



TOWN OF ERIE

645 Holbrook Street
Erie, CO 80516

Town Council

Board Meeting Date: 1/12/2021

File #: 20-595, Version: 1

SUBJECT: CONSENT

A Resolution of the Board of Trustees of the Town of Erie Approving the Northern Integrated Supply Project Common Interest, Joint Defense, and Confidentiality Agreement Between the Northern Colorado Water Conservancy District, Through its Northern Integrated Supply Project Water Activity Enterprise, and the Town of Erie, Acting By And Through its Erie Water Activity Enterprise

DEPARTMENT: Public Works

PRESENTER: Todd Fessenden, Public Works Director

FISCAL SUMMARY: N/A

STAFF RECOMMENDATION:

Adopt Resolution approving the Town to enter into the Northern Integrated Supply Project Common Interest, Joint Defense, and Confidentiality Agreement.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Board of Trustees has approved numerous agreements with the Northern Colorado Water Conservancy District, acting by and through its Northern Colorado Water Conservancy District Northern Supply Project Enterprise, (NCWCD) to participate in the Northern Integrated Supply Project (NISP or the Project). The Town of Erie, acting by and through its Erie Water Activity Enterprise, (Erie) is participating in the Project for a permitted firm yield of 6,500-acre feet per year of water for future water demands. NISP is a water project coordinated by NCWCD to develop additional water resources for 15 participant water providers in northern Colorado. Erie has participated in this group for the past 17 years to cooperatively pursue the project. NISP is intended to provide a new water supply to meet part of the Town's anticipated future water demands, and it is an important project necessary to meet those demands.

At this time, NCWCD has requested all the participants in NISP enter into a Common Interest, Joint Defense, and Confidentiality Agreement (Agreement) with NCWCD, which would confirm the existence of a common interest among the participants and NCWCD for the purpose of NISP. This Agreement would provide the following benefits:

- (a) allow the free exchange of information between the participants, NCWCD, and their attorneys and consultants to develop, construct, and operate the Project and to pursue or defend any

legal actions involving the Project;

(b) share labor in connection with research, investigation, expert analysis, and opinions relating to the Project; and

(c) reduce legal fees, engineering fees, and other costs related to the Project.

The Agreement acknowledges the parties may share confidential and privileged information and communications in pursuit of the Project, and such information and communications would be protected by a legal principle known as the common interest and joint defense doctrine, meaning they remain privileged and confidential among the group and not discoverable in a lawsuit. In other words, the Agreement would protect information that the Participants and their attorneys and experts share about the Project, thereby enabling them to freely share such information in the development of the Project and the defense of any lawsuits against the Project. Accordingly, the Agreement would facilitate the pursuit, and any legal defense, of the Project. For instance, if Erie were to share any confidential information with the participants and NCWCD in pursuit of NISP, the Agreement would protect that information by prohibiting the participants and NCWCD from sharing it outside the group, except as required by law or with Erie's consent. Erie entered into an identical form of agreement for its participation in the Windy Gap Firing Project, and it has provided an important basis for pursuing and defending the Windy Gap Firing Project in litigation.

Staff recommends the Board of Trustees authorize the Agreement, which would protect certain confidential and privileged information and communications between Erie, NCWCD, and the other Project participants relating to NISP

Fiscal Impact:

The Agreement should facilitate an overall reduction in costs relating to NISP for Erie. Otherwise, there is no discernible fiscal impact, as the Agreement does not require Erie to contribute any funds.

Board Priority(s) Addressed:

- ✓ Safe and Healthy Community
- ✓ Effective Governance
- ✓ Fiscally Responsible

ATTACHMENTS:

1. Resolution
2. Agreement