERPRISE

By: _____
Tina Harris, Mayor

ATTEST:

Nancy J. Parker, Town Clerk

PLATTE RIVER POWER AUTHORITY

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as _____ of Platte River Power Authority.

Witness my hand and official seal.

My Commission Expires: _____.

(SEAL)

Notary Public

EXHIBIT A

RECONVEYANCE AND ASSIGNMENT – STORAGE CAPACITY IN THE WINDY GAP FIRING PROJECT

THIS RECONVEYANCE AND ASSIGNMENT is made this __ day of _____, 2017, from the **PLATTE RIVER POWER AUTHORITY** (“Platte River”), a political subdivision of the State of Colorado, to the **TOWN OF ERIE, COLORADO**, a municipal corporation organized under the laws of the State of Colorado and acting by and through its Erie Water Activity Enterprise (a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101) (“Erie”) (jointly, the “Parties”).

1. Erie, in contemplation of the closing on the Agreement for Sale and Purchase of Windy Gap Units dated _____, 2017 (“Sales Agreement”), and in accordance with the terms and conditions therein, has transferred, assigned, conveyed, and delivered unto Platte River, and its successors and assigns, all of Erie’s right, title, and interest (including all real property interests, if any) in and to the following:

- (a) The entire amount of Erie’s pro-rata share of unsubscribed storage capacity in the Windy Gap Firing Project, a water storage project being developed by the Windy Gap Firing Project Water Activity Enterprise (“WGF Enterprise”) for storing water produced by the Windy Gap Project. The Windy Gap Project is a water diversion and storage project operated by the Municipal Subdistrict of the Northern Colorado Water Conservancy District (“Municipal Subdistrict”). Erie’s pro-rata portion of the unsubscribed storage capacity in the Windy Gap Firing Project, and the amount assigned, is 301 acre-feet (“Unsubscribed Storage Capacity”).
- (b) All rights, privileges, credits, and benefits attributable to said Unsubscribed Storage Capacity.
- (c) A prorated share attributable to the Unsubscribed Storage Capacity of all of Erie’s interests in all amounts, monies, proceeds, funds, and assets held or owned by or for the benefit of the WGF Enterprise or the Municipal Subdistrict, including but not limited to capital assets of the Windy Gap Firing Project, surplus construction funds for the Windy Gap Firing Project and any other funds established by the WGF Enterprise or Municipal Subdistrict, and all of the WGF Enterprise’s or Municipal Subdistrict’s allocation and rights in the Windy Gap Firing Project associated with the Unsubscribed Storage Capacity.

2. The closing did not occur in accordance with Paragraph 8 of the Sales Agreement. Accordingly, Platte River hereby re-conveys and assigns the Unsubscribed Storage Capacity in the amount of 301 acre feet back to Erie. Said reconveyance is free and clear of all liens, encumbrances, leases, rights of first refusal, assessments, security interests and claims, whether asserted or unasserted, except for any pro-rata share of costs or assessments not yet due and owing that the Municipal Subdistrict or WGF Enterprise may require Windy Gap Firing

**TOWN OF ERIE, STATE OF COLORADO, acting by and through its ERIE WATER
ACTIVITY ENTERPRISE**

By: _____
Title:

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this __ day of _____
2017 by _____, _____ of the Town of Erie.

Witness my hand and official seal.

My commission expires on _____.

Notary Public

EXHIBIT B

RIGHT OF FIRST REFUSAL – LEASE OF SURPLUS WATER

THIS RIGHT OF FIRST REFUSAL is made this ___ day of _____, 2017, between the **TOWN OF ERIE, COLORADO**, a municipal corporation organized under the laws of the State of Colorado and acting by and through its Erie Water Activity Enterprise (a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101) (“Erie”), and the **PLATTE RIVER POWER AUTHORITY** (“Platte River”), a political subdivision of the State of Colorado (jointly, the “Parties”).

RECITALS

- A. For and in consideration of the promises and covenants set forth in the Agreement for Sale and Purchase of Windy Gap Units dated _____, 2017 (“Sales Agreement”), Erie desires to grant to Platte River a right of first refusal to lease any surplus water from Erie under Erie’s Colorado-Big Thompson Project Units (“Surplus Water”) on an annual basis, until the date on which the Windy Gap Firming Project becomes operational.
- B. The purpose of this Right of First Refusal is to assist Platte River in firming the yield of its remaining units of Windy Gap Water until the Windy Gap Firming Project is complete and operational.

AGREEMENT

1. **Right of First Refusal to Platte River.** Platte River shall have the right of first refusal for any Surplus Water that Erie desires to lease in a given year until the Windy Gap Firming Project becomes operational, or October 31, 2022, whichever occurs first. If, at any time during the term of this Agreement, Erie determines that it has Surplus Water available and desires to lease such Surplus Water to a third party or third parties, Erie shall provide Platte River written notice of the amount of Surplus Water available that year (“Notice”), prior to offering to sell or lease any Surplus Water to any entity or entities other than Platte River. The price offered to Platte River shall be equal to the annual assessment for such Surplus Water.

2. **Exercise of Right of First Refusal.** Within fourteen (14) calendar days of receipt of a notice under Section 1 of this Agreement, Platte River shall respond in writing to indicate whether Platte River will or will not exercise its right to lease the Surplus Water, in whole or in part, from Erie that year. If Platte River desires to lease the Surplus Water, in whole or in part, the Parties shall enter into a separate lease agreement, with a term no longer than one calendar year.

3. **Term.** This Agreement shall remain in force and effect until the date on which the Windy Gap Firming Project becomes operational or October 31, 2022, whichever occurs sooner.

4. **Condition Precedent.** This Agreement and the rights and obligations of the parties hereunder are expressly conditioned on the closing of the Sales Agreement. If the closing contemplated in Paragraph 8 of the Sales Agreement does not occur, this Agreement and the right of first refusal granted hereunder shall be null and void and shall be of no further force and effect.

5. **Right Not Assignable.** The rights, obligations, or duties under this Agreement may not be assigned in whole or in part without the prior consent of the other party.

6. **Modifications.** This Agreement may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by the parties.

IN WITNESS WHEREOF, Erie has executed this Right of First Refusal on the date set forth above.

TOWN OF ERIE, STATE OF COLORADO, acting by and through its ERIE WATER ACTIVITY ENTERPRISE

By: _____
Tina Harris, Mayor

ATTEST:

Nancy J. Parker, Town Clerk

PLATTE RIVER POWER AUTHORITY

By: _____
Title

EXHIBIT C

MUNICIPAL SUBDISTRICT
NORTHERN COLORADO WATER CONSERVANCY DISTRICT

APPLICATION FOR TRANSFER OF ALLOTMENT OF SIX UNITS
OF SUBDISTRICT WATER FROM THE PLATTE RIVER POWER AUTHORITY
TO THE TOWN OF ERIE

WHEREAS, the Platte River Power Authority, a political subdivision of the State of Colorado (“Platte River”), obtained an allotment of 160 Units of Subdistrict Water pursuant to Order of the Board of Directors of Municipal Subdistrict, Northern Colorado Water Conservancy District, dated July 11, 1975; and

WHEREAS, Platte River has determined that it has no present need for the beneficial use of six (“6”) units of such Subdistrict Water allotment and desires to transfer 6 Units of such allotment to the Town of Erie, which is a municipal corporation organized under the laws of the State of Colorado and acting by and through its Erie Water Activity Enterprise (a government-owned business within the meaning of Article X Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101) of the State of Colorado (“Erie”); and

WHEREAS, there are currently no bonds or other outstanding indebtedness related to the Windy Gap Project, except for ongoing operation and maintenance expenses, and Erie has agreed to assume all continuing obligations related to the 6 Units to be transferred.

NOW THEREFORE, Platte River hereby applies for and requests that the Subdistrict's Board of Directors approve and authorize the transfer and assignment of all right, title and interest to 6 Units of the Subdistrict Water, as defined in its Allotment Contract dated July 11, 1975, and that Platte River thereafter shall be released from any further obligations with respect to the 6 Units. Except with respect to the 6 Units transferred, Platte River’s obligations under its water allotment contracts with the Subdistrict shall remain unchanged.

PLATTE RIVER POWER AUTHORITY

By: _____

ATTEST:

By: _____

**ORDER OF MUNICIPAL SUBDISTRICT
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
ON PETITION FOR TRANSFER OF ALLOTMENT CONTRACT,
AND PETITION FOR ALLOTMENT CONTRACT,
REGARDING THE TRANSFER OF ALLOTMENT
FROM THE PLATTE RIVER POWER AUTHORITY TO
THE TOWN OF ERIE**

Upon the Application for Transfer of Allotment Contract of the Platte River Power Authority (“Platte River”), and the Petition for Allotment Contract of the Town of Erie, which is a municipal corporation organized under the laws of the State of Colorado and acting by and through its Erie Water Activity Enterprise (a government-owned business within the meaning of Article X Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101) of the State of Colorado (“Erie”), and after considering said Application and Petition as required by law at a regular meeting held on June 8, 2017, the Board of Directors of the Municipal Subdistrict, Northern Colorado Water Conservancy District (Subdistrict) hereby order that:

The allotment of 6 Units of Subdistrict Water of Platte River is hereby transferred, and an allotment contract for 6 Units is hereby granted to Erie on the terms and conditions set forth in the Petition for Allotment Contract of Erie. Platte River is hereby released from any further obligations with respect to the 6 Units transferred to Erie.

Dated: June ____, 2017

MUNICIPAL SUBDISTRICT,
NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

Dennis Yanchunis, President

EXHIBIT D
PETITION TO
MUNICIPAL SUBDISTRICT
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR WATER ALLOTMENT CONTRACT

The Town of Erie, which is a municipal corporation organized under the laws of the State of Colorado and acting by and through its Erie Water Activity Enterprise (a government-owned business within the meaning of Article X Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101) of the State of Colorado (hereinafter “Petitioner”), hereby petitions the Municipal Subdistrict, Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado, and a body corporate with all the powers of a public or municipal corporation (hereinafter called “Subdistrict”) organized and existing by virtue of C.R.S. § 37-45-101 *et seq.*, for an allotment contract pursuant to C.R.S. § 37-45-131, for the beneficial use of water under and pursuant to the following terms and conditions:

1. **Definitions.** The following definitions shall apply:
 - (a) “Acre-foot” shall mean 43,560 cubic-feet of water and any volume of water delivered by the Subdistrict will be computed on the assumption that a flow of one cubic-foot of water per second of time will equal two acre-feet in twenty-four hours.
 - (b) “Board” shall mean the Board of Directors of the Subdistrict.
 - (c) “Carriage Contract” shall mean that Amendatory Contract entered into on December 19, 2014, between the Subdistrict, the Northern Colorado Water Conservancy 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 water developed by the Subdistrict, and any subsequent amendments or successor contracts for the same purpose.
 - (d) “Delivered Water” is that Subdistrict Water delivered to Petitioner for use by the Petitioner.
 - (e) “Entity” shall mean any public corporation, person, mutual ditch company, water users’ association or private corporation.
 - (f) “Operating Agreement” shall mean an agreement required by the

Subdistrict for provision of services that may be requested by Petitioner and which can be provided by the Subdistrict. Said agreement may contain, but not be limited to, provisions relating to the quantity, location or time of water delivered pursuant to this Contract, provisions for the payment by Petitioner of costs associated with the construction, modification, operation, maintenance, repair or administration of new or additional facilities which are required to deliver water to Petitioner at project system delivery points if said facilities are necessary to provide water to Petitioner in a manner which will not impair the ability of the Subdistrict to deliver water to other allottees of the Subdistrict, or provisions for the payment of costs which may arise from services to Petitioner not otherwise provided for under this Contract.

- (g) “Project Water” shall mean all water that accrues to the use of the Northern Colorado Water Conservancy District or its allottees by reason of the Colorado-Big Thompson Reclamation Project.
- (h) “Subdistrict Water” shall mean the quantity of water acquired and obtained by the Subdistrict from the development and construction of the Windy Gap Project pursuant to applicable state law, and which the Subdistrict introduces into the project system either directly or by exchange and which is deliverable to the Subdistrict through the project works.
- (i) “Unit” shall mean 1/480th of the Subdistrict Water supply annually made available for distribution by the Board.
- (j) “Water Year” shall mean the period from November 1 of one calendar year through October 31 of the next succeeding calendar year.
- (k) “Windy Gap Project” shall mean that project (including the acquisition and perfection of water rights) constructed by the Subdistrict for the diversion of waters from the Colorado River at or near its confluence with the Fraser River and Carriage of this Subdistrict Water to the Eastern Slope for beneficial use pursuant to the terms of the Carriage Contract. For purposes of this Contract, said Project is defined as those facilities necessary to divert, pump, store, regulate, and introduce into the Colorado-Big Thompson Project that quantity of Subdistrict Water which will produce an average deliverable quantity of water equal to approximately 48,600 acre-feet per Water Year under the water rights decreed to the Windy Gap Project and in accordance with all applicable agreements, court decrees and orders.

2. Quantity of Water. Petitioner petitions for six (6) Units of Subdistrict Water for annual delivery commencing as of the date of the granting of this petition by the Board and for so long thereafter as Petitioner fully complies with all the terms,

conditions and obligations hereinafter set forth, but in no event for a term less than the period required for the payment of bonds or other fixed indebtedness incurred by the Subdistrict for the Windy Gap Project during any period prior to transfer of a part or all of Petitioner's allotment to an Entity within the Subdistrict.

3. Use of Water. Petitioner agrees that any Subdistrict Water allotted by the Board shall be for domestic, irrigation, municipal and industrial use within or through facilities or upon lands owned or served by said Petitioner, provided, however, that (i) all lands, facilities and service areas which receive benefit from the allotment (whether water service is provided by direct delivery, by exchange or otherwise) shall be situated within the boundaries of the Subdistrict, and (ii) said water may be seasonally transferred by Petitioner for such uses within Northern Colorado Water Conservancy District or Subdistrict boundaries. Petitioner also agrees to (i) account for, by the use of separate water meters, all deliveries of water to users that will receive Subdistrict Water; (ii) certify, prior to November 1 of each year, that it owns, leases or otherwise controls sufficient water from sources other than Subdistrict Water to supply water for the next Water Year to any and all service areas located outside of the Subdistrict boundaries; and (iii) provide to the Subdistrict, on or before November 30 of each year, a complete accounting of the disposition and use of all water used by it during the previous Water Year. Petitioner shall not receive Subdistrict Water in excess of the quantity required by the metered uses of water that are within the Subdistrict boundaries. Nothing herein shall prevent the Petitioner from reusing Subdistrict Water, by direct delivery, exchange or otherwise, provided that the first use thereof is for benefit of lands, facilities and service areas within the boundaries of the Northern Colorado Water Conservancy District or Subdistrict or as otherwise provided by law and Subdistrict policy and regulations.
4. Delivery of Subdistrict Water. Pursuant to terms of the Carriage Contract, the introduction, storage, carriage and release of Subdistrict Water into, through or from the Colorado-Big Thompson Project system and the manner of delivery, measurement and accounting therefor shall be in accordance with procedures in use between the United States and Northern Colorado Water Conservancy District for the delivery of Project Water or as such procedures are herein or may hereafter be modified by agreement of the parties. Deliveries of Subdistrict Water to Subdistrict and its allottees shall be made by the United States and the Northern Colorado Water Conservancy District at project system delivery points. No part of Petitioner's Subdistrict Water shall be delivered to another Entity without the written authorization of Petitioner.
5. Annual Charges. Petitioner agrees to pay the following annual charges:
 - (a) Commencing in 2017 and annually thereafter an amount per Unit as allocated by this contract equal to 1/480th of the sum of (i) the annual charge required to pay the principal, interest and premium, if any, on bonds issued or other fixed indebtedness, if any, incurred by Subdistrict to

finance the Windy Gap Project; (ii) the annual costs, exclusive of those costs set forth in Paragraph (b) of this Article, incurred by Subdistrict in the administration, operation, maintenance, repair, and rehabilitation of Windy Gap Project facilities and such other annual costs as may arise from and be attributable to the operation of Windy Gap Project; (iii) an annual amount to establish and maintain a reserve equal to the maximum principal and interest due or to become due, if any, in the succeeding year on all outstanding bonds or other fixed indebtedness of the Subdistrict; (iv) such an annual amount, as the Board shall determine to be necessary, to establish and maintain an operating and maintenance reserve equal to eighteen months operating and maintenance costs; and (v) such other reserves as the Board shall determine are necessary, if any, for operation, maintenance, renewal or replacement of Subdistrict facilities.

- (b) An amount per acre-foot of Subdistrict Water delivered to Petitioner. Said amount shall be due and payable annually and shall be the sum of (i) the annual per acre-foot carriage charge levied in accordance with the Carriage Contract; and (ii) an annual per acre-foot charge for the energy costs incurred in the operation of those Windy Gap Project facilities required to divert, pump, store or introduce such water into the Colorado-Big Thompson Project for carriage and delivery to the Subdistrict.

6. Estimated Demand and Delivery Schedule. On or before August 1 of each year, Petitioner shall provide Subdistrict with an estimated demand and delivery schedule, not to exceed the amount of Subdistrict Water allotted herein, for its Subdistrict water for the following Water Year. This schedule shall contain the time, delivery points and quantities of water which Petitioner estimates it shall require. This schedule may be modified from time to time as the need warrants within the physical capabilities of the delivery system and subject to advance payment by the Petitioner of the charges established in Article 5(d) of the Carriage Contract.
7. Estimate Statement. Subdistrict shall furnish Petitioner with an estimated statement of anticipated assessments required under Article 5(a) or 5(b) hereof, or both, on or before August 31 of each year, which statement shall be used by Petitioner for budgeting purposes for the following fiscal year.
8. Payment of Charges. On or before March 1 of each year, Subdistrict shall render a billing statement to Petitioner for payment of all charges and costs due under this contract, as based upon estimated demand for that year as provided in Article 6 hereof. The estimated assessment shall be based upon actual costs incurred during the previous Water Year, plus such additional amounts reasonably attributable to inflation. Any credit from the previous Water Year or any additional charges from the previous Water Year shall be included in the billing statement rendered. Petitioner shall pay the net charges shown on the billing statement of estimated assessments on or before April 1 after receipt of statement.

9. Security.

- (a) As security to the Subdistrict, the Petitioner agrees, to the extent permitted by law, to be bound by the provisions of C.R.S. § 37-45-131, and that the foregoing covenant of annual payments will be met, to the extent permitted by law, from assessments levied by the Subdistrict pursuant to C.R.S. § 37-45-131, or, at the option of Petitioner, such annual payments may be fully or partially met by appropriation of funds from such sources of revenue as may be legally available to said Petitioner for such purpose. Further, the Petitioner agrees to continue to make the annual payments, as defined in Article 5 of this contract, for those Units of Subdistrict Water allotted to it and for which Petitioner is obligated by the adoption of a resolution which resolution expressly shall not be repealable until all bonded indebtedness, if any, of the Subdistrict is paid in full according to the terms of any bond indenture or other indenture issued by Subdistrict. This is not intended to create a General Obligation of Debt of the Petitioner. As of the date of this Application, there are currently no bonds or other fixed indebtedness issued to finance the Windy Gap Project.

10. Default.

- (a) Notice of Non-Payment or Non-Renewal. If any payment of annual charges, as herein provided, is not made by the due date, written notice thereof will be given by the Subdistrict to Petitioner at the following designated address:

Town of Erie
c/o Town Administrator
645 Holbrook
P. O. Box 750
Erie, CO 80516

or at such other address as is furnished to Subdistrict by the Petitioner.

- (b) Default. Subdistrict may, in its sole discretion, declare Petitioner to be in default of this allotment contract if all annual payments due under this allotment contract are not made by or on behalf of Petitioner, within 15 days of the date of the Notice of Non-payment provided in accordance with Article 10(a) hereof. Subdistrict shall not be deemed to have waived or relinquished the right to declare a default by virtue of any delay in the declaration of such default after the expiration of the 15-day period provided for in this Article 10(b).
- (c) Reversion. Upon the declaration of default by the Subdistrict, this

allotment contract shall terminate, and Petitioner shall have no further right, title or interest in the 6 Units of Subdistrict Water, and the 6 Units may be re-allotted by the Subdistrict in its sole and exclusive discretion.

- (d) Re-Allotment. Subdistrict agrees that it will, upon the filing of a petition by Petitioner, and notice and hearing, re-allot to Petitioner on the terms and conditions of this allotment contract all or a portion of the 6 Units of Subdistrict Water upon a finding that all amounts owed by Petitioner pursuant to this allotment contract have been paid to Subdistrict and that Petitioner is entitled to such re-allotment, which findings shall be made by the Subdistrict Board within 60 days of the filing of the petition. Petitioner shall reimburse the Subdistrict prior to such re-allotment for all amounts, including any applicable interest, and including all other charges, costs, fees, and expenses incurred as a result of Petitioner's default.

11. Beneficial Use of Water. Petitioner agrees that the water allotment shall be beneficially used for the purposes and in the manner specified herein, and this allotment contract is made for the exclusive benefit of the Petitioner and shall not inure to the benefit of any successors or assigns of said Petitioner without prior specific approval by the Board.
12. Operating Agreement. Petitioner acknowledges and understands that Subdistrict Water is only delivered at project system delivery points and that all facilities, lands, rights-of-way and easements necessary for the delivery of Subdistrict Water to Petitioner's service area are at the sole cost and responsibility of Petitioner to acquire, construct, operate and maintain. Further, Petitioner recognizes and understands that the delivery of Subdistrict Water to Petitioner through the Colorado-Big Thompson Project system is limited during certain periods during the Water Year and that it is necessary to enter into an Operating Agreement with Subdistrict providing for the means, times and other matters relating to the delivery of Subdistrict Water to Petitioner. Delivery concerns and problems, including scheduling, may require Petitioner to construct, operate and maintain storage, transmission and other facilities for the use of its Subdistrict Water. Notwithstanding the foregoing, the Petitioner may take delivery of Subdistrict Water on a year-round basis into Chimney Hollow Reservoir, and before or after storage in Chimney Hollow from Carter Lake through the Southern Water Supply Project Pipeline, pursuant to and in accordance with Petitioner's allotment contracts therefor and applicable District and Subdistrict procedures, rules and regulations.
13. Limitations on Rights of Petitioner. 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 Petitioner 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, to-wit:

- (a) The Water Conservancy Act of Colorado;
- (b) The Amendatory Carriage Contract dated December 19, 2014, between Subdistrict, the Northern Colorado Water Conservancy District, and the United States of America, provided, that if any amendment is proposed which would affect the right of Petitioner to reuse Subdistrict Water, the approval of such amendment shall first be obtained from the Petitioner; and
- (c) The Rules, Regulations and Policies of the Board, as may be amended from time to time, including but not limited to the Subdistrict Policy Regarding First Use, Reuse, Successive Use or Other Disposition of Subdistrict Water, as adopted by the Board on October 11, 1985, and the Subdistrict Inclusion Policy, as adopted by the Board on October 11, 1985.

- 14. Transfer of Allotment. If Petitioner, with approval of the Board, transfers a part of its allotment to another Entity within the Subdistrict, Petitioner shall be relieved of its obligation hereunder to the extent of said transfer, except as otherwise provided herein. If Petitioner, with approval of the Board, transfers all of its allotment to another Entity within the Subdistrict, Petitioner shall no longer participate in the Windy Gap Project and the Petitioner shall be relieved of its obligations except as otherwise provided herein.
- 15. Future Participation. Nothing herein shall be construed in any manner that will obligate Petitioner to participate in any future or other project of the Subdistrict or preclude Petitioner from participation therein.
- 16. Authorization. Petitioner attaches hereto a true and correct copy of Petitioner's records authorizing the officers, whose names appear hereon, to make this petition.
- 17. Entire Agreement. This allotment contract, together with the statutes, contracts, rules, regulations and policies listed or incorporated herein, constitutes the sole agreement and understanding of the parties and 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.
- 18. Confirmation. This allotment contract, and all agreements related thereto, may be confirmed by Subdistrict pursuant to C.R.S. § 37-45-143.

Dated _____

THE TOWN OF ERIE, which is a municipal corporation organized under the laws of the State of

Colorado and acting by and through its Erie Water Activity Enterprise (a government-owned business within the meaning of Article X Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101) of the State of Colorado

By: _____

Tina Harris

Title: Mayor

ATTEST:

By: _____

Nancy J. Parker

Title: Town Clerk

**ORDER OF MUNICIPAL SUBDISTRICT
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
ON PETITION FOR TRANSFER OF ALLOTMENT CONTRACT,
AND PETITION FOR ALLOTMENT CONTRACT,
REGARDING THE TRANSFER OF ALLOTMENT
FROM THE PLATTE RIVER POWER AUTHORITY TO
THE TOWN OF ERIE**

Upon the Application for Transfer of Allotment Contract of the Platte River Power Authority (“Platte River”), and the Petition for Allotment Contract of the Town of Erie, which is a municipal corporation organized under the laws of the State of Colorado and acting by and through its Erie Water Activity Enterprise (a government-owned business within the meaning of Article X Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101) of the State of Colorado (“Erie”), and after considering said Application and Petition as required by law at a regular meeting held on June 8, 2017, the Board of Directors of the Municipal Subdistrict, Northern Colorado Water Conservancy District (Subdistrict) hereby order that:

The allotment of 6 Units of Subdistrict Water of Platte River is hereby transferred, and an allotment contract for 6 Units is hereby granted to Erie on the terms and conditions set forth in the Petition for Allotment Contract of Erie. Platte River is hereby released from any further obligations with respect to the 6 Units transferred to Erie.

Dated: June 8, 2017

MUNICIPAL SUBDISTRICT,
NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

Dennis Yanchunis, President