

**NISP PHASE 1 AGREEMENT**

**DATED AS OF JANUARY \_\_\_\_, 2020**

**BY AND AMONG**

**NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE**

**AND**

**THE NISP PHASE 1 PARTICIPANTS LISTED HEREIN**

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**THIS NISP PHASE 1 AGREEMENT** (this “**Agreement**”) dated as of January \_\_\_\_, 2020, is made effective as provided in Section 7.1 hereof by and between (a) the Northern Integrated Supply Project Water Activity Enterprise (the “**Enterprise**”), and (b) The Town of Erie, acting by and through its Erie Water Activity Enterprise, a water activity enterprise and 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 *et seq.* (the “**Participant**”), and is made with reference to the following facts:

## **RECITALS**

A. The 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 Northern Colorado Water Conservancy District (“**District**”), and whose address is 220 Water Avenue, Berthoud, Colorado 80513. The 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 and operation of the Northern Integrated Supply Project (“**NISP**”).

B. NISP is a complex regional water supply and storage project that will be developed over time by the Enterprise for the purpose of providing water supply, water storage, and related benefits to the Participant and all other participants that elect to participate in NISP (collectively, the “**NISP Phase 1 Participants**”), and that, from time to time, execute an agreement in a form substantially similar to this Agreement (a “**NISP Phase 1 Agreement**”) for the purpose of receiving a NISP Allotment, as is further defined in Section 1 below and in **Exhibit A** attached hereto.

C. NISP is described in general in the Summary section of the U.S. Army Corps of Engineers Final Environmental Impact Statement for the Northern Integrated Supply Project.

D. NISP has been and will be developed in multiple phases over a period of time. “**NISP Phase 1**” includes the pre-construction elements and actions for NISP more generally described in **Exhibit B** attached hereto, which may be modified from time to time by the Enterprise.

E. The Enterprise is entering into a NISP Phase 1 Agreement with each NISP Phase 1 Participant to provide funding for NISP Phase 1 activities and to define the NISP Phase 1 Participants’ current rights and obligations in NISP.

## **AGREEMENT**

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

### **Section 1.     Definitions**

“**Agreement**” has the meaning assigned to the term in the introductory paragraph to this Agreement.

**“Annual Interim Agreement”** means the annual funding agreements entered into between the Enterprise and the NISP Participants under which the NISP Participants agree to pay, on a pro rata basis, for the operation, maintenance, legal, administrative, improvement, and other costs of developing NISP. The most recent Annual Interim Agreement was the Fifteenth Interim Agreement, executed in 2019. The Annual Interim Agreements do not and will not provide funds to pay for NISP Phase 1 Project Costs, which instead are subject to this Agreement.

**“District”** has the meaning assigned to the term in the recitals to this Agreement.

**“Enterprise”** has the meaning assigned to the term in the introductory paragraph to this Agreement.

**“Enterprise Board”** means the Board of Directors of the Enterprise.

**“Event of Default”** means an event described in Section 6.1 or Section 6.4 hereof as an Event of Default.

**“Fiscal Year”** means the fiscal year of the Enterprise, which currently begins on October 1 of each calendar year and ends on September 30 of the following calendar year, or such other twelve-month period which may be designated by the Enterprise as its Fiscal Year.

**“NISP”** has the meaning assigned to the term in the recitals to this Agreement.

**“NISP Allotment”** means the number of NISP Units allotted by the Enterprise to a NISP Phase 1 Participant pursuant to a NISP Phase 1 Agreement, including the allotment of NISP Units to the undersigned Participant pursuant to Section 2.2 of this NISP Phase 1 Agreement. **Exhibit A** shows the current NISP Allotment of NISP Units to each NISP Phase 1 Participant.

**“NISP Assets”** means, and may include, without limitation, water, waterworks, water rights, rights to water, or contractual or other interests in water, sources of water supply, works, improvements, water projects, water facilities, stock in or other agreements with canal companies, water companies, and water users' associations, and real and personal property or interests therein that are necessary or convenient to or for the diversion, storage, collection, and distribution of water yielded by NISP to and for the use of NISP Phase 1 Participants. NISP Phase I Assets, as defined below, are a subset of NISP Assets.

**“NISP Participant”** means an entity that holds a NISP Allotment.

**“NISP Participation Percentage”** means the quotient of a NISP Phase 1 Participant's NISP Allotment divided by the sum of all NISP Phase 1 Participants' NISP Allotments, as such NISP Participation Percentages may be modified in accordance herewith. The NISP Participation Percentages are further described in Section 4 hereof and are set forth in **Exhibit A** hereto opposite each NISP Phase 1 Participant's name.

**“NISP Phase 1 Agreement”** has the meaning assigned to the term in the recitals to this Agreement.

**“NISP Phase 1 Asset Disposition”** means any sale, lease, transfer, or other conveyance of NISP Phase 1 Assets by the Enterprise occurring before adoption of a resolution of project termination under Section 10.1.

**“NISP Phase 1 Assets”** are NISP Assets that the Enterprise has determined should be acquired at this point in the development of NISP in order to assure that these assets will be available for integration into NISP. NISP Phase 1 Assets include real property and other assets purchased with funds made available as the result of this Agreement that are necessary or convenient to the construction and operation of NISP, including without limitation (i) real property and other assets for NISP reservoir sites and associated facilities, (ii) stock in or other agreements with mutual ditch companies, irrigation companies, water companies and water users' associations, and (iii) real property or interests in real property associated with the use of such stock or other agreements. Each of the District and the Enterprise own and/or control other assets that are or may in the future be a part of NISP that are not included within NISP Phase 1 Assets as defined for the purposes of this Agreement.

**“NISP Phase 1 Budget”** means the NISP Phase 1 Budget approved by the Enterprise Board on August 1, 2019, as such NISP Phase 1 Budget may be amended or supplemented from time to time in accordance with this Agreement.

**“NISP Phase 1 Capital Funding Obligations”** means the pro rata obligations of each NISP Phase 1 Participant to fund NISP Phase 1 Project Costs in the amounts set forth in **Exhibit A** attached hereto. The amount of NISP Phase 1 Capital Funding Obligations is the product of the NISP Participation Percentage multiplied by the NISP Phase 1 Project Costs.

**“NISP Phase 1 Participants”** means all NISP Participants which execute a NISP Phase 1 Agreement, including any additional parties who execute a NISP Phase 1 Agreement from time to time pursuant to Section 9 hereof.

**“NISP Phase 1 Project Costs”** means all costs associated with the purchase, acquisition, improvement, operation, and maintenance of NISP Phase 1 Assets. NISP Phase 1 Project Costs do not include and are separate from the annual NISP costs paid under Annual Interim Agreements.

**“NISP Unit,”** for purposes of this Agreement, means the right to 1/40,000th of the benefits and yield of NISP, which may include water supply, delivery, and storage, subject to any terms and conditions included in subsequent agreements related to future phases of NISP or otherwise in the final allotment contract between the parties. There are 40,000 NISP Units. The Enterprise and the Participants agree that “NISP Unit” may be defined in greater detail in subsequent agreements related to future phases of NISP or otherwise in the final allotment contracts for NISP.

**“Upfront Payment”** means the cash payment made by a NISP Phase 1 Participant to the Enterprise for the purpose of paying its NISP Phase 1 Capital Funding Obligations.

## **Section 2. Purpose of Agreement and NISP Allotment**

2.1 **Purpose of Agreement.** The purpose of this Agreement is to (i) confirm the Participant’s NISP Allotment, which allotment may be further defined in one or more subsequent allotment contracts between the Enterprise and such Participant; (ii) provide for the acquisition

and funding of NISP Phase 1 Assets; and (iii) define Participant's pro rata share of and obligation to pay for NISP Phase 1 Project Costs. Performance of the terms of this Agreement constitutes good and sufficient consideration for all parties to this Agreement.

2.2 NISP Allotment. The Enterprise hereby allots to the undersigned Participant 6,500 NISP Units. Unless this NISP Allotment is terminated or modified under the terms herein, the Participant shall have a right to its NISP Units under any subsequent allotment contracts on the same terms and conditions as other similarly situated NISP Participants.

2.3 NISP Allotment Termination. This NISP Allotment shall terminate in the event any of the following shall occur: (i) default and forfeiture pursuant to Section 6 of this Agreement, (ii) the undersigned Participant does not participate in future NISP funding or financing agreements on the same terms and conditions as other similarly situated NISP Phase 1 Participants, (iii) the undersigned Participant does not enter into, or provide funding required under, future Annual Interim Agreements on the same terms and conditions as other NISP Phase 1 Participants, (iv) the undersigned Participant and the Enterprise do not enter into a final NISP allotment contract on the same terms and conditions as other NISP Phase 1 Participants, (v) a withdrawal or reduction in further NISP participation pursuant to Section 8 of this Agreement (provided that, in the case of a reduction in further NISP participation, the NISP Allotment shall be terminated to the extent of the reduction), (vi) a Project Termination pursuant to Section 10 of this Agreement, or (vii) the undersigned Participant violates the rules and regulations of the Enterprise, as may be established or amended from time to time.

### **Section 3. Funding**

3.1 NISP Phase 1 Budget and Annual Budgets. The Enterprise Board has previously approved the NISP Phase 1 Budget. The Enterprise Board also has previously approved the Fiscal Year 2020 Enterprise budget and shall provide and approve Enterprise operating budgets for future Fiscal Years annually or more frequently as needed, which budgets will be funded by the NISP Participants through Annual Interim Agreements.

3.2 NISP Phase 1 Capital Funding Obligations. Each NISP Phase 1 Participant hereby agrees to meet its NISP Phase 1 Capital Funding Obligations under its NISP Phase 1 Agreement and in the amount set forth in **Exhibit A** attached hereto by providing its Upfront Payment to the Enterprise on or before January 22, 2020. The Enterprise shall deposit the proceeds of each NISP Phase 1 Participant's Upfront Payment into segregated accounts as further described in Section 3.3.

3.3 Segregated Accounts. For the purpose of making NISP Phase 1 accounting specific to each NISP Phase 1 Participant, the Enterprise shall create interest-bearing segregated accounts within the Enterprise that are unique to each Participant. In addition to the NISP Phase 1 Participants' Upfront Payments, the Enterprise shall also deposit all revenue that may be generated from the lease or operation of NISP Phase 1 Assets pursuant to Section 5.3 into the segregated accounts in proportion to the NISP Phase 1 Participant's NISP Participation Percentages. All funds in the segregated accounts, including any interest that may accrue, shall be used by the Enterprise to pay for NISP Phase 1 Project Costs. Disbursements under the NISP Phase 1 Agreements from the segregated accounts shall be made in proportion to the NISP Phase 1 Participants' NISP

Participation Percentages as they exist at the time of such disbursements. The Enterprise shall provide Participant with annual reports of all deposits and disbursements from, and interest accrued on, the Participant's segregated account.

3.4 Participants' Claim on Segregated Account Funds. Each NISP Phase 1 Participant shall have a claim on the full balance of its respective segregated account regardless of the source of funds, except that the NISP Phase 1 Participants are entitled to payment of the balance only upon the conclusion of NISP Phase 1, which shall occur when the Enterprise and Participant enter into a subsequent agreement related to future phases of NISP or a final allotment contract for NISP that expressly supersedes this Agreement; replacement of the balance by another entity under Sections 8.1 and 9.2; or Project termination under Section 10.

#### **Section 4. NISP Participation Percentages**

The initial NISP Participation Percentages are for the purpose of establishing the NISP Phase 1 Participants' respective responsibilities to pay their pro rata amounts contained in the approved NISP Phase 1 Budget. The NISP Participation Percentage of a NISP Phase 1 Participant may be modified by the Enterprise from time to time as the result of the execution by a new NISP Phase 1 Participant of a NISP Phase 1 Agreement pursuant to Section 9.1, the withdrawal or reduction of participation of a NISP Phase 1 Participant pursuant to Section 8, or the transfer or assignment of a NISP Allotment in whole or in part pursuant to Sections 8, 9, or 13 of this Agreement, and in each such case **Exhibit A** shall be amended to reflect all such changes. All amendments to **Exhibit A** shall, upon approval by the Enterprise, be attached hereto and upon attachment, shall supersede all prior versions of **Exhibit A** without the requirement of further amendment of this Agreement.

#### **Section 5. Future Development of NISP Phase 1**

5.1 The NISP Phase 1 Participants acknowledge that NISP Phase 1 is still in the conceptual stage and there are no assurances that NISP or any water supplies will be developed as a result of the NISP Phase 1 Agreements. The NISP Phase 1 Participants therefore recognize that they are not acquiring any interest in NISP except as expressly provided in the NISP Phase 1 Agreements, and that the NISP Phase 1 Participants are not acquiring under the NISP Phase 1 Agreements any interest in any future water supply or access to any other services from NISP or the Enterprise except as expressly provided hereunder.

5.2 The Enterprise agrees to diligently pursue NISP and the acquisition of NISP Phase I Assets in good faith to the extent that funds therefor are provided by NISP Phase 1 Participants under the NISP Phase 1 Agreements and Annual Interim Agreements. By entering into this Agreement and accepting payments from the undersigned Participant, the Enterprise does not obligate itself to, nor does the Enterprise warrant that it will, proceed with NISP beyond NISP Phase 1 or that it will construct or operate NISP. By entering into their respective NISP Phase 1 Agreements and making payments hereunder, the NISP Phase 1 Participants do not obligate themselves to, nor do they warrant that they will, proceed with NISP beyond NISP Phase 1 or that they will maintain their NISP Allotments and NISP Participation Percentages at the same level in the future; the NISP Phase 1 Participants may withdraw from NISP Phase 1 or NISP, reduce their overall participation in NISP, or transfer or assign all or a portion of their NISP Allotment and

NISP Participation Percentage under the terms of their respective NISP Phase 1 Agreements. At the end of NISP Phase 1, the Enterprise Board will determine after consultation with the NISP Phase 1 Participants whether to proceed with NISP. The Enterprise agrees that, if the NISP Phase 1 Participants provide all required funding, if the Enterprise has the ability, and if the Enterprise Board determines that NISP is feasible and practical, it will pursue the construction and operation of NISP if requested to do so by sufficient NISP Phase 1 Participants to fully fund NISP. In the event that the Enterprise Board decides not to proceed with NISP, it will so notify the NISP Phase 1 Participants, and, upon the giving of such notice, NISP Phase 1 will be wound up in accordance with Section 10 hereof.

5.3 The Enterprise, acting by and through the Enterprise Board and with input from and consultation with the NISP Phase 1 Participants, will acquire, own, and control NISP Phase 1 Assets. Any such acquired NISP Phase I Assets shall be used solely for the purpose of NISP; provided, however, that any such NISP Phase I Assets may be used for another purpose on a temporary basis subject to payment of fair compensation to the Enterprise for such other use. The Enterprise shall use reasonable efforts to generate revenues from NISP Phase I Assets. Income from the temporary lease or use of NISP Phase 1 Assets shall only be used for NISP purposes.

5.4 Before termination of NISP and this Agreement and wind-up as provided in Section 10 of this Agreement, the Enterprise may in its discretion, with input from and consultation with the NISP Phase 1 Participants, make NISP Phase 1 Asset Dispositions. Proceeds from a NISP Phase 1 Asset Disposition shall, at the discretion of the Enterprise Board, be (i) used to further pursue NISP Phase 1, (ii) used for the purposes of the development and construction of NISP, or (iii) distributed to then-existing NISP Phase 1 Participants in proportion to their respective NISP Participation Percentages as they exist at the time of such distribution.

## **Section 6. Default and Forfeiture**

6.1 Default by NISP Phase 1 Participant. Upon (i) the termination of a NISP Allotment pursuant to Section 2.3 of this Agreement (except for clause (vi) thereof), (ii) the failure of a NISP Phase 1 Participant to make any payment in full when due under a NISP Phase 1 Agreement, or (iii) the failure of a NISP Phase 1 Participant to perform any other obligation hereunder, the Enterprise shall make written demand upon such NISP Phase 1 Participant. If a failure described in clause (ii) above is not remedied, with a late-fee penalty equal to 3% of the defaulted amount, within thirty (30) days from the date of such demand, such failure shall constitute an Event of Default at the expiration of such period. If a failure described in clause (iii) above cannot be remedied within thirty (30) days from the date of such demand but such NISP Phase 1 Participant commences remedial action within such thirty (30) day period in a form acceptable to the Enterprise, then such failure shall not constitute an Event of Default hereunder. Notice of any such demand shall be provided to each other NISP Phase 1 Participant by the Enterprise.

Additionally, if a NISP Phase 1 Participant shall file any petition or institute 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 a NISP Phase 1 Participant 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 if a NISP Phase 1 Participant shall make a general or any assignment for the benefit of its creditors then in each and every such case, such action by a NISP Phase 1 Participant shall be deemed to be an Event of Default hereunder.

6.2 Forfeiture. Upon an Event of Default by a NISP Phase 1 Participant under Section 6.1, the Enterprise may give notice of termination of the defaulting NISP Phase 1 Participant's NISP Allotment and NISP Participation Percentage under this Agreement, which termination shall be effective thirty (30) days following the sending of the notice unless such termination is delayed by judicial action. Upon such notice given, such termination shall result in the complete forfeiture of any and all right, title, claim, or interest, whether express or implied, of the NISP Phase 1 Participant in or to NISP, including without limitation any and all NISP Allotments or NISP Phase 1 Assets under this Agreement or any other Annual Interim Agreement related to NISP. The undersigned Participant, by executing this Agreement, certifies that it has fully disclosed to the governing body of such undersigned Participant the existence and consequence of this Agreement, and agrees that but for the Participant's acceptance of the termination of a NISP Allotment pursuant to Section 2.3 of this Agreement and the consequences of an Event of Default under Section 6.1, the Enterprise would not have entered into this Agreement or any other agreement related to NISP. Except for claims of breach against the Enterprise under the express terms of this Agreement, the undersigned Participant waives any and all legal or equitable claims, in any forum, to NISP, NISP Allotments, or NISP Phase 1 Assets, or against the Enterprise, arising out of an Event of Default under this Agreement by the undersigned Participant. Irrespective of such termination, a NISP Phase 1 Participant shall remain liable to the Enterprise to pay the full amount of its pro rata share of the NISP Phase 1 Project Costs under a NISP Phase 1 Agreement, except as such amounts are otherwise recovered by the Enterprise as provided by this Agreement.

6.3 Reallocation Upon Event of Default and Forfeiture. Upon an Event of Default and Forfeiture under Sections 6.1 and 6.2, the Enterprise shall use its best efforts to reallocate the defaulted NISP Phase 1 Participant's forfeited NISP Allotment and NISP Participation Percentage first to the remaining NISP Phase 1 Participants who elect to receive additional NISP Units by the Enterprise in proportion to the pro rata interest in NISP of each remaining NISP Phase 1 Participant who elected to receive additional NISP Units, and second to an entity or entities that the Enterprise Board determines may be a NISP Participant or NISP Participants pursuant to Section 9. Notwithstanding that all or any portion of a defaulting NISP Phase 1 Participant's NISP Allotment and NISP Participation Percentage is so transferred, such defaulting NISP Phase 1 Participant shall remain liable to the Enterprise to pay the full amount of its share of NISP Phase 1 Project Costs hereunder except to the extent that the Enterprise receives payment from the transferee thereof.

6.4 Default by Enterprise. Upon failure of the Enterprise to perform any obligation of the Enterprise under this Agreement, the Participant may make written demand upon the Enterprise, and if such failure is not remedied within thirty (30) from the date of such demand, or for such additional time as is reasonably required in the discretion of Participant to correct the same, such failure shall constitute an Event of Default at the expiration of such period. The Participant shall provide notice of such demand to each NISP Phase 1 Participant. Upon an Event

of Default of the Enterprise under this Section 6.4, the Enterprise and the Participant agree that they shall confer in good faith to attempt to resolve the Event of Default, and if conferral fails to resolve the Event of Default, then to participate in non-binding mediation.

6.5 **Enforcement of Remedies.** In addition to the remedies set forth in this Section 6, upon the occurrence of an Event of Default as defined herein, the Enterprise or a NISP Phase 1 Participant, as the case may be, shall be entitled to proceed to protect and enforce the rights vested in such party by agreement by such appropriate judicial proceeding as such party shall deem most effectual, either by suit in equity or by action of law, 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 Agreement or by law. The provisions of a NISP Phase 1 Agreement and the duties of each party thereto, their respective boards, officers or employees shall be enforceable by the other party hereto by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, and the prevailing party shall be entitled to an award of its costs and attorney fees to the extent permitted by law.

## **Section 7. Term**

7.1 No provision of this Agreement shall take effect until all NISP Phase 1 Participants listed on **Exhibit A** duly authorize, execute, and deliver to the Enterprise their respective NISP Phase 1 Agreements, and the Enterprise duly authorizes, executes, and delivers to the NISP Phase 1 Participants their respective NISP Phase 1 Agreements.

7.2 The NISP Allotment confirmed in Section 2.2 of this Agreement shall be perpetual unless terminated pursuant to this Agreement. The term of the remainder of this Agreement shall continue until the Enterprise and Participant enter into a subsequent agreement related to future phases of NISP or a final allotment contract for NISP that expressly supersedes this Agreement, unless otherwise terminated pursuant to this Agreement.

## **Section 8. Withdrawal from Agreement or Withdrawal from or Reduction in Further NISP Participation**

NISP Phase 1 Participants may withdraw from a NISP Phase 1 Agreement and further participation in NISP, or may reduce further participation in NISP, as provided in this Section 8. NISP Phase 1 Participants also may transfer their NISP Units, in whole or in part, as provided in Section 9 below.

8.1 Except as otherwise provided in Section 8.2 below, a NISP Phase 1 Participant may withdraw from NISP Phase 1 and NISP, or reduce its overall participation in NISP, by giving the Enterprise and all other NISP Phase 1 Participants written notice of such withdrawal or reduction in overall NISP participation not less than 180 days prior to the withdrawal or reduction date. Notwithstanding the foregoing, a NISP Phase 1 Participant that withdraws or reduces NISP participation under this Section 8 shall not receive any balance in its respective segregated account unless an equal amount is provided to the Enterprise by another entity as replacement of the balance in the withdrawing or reducing NISP Phase 1 Participant's account.

8.2 Withdrawal from a NISP Phase 1 Agreement and NISP, or reduction in overall NISP participation, shall not excuse any withdrawing or reducing NISP Phase 1

Participant's performance of obligations imposed upon that party by any judgment which has been entered by a court of competent jurisdiction or regulation to which the Enterprise or the NISP Phase 1 Participants are subject and that arise from or are related to activities of the NISP Phase 1 Agreements conducted during the period when the withdrawing or reducing NISP Phase 1 Participant participated in the NISP Phase 1 Agreement.

**Section 9. Transfer of NISP Allotment; Admission of New NISP Phase 1 Participants**

9.1 Additional entities may become NISP Phase 1 Participants if the NISP Enterprise, in its discretion, approves transfer of existing or allotment of new NISP Units to such entity, provided, however, that the total number of NISP Units shall not be increased without the consent of each NISP Participant.

9.2 Transfer of NISP Allotment.

9.2.1 The Enterprise Board shall approve a requested transfer of NISP Units constituting all or a portion of a NISP Allotment from a NISP Phase 1 Participant to one or more other NISP Participants that have a NISP Allotment as of the time of the transfer if the Enterprise Board determines that (i) the NISP Participant receiving the additional NISP Units has an existing or future need for additional NISP Units for use within the District, (ii) the NISP Participant receiving the additional NISP Units has sufficient financial capacity, and (iii) the transfer will not create a material risk under applicable law; provided, however, that approval of a transfer is subject to delivery capacity limitations.

9.2.2 At any time after all final federal permitting approvals for NISP are issued and any litigation challenging such approvals is no longer pending or appealable, a NISP Participant may request a transfer of NISP Units constituting all or a portion of a NISP Allotment to a municipality or a district formed under Colorado law that is not an existing NISP Participant at the time of the proposed transfer. The NISP Enterprise shall approve such a requested transfer if the Enterprise Board determines that (i) the entity receiving the NISP Units has an existing or future need for said NISP Units for use within the District, (ii) the NISP Participant receiving the NISP Units has sufficient financial capacity, (iii) the transfer will not create a material risk under applicable law, and (iv) the entity has not transferred or entered into an agreement to transfer water out of the Northern Colorado Water Conservancy District. Any such transfer shall also be subject to delivery capacity limitations. The Enterprise Board may deny a proposed transfer under this Section 9.2.2 if it finds that, based on extraordinary circumstances, the proposed transfer would not be in the best interests of the Enterprise or the Northern Colorado Water Conservancy District.

- 9.2.3 A transfer of NISP Units under this Section 9 also shall result in the transfer of all rights and obligations under the relevant NISP Phase 1 Agreement that correspond to the transferred NISP Units. Notwithstanding the foregoing, a NISP Phase 1 Participant that transfers NISP Units under this Section 9 is not entitled to any balance in its respective segregated account that corresponds to the amount of NISP Units transferred unless an equal amount of money is provided to the Enterprise by the transferee as replacement of the balance in transferor NISP Phase 1 Participant's account. The transferring NISP Phase 1 Participant may also assign the corresponding portion of its segregated account to the transferee.

## **Section 10. Project Termination**

10.1 Event Giving Rise to Project Termination. NISP shall terminate and the process of winding-up of NISP shall be initiated upon the Enterprise Board's adoption of a resolution of termination. Such resolution may be adopted after the Enterprise Board's receipt of a written request from all NISP Phase 1 Participants to terminate NISP Phase 1 or NISP, or for other financial, legal or practical reasons that would make completion of NISP Phase 1 or NISP impracticable as determined by the Enterprise Board. The decision to adopt a resolution of termination shall be in the Enterprise Board's discretion.

10.2 Winding Up Procedure. Upon the Enterprise Board's adoption of a resolution of termination under Section 10.1 above, NISP Phase 1 shall be wound up within a reasonable time pursuant to the procedures set forth in this Section 10.2.

(i) The Enterprise Board shall appoint a winding-up agent to carry out the procedures and responsibilities set forth in this Section 10.2 and to take any other actions as determined by the Enterprise Board to be necessary and convenient to the winding up of NISP Phase 1.

(ii) The winding-up agent shall obtain from the Financial Services Manager of the District an accounting of NISP Phase 1 Assets and NISP Phase 1 liabilities and operations through the last day of the month in which the Enterprise Board adopts a resolution of termination under Section 10.1 above. The winding-up agent may also cause a proper accounting to occur at other times, including before or after the distribution of NISP Phase 1 Assets pursuant to Section 10.3 below, if the Enterprise Board determines in its discretion that such an additional accounting is reasonably necessary for the orderly winding up of NISP.

(iii) Option of Northern Colorado Water Conservancy District to Purchase Certain NISP Phase 1 Assets. The District shall have an option to purchase, within 180 days of adoption of a resolution of termination by the Enterprise pursuant to this Section 10, the real property necessary or useful for Glade Reservoir, Galeton Reservoir, and any of the associated diversion structures, pipelines, ditches, forebays, or other property or assets then owned by the Enterprise and determined by the District to be necessary to place water into storage

in either or in each. The purchase price to be paid by the District for any NISP Phase 1 Assets subject to this Section 10.2(iii) shall be the price paid by the Enterprise for such asset plus the cost of capital improvements thereon or, if such asset was acquired by the Enterprise other than by purchase, the actual cost to acquire such asset. The proceeds of any sale of NISP Phase 1 Assets to the District under this Section 10.2(iii) shall be transferred to the non-defaulting NISP Phase 1 Participants in accordance with Section 10.3 below.

(iv) After complying with Section 10.2(ii) and 10.2(iii), the winding-up agent shall offer, on an asset-by-asset basis, each non-cash NISP Phase 1 Asset to all of the NISP Phase 1 Participants for cash or cash equivalents for the price paid by the Enterprise for such NISP Phase 1 Assets plus the cost of capital improvements or, if such NISP Phase 1 Asset was acquired by the Enterprise other than by purchase, the actual cost to acquire such NISP Phase 1 Asset. If more than one NISP Phase 1 Participant desires to purchase any such NISP Phase 1 Asset, the winding-up agent shall sell the NISP Phase 1 Asset to the highest bid submitted by a NISP Phase 1 Participant in a closed-bid process.

(v) Subject to Section 10.2(vi) and (vii), and after complying with Section 10.2(ii) through (iv), the winding-up agent shall make commercially reasonable efforts to reduce to cash or cash equivalents the NISP Phase 1 Assets.

(vi) The winding-up agent shall exercise discretion in light of legal, tax, contractual, and other considerations as to whether to liquidate particular NISP Phase 1 Assets and to propose a sale to the Enterprise Board under Section 10.2(v). The winding-up agent may consult with legal counsel, tax consultants, or other experts.

(vii) Any sale or transfer of an NISP Phase 1 Asset by the winding-up agent shall require advance notice to all NISP Phase I Participants and approval by the Enterprise Board.

(viii) While conducting the winding-up procedures of this Section 10.2, the winding-up agent shall manage the Enterprise's NISP Phase 1 Assets with reasonable care and with the same powers as the Enterprise's managers exercised before the Enterprise Board adopted a resolution of termination under Section 10.1.

### 10.3 Distribution of NISP Phase 1 Assets.

(i) Subject to Section 10.3(ii) below, upon completion of the winding-up procedure set forth in Section 10.2 above, the Enterprise Board, with the assistance of the winding-up agent, shall distribute the cash or cash equivalents held by the Enterprise in the following manner and order:

(A) To cover any expenses incurred as a result of the winding-up procedures set forth in Section 10.2;

(B) To maintain a reserve fund as the Enterprise Board may deem necessary to cover any contingent liabilities or obligations of the Enterprise as identified with specificity by the Enterprise, provided that such reserves or any part thereof not required for payment of such contingent liabilities shall be distributed as hereinafter provided;

(C) To satisfy any loans or advances made to the Enterprise by the NISP Phase 1 Participants; and then

(D) To the non-defaulting NISP Phase 1 Participants in proportion to their NISP Participation Percentages after adjusting for any debts each NISP Phase 1 Participant may owe to the Enterprise.

(ii) Distribution of Enterprise assets under Section 10.3(i) is subject to the following terms and conditions:

(A) If any unliquidated non-cash NISP Phase 1 Assets remain after completion of the winding-up procedures set forth in Section 10.2, then the Enterprise Board shall exercise all reasonable efforts to determine whether the unliquidated non-cash NISP Phase 1 Assets are to be conveyed to and owned by the NISP Phase 1 Participants individually or jointly.

(B) Notwithstanding Section 10.3(ii)(A) above, a NISP Phase 1 Participant is not entitled to and does not have the right to demand distributions of non-cash NISP Phase 1 Assets in general or of any particular non-cash NISP Phase 1 Asset.

10.4 Completion of Winding-Up of NISP. After the distribution of all NISP Phase 1 Assets pursuant to Section 10.3, the winding-up agent shall give notice to the Enterprise Board that NISP has been terminated and the NISP Phase 1 Assets have been disposed of pursuant to the NISP Phase 1 Agreements.

## **Section 11. Liability of Enterprise and NISP Phase 1 Participants**

11.1 Enterprise and Undersigned NISP Phase 1 Participant Liability. Participant shall not be liable to another NISP Phase 1 Participant or to the Enterprise, and the Enterprise shall not be liable to the NISP Phase 1 Participants, for consequential, indirect, punitive, or special damages arising under this Agreement. Neither the Enterprise nor Participant shall be liable for the acts or omissions of the other NISP Phase 1 Participants.

11.2 Enterprise Liability. Any and all obligations of the Enterprise that may arise under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by the Enterprise. Nothing herein shall be deemed to prevent the Enterprise from making any payments from any other legally available source. In no event shall the 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 Agreement or which would cause the Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, neither the Enterprise nor the District shall be required to expend any



funds or impair any assets of the District in the performance of any of the Enterprise's obligations under this Agreement. The obligations of the Enterprise under this Agreement do not constitute a debt or indebtedness of the Enterprise 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 Enterprise or the District.

11.3 Undersigned NISP Phase 1 Participant Liability. Any and all obligations of the undersigned Participant that may arise under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by such Participant from the operation of its water utility enterprise. Nothing herein shall be deemed to prevent the undersigned Participant from making any payments from any other legally available source. In no event shall undersigned Participant 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 Agreement or which would cause such Participant to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, the undersigned Participant shall not be required to expend any funds or impair any assets of its parent entity in the performance of its obligations under this Agreement. The obligations of the undersigned Participant under this Agreement 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 the Participant or of its parent entity.

11.4 Governmental Immunity. The Enterprise and the undersigned Participant are each relying on, and do not waive or intend to waive by any provision of this Agreement, 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.

## **Section 12. Amendments**

This Agreement may be amended only by a writing executed by the Enterprise and each non-defaulting NISP Phase 1 Participant.

## **Section 13. Assignment; Binding on Successors**

Except as otherwise provided in this Agreement, the rights and duties of the Participant may not be assigned or delegated without the written consent of the Enterprise. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Enterprise and the Participant.

## **Section 14. Third Party Beneficiaries**

Any NISP Phase 1 Participant shall have the right as a third-party beneficiary to initiate and maintain suit to enforce the obligations of other NISP Phase 1 Participants hereunder. Except as provided in the preceding sentence, no other entities are conferred a benefit under this Agreement or may enforce this Agreement as third-party beneficiaries.

## **Section 15. Counterparts**

This Agreement may be executed by the Enterprise and the Participant in separate counterparts that are identical except as to the number of NISP Units and the identity of the NISP Phase 1 Participant, each of which when so executed and delivered shall 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.

**Section 16. Merger of Prior Agreements**

This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.

**Section 17. Severability**

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

**Section 18. Choice of Law; Venue**

This Agreement 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.

**Section 19. Notices**

Notices authorized or required to be given under this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the addresses set forth in **Exhibit C**, or to such other address as a party may provide to the other party and other NISP Phase 1 Participants from time to time. Any notice to the Participant shall be given to all NISP Phase 1 Participants. Notices authorized or required to be given under this Agreement may in the alternative be given by electronic mail (email) to the email addresses set forth in **Exhibit C**, or to such other email addresses as a party may provide to the other party and other NISP Phase 1 Participants from time to time, provided that the receiving party acknowledges and does not object to receipt of such notice by email.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the Enterprise and NISP Phase 1 Participants hereto, 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.

**Northern Integrated Supply Project Water  
Activity Enterprise**

By: \_\_\_\_\_  
Bradley D. Wind  
General Manager

**The Town of Erie, acting by and through its Erie  
Water Activity Enterprise, a water activity  
enterprise and 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 *et seq.***

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

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

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

**EXHIBIT A**

**NISP PHASE 1 PARTICIPANTS**

<b>Participant</b>	<b>NISP Allotment</b>	<b>NISP Participation Percentage</b>	<b>NISP Phase 1 Capital Funding Obligations</b>
Erie	6,500	16.25%	\$3,250,000
Left Hand Water District	4,900	12.25%	2,450,000
Fort Morgan	3,600	9.00%	1,800,000
Central Weld County Water District	3,500	8.75%	1,750,000
Windsor	3,300	8.25%	1,650,000
Fort Collins-Loveland Water District	3,000	7.50%	1,500,000
Frederick	2,600	6.50%	1,300,000
Fort Lupton	2,050	5.13%	1,025,000
Severance	2,000	5.00%	1,000,000
Lafayette	1,800	4.50%	900,000
Evans	1,600	4.00%	800,000
Morgan County Quality Water District	1,300	3.25%	650,000
Firestone	1,300	3.25%	650,000
Eaton	1,300	3.25%	650,000
Dacono	1,250	3.13%	625,000
<b>Totals</b>	<b>40,000</b>	<b>100.00%</b>	<b>\$20,000,000</b>

## **EXHIBIT B**

### **NISP PHASE 1 PROJECT DESCRIPTION AND SUMMARY WORK PLAN**

The work to be performed and costs to be included under the NISP Phase 1 Project include the following:

- Acquisition of property associated with the Galeton Reservoir site (approximately 3,700 acres).
- Acquisition of property associated with Glade Reservoir site (approximately 400 acres)
- Acquisition of property associated with Highway 287 relocation (acreage to be determined).
- Acquisition of easements for both the NISP delivery pipelines and the Galeton Unit pipelines.
- Water Secure properties served by and/or under the New Cache and Larimer and Weld Irrigation Companies' ditch systems (acreage to be determined based upon available funds after the above items have been purchased).
- Operation, maintenance, and improvement costs for the NISP Phase 1 Assets.

**EXHIBIT C**  
**NOTIFICATIONS**

<b>IF TO:</b>	<b>MAILING ADDRESS</b>	<b>EMAIL</b>
Northern Integrated Supply Project Water Activity Enterprise	c/o NISP Project Manager 220 Water Avenue Berthoud, CO 80513	<a href="mailto:cbrouwer@northernwater.org">cbrouwer@northernwater.org</a> <a href="mailto:braley@troutlaw.com">braley@troutlaw.com</a>
Central Weld County Water District	c/o Mr. Stan Linker District Manager 2235 2 <sup>nd</sup> Avenue Greeley, CO 80631-7203	<a href="mailto:stan@cwewd.com">stan@cwewd.com</a>
Dacono	c/o Mr. A.J. Euckert City Manager PO Box 186 Dacono, CO 80514-0186	<a href="mailto:AEuckert@cityofdacono.com">AEuckert@cityofdacono.com</a>
Eaton	c/o Mr. Jeff Schreier Town Administrator 223 1 <sup>st</sup> Street Eaton, CO 80615-3479	<a href="mailto:jeff@eatonco.org">jeff@eatonco.org</a>
Erie	c/o Mr. Todd Fessenden Deputy Public Works Director PO Box 750 Erie, CO 80516-0750	<a href="mailto:tfessenden@erieco.gov">tfessenden@erieco.gov</a>
Evans	c/o Mr. Randy Ready Public Works Director 1100 37 <sup>th</sup> Street Evans, CO 80620-2036	<a href="mailto:rready@evanscolorado.gov">rready@evanscolorado.gov</a>
Firestone	c/o Ms. Julie Pasillas Public Utilities Director PO Box 100 Firestone, CO 80520-0100	<a href="mailto:jpasillas@firestoneco.gov">jpasillas@firestoneco.gov</a>
Fort Collins–Loveland Water District	c/o Mr. Chris Matkins General Manager 5150 Snead Drive Fort Collins, CO 80525-3764	<a href="mailto:chrism@fclwd.com">chrism@fclwd.com</a>
Fort Lupton	c/o Mr. Chris Cross Assistant City Administrator 130 S McKinley Ave Fort Lupton, CO 80621-1343	<a href="mailto:ccross@fortlupton.org">ccross@fortlupton.org</a>

IF TO:	MAILING ADDRESS	EMAIL
Fort Morgan	c/o Mr. Jeffrey Wells Acting City Manager PO Box 100 Fort Morgan, CO 80701-0100	<a href="mailto:jwells@cityoffortmorgan.com">jwells@cityoffortmorgan.com</a>
Frederick	c/o Ms. Sarah Watson Water Engineer PO Box 435 Frederick, CO 80530-0435	<a href="mailto:swatson@frederickco.gov">swatson@frederickco.gov</a>
Lafayette	c/o Mr. Jeff Arthur Public Works Director 1290 S Public Rd Lafayette, CO 80026-2706	<a href="mailto:Jeff.arthur@cityoflafayette.com">Jeff.arthur@cityoflafayette.com</a>
Left Hand Water District	c/o Mr. Chris Smith General Manager PO Box 210 Niwot, CO 80544-0210	<a href="mailto:chrissmith@lefthandwater.org">chrissmith@lefthandwater.org</a>
Morgan County Quality Water District	c/o Mr. Kent Pflager General Manager PO Box 1218 Fort Morgan, CO 80701-1218	<a href="mailto:kpflager@mcqwd.org">kpflager@mcqwd.org</a>
Severance	c/o Mr. Nicholas Wharton Town Administrator PO Box 339 Severance, CO 80546-0339	<a href="mailto:nwharton@townofseverance.org">nwharton@townofseverance.org</a>
Windsor	c/o Mr. John Thornhill Director of Community Development 301 Walnut Street Windsor, CO 80550	<a href="mailto:jthornhill@windsorgov.com">jthornhill@windsorgov.com</a>