

AGENDA

Water Board – Monday, July 20, 2020, 3 pm

VIRTUAL MEETING –

**For information and instructions on how to join in this meeting,
please email Heather McIntyre at
heather.mcintyre@longmontcolorado.gov**

- 1. MEETING CALLED TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF PREVIOUS MONTH’S MINUTES**
 - a. June 15, 2020 – Water Board Regular Meeting
- 4. WATER STATUS REPORT**
- 5. PUBLIC INVITED TO BE HEARD AND SPECIAL PRESENTATIONS**
- 6. AGENDA REVISIONS AND SUBMISSION OF DOCUMENTS**
- 7. DEVELOPMENT ACTIVITY**
 - a. Development Activity Requiring Water Board Action
 - i. North Star Filing 1 Final Plat
 - b. Development Activity Submitted for Water Board Information Only
 - i. None
- 8. GENERAL BUSINESS**
 - a. Climate Action Task Force Recommendation – Water Conservation (Staff will discuss the Climate Action Task Force water conservation recommendation and seek advice for City Council) Staff Contact: Francie Jaffe 303-774-4468, francie.jaffe@longmontcolorado.gov

- b. Windy Gap Firming Project Update (Update regarding the Windy Gap Firming Project) Staff Contact: Ken Huson 303-651-8340, ken.huson@longmontcolorado.gov
- c. Cash-In-Lieu Review (The Board will review the current fee for cash in lieu of water rights for possible adjustment) Staff Contact: Wes Lowrie (303) 651-8814, wes.lowrie@longmontcolorado.gov

9. ITEMS FROM STAFF

- a. Water Conservation Update (Staff will provide Water Board with a update regarding Longmont's water conservation) Staff Contact: Francie Jaffe 303-774-4468, francie.jaffe@longmontcolorado.gov

10. ITEMS FROM BOARD

- a. Review of Major Project Listing and Items Tentatively Scheduled for Future Board Meetings.

11. INFORMATIONAL ITEMS AND WATER BOARD CORRESPONDENCE

12. ITEMS TENTATIVELY SCHEDULED FOR FUTURE BOARD MEETINGS

- a. Cash-in-Lieu Review (March, June, September, December)

13. ADJOURN

WATER BOARD MINUTES

June 15, 2020

This Water Board Meeting was held remotely during the COVID-19 pandemic

REGULAR MEETING

The June 15, 2020 meeting of the Longmont Water Board was called to order by Chair Todd Williams at 3:03 pm via remote Zoom meeting connection.

1. ROLL CALL

Board Members Present: Todd Williams, John Caldwell, Kathy Peterson, Roger Lange, and Renee Davis

City Staff Members Present: Ken Huson, Nelson Tipton, Wes Lowrie, Kevin Boden, Francie Jaffe, Jason Elkins, and Tammy Duerksen

Council Liaison Present: Marcia Martin

2. DETERMINATION OF A QUORUM

There was a quorum present with five board members in attendance.

3. CHAIR REMINDER TO THE PUBLIC

Chair Williams reviewed the procedures for Public Invited to Be Heard.

4. APPROVAL OF PREVIOUS MONTH'S MINUTES

Chair Williams asked if there were any questions or comments on the February 24, 2020 meeting minutes. **A motion was made by Board member Davis to approve Water Board's February 24, 2020 minutes, seconded by Board member Caldwell. The motion carried 5-0.**

5. WATER STATUS REPORT

Staff member Wes Lowrie gave the current water status report. The flow of the St. Vrain at the Lyons gage at 1:15 pm today was 391 cfs, with an historical average of 585 cfs for this date, very close to our peak.

Ralph Price Reservoir at Button Rock Preserve is currently full and spilling, releasing approximately 170 cfs. All local reservoirs are full or nearly full. The peak runoff at Lyons occurred on June 4, 2020, with 557 cfs; the normal peak typically would have occurred around June 12.

Union Reservoir is at an elevation of 28 feet, equaling 12,768 acre-feet. Currently there are 11.5 cfs being released from Union Reservoir.

The call on the St. Vrain Creek is the Supply Ditch, Admin #10378 with a priority date of 5/31/1878, and the call on the Main Stem of the South Platte River is Harmony Ditch, Admin #17290, with a priority date of 11/20/1885.

Local storage at the end of May 2020 was approximately 86% full and is currently at approximately 95% full.

6. PUBLIC INVITED TO BE HEARD AND SPECIAL PRESENTATIONS

None due to the Live Stream of the meeting not functioning properly.

7. AGENDA REVISIONS AND SUBMISSION OF DOCUMENTS

None

8. DEVELOPMENT ACTIVITY

A. Sugar Mill Paired Homes Final Plat

Sugar Mill Paired Homes Final Plat is a 17.430-acre parcel south of Colorado Highway 119 and west of Great Western Drive. All historic water rights were transferred to the City at the time of annexation; there was a deficit of 50.739 acre-feet. Water Board approved a recommendation that Sugar Mill Paired Homes Final Plat would be in compliance with the Raw Water Requirement Policy upon satisfaction of the 50.739 acre-foot deficit at time of final plat approval.

The motion was made by Board member Lange to approve and was seconded by Board member Caldwell. The motion carried 5-0.

B. Springs at Longmont Final Plat

The Springs at Longmont Final Plat is a 25.703-acre parcel south of State Highway 119 and east of Weld County Road 1. All historic water rights were transferred to the City at the time of annexation, with a deficit of 68.602 acre-feet. Water Board approved a recommendation that the Springs at Longmont Final Plat would be in compliance with the Raw Water Requirement Policy upon satisfaction of the 68.602 acre-foot deficit at time of final plat approval.

The motion was made by Board member Davis to approve and was seconded by Board member Peterson. The motion carried 5-0.

9. GENERAL BUSINESS

A. City of Longmont's 2020 Water Supply and Drought Management Plan

Staff member Wes Lowrie presented the City's 2020 Water Supply and Drought Management Plan and reviewed its details. The Plan was included in May's informational packet that was sent to the Board as well as this month's packet.

Since 2019, the City has been operating under the Sustainable Conservation Level Drought Response. The two main criteria for this level include looking at the storage levels at Ralph Price Reservoir and the raw water supply availability projection for the next water year being greater than 135%. As mentioned earlier in the meeting, Ralph Price Reservoir is full and spilling and projections for supply availability from earlier snowpack is consistent with maintaining the Sustainable Conservation Level Response.

After further discussion, **a motion was made by Board member Peterson to recommend that City Council accept the 2020 Water Supply and Drought Management Plan and was seconded by Board member Caldwell. The motion carried 5-0.**

10. ITEMS FROM STAFF

A. WaterSMART Water and Energy Efficiency Grant Funding Update

Staff member Francie Jaffe reminded the Board of their support in September 2019 for the application of a grant for funding the City's program to transition to AMR meters. She notified the Board that the City received an award of that funding, though the next steps meeting related to the award will not occur until October 2020 because of significant delays at the US Bureau of Reclamation. She added her thanks again for the Board's support.

B. Water Resources Engineering Projects Update

Staff member Jason Elkins reported that the City has issued a notice to proceed to C&L Water Solutions allowing them to access the South St. Vrain Pipeline for constructing and installing additional temporary and permanent access points along the pipeline. This project to rehabilitate the South St. Vrain Pipeline is currently on schedule and on budget for completion by the end of 2020.

He also gave an update on the South St. Vrain Pipeline Pump Station Project. Previously a conceptual project only, FEMA PAAP funding of approximately \$800-900,000 has provided an opportunity to make this project a priority. Though the total cost estimate for this project is \$3,000,000, the City has decided to de-fund other lower-priority projects to fund this one at this time as it complements the South St. Vrain Pipeline Project. Once completed, the pump station will allow the City to pump water from the South St. Vrain Pipeline to the North St. Vrain Pipeline, benefiting the management of the City's senior water rights, particularly in the winter months. The South St. Vrain Pipeline Pump

Station Project is scheduled for completion by the end of 2021, with land acquisition, planning, and permitting taking the bulk of that time; actual construction is estimated to take one-month.

C. Windy Gap Firing Project Update

Staff member Ken Huson reported that there has not been any movement on the federal case. All objectors on the State’s Water Rights case have settled now, which opened up the opportunity to draft and submit the final decree. This decree is currently under review; participants are hopeful that this will be finished soon.

The connectivity channel around the Windy Gap Reservoir on the Colorado River is currently at 30 percent design, a milestone for getting ready to secure a design-build firm. Northern Water staff is putting together a team to compile a request for qualifications and proposal in preparation of that contractor search. A formal request has been submitted to the US Department of Natural Resources Conservation Service for a deadline extension on the funding for this project, as it will be difficult to meet the original deadline.

The contractor on the Windy Gap Firing Project has begun working on site preparations, as well as on project submittals, with about one-fourth of those submittals left to go. Work with Western Area Power Administration (WAPA) continues on relocating power lines on the site, with WAPA awaiting a final decision on the federal lawsuit resolution before granting approval for the relocation.

The final allotment contract is approximately 75 percent complete, with projections for full completion this summer. Once the contract is finished, staff will bring it to the Board for review.

11. ITEMS FROM BOARD

A. Review of Major Project Listing

A review of major project listing was provided in the agenda packet.

12. INFORMATIONAL ITEMS AND WATER BOARD CORRESPONDENCE

Chair Williams acknowledged Board member Caldwell and his service to the Water Board; this meeting was his last due to term limits. A reception to recognize Board member Caldwell will be planned by staff in a way that complies with the pandemic requirements.

13. ITEMS TENTATIVELY SCHEDULED FOR FUTURE BOARD MEETINGS

The next cash-in-lieu review is scheduled for the July 2020 meeting.

13. ADJOURN

There being no further business to come before Water Board, Chair Williams adjourned the meeting at 3:47 pm.

The next regular meeting of the Longmont Water Board is scheduled for July 15, 2020, at 3:00 pm. The location will be determined by the pandemic guidelines at that time.

Todd Williams, Water Board Chair

Date

Heather McIntyre, Recording Secretary

Date



CITY OF LONGMONT | Water Board

Meeting Date: July 20, 2020

Item Number: 7

Type of Item: Development Activity

From: Wes Lowrie, Water Resources Analyst, 303-651-8814
wes.lowrie@longmontcolorado.gov

As the Board will recall, City Council approved Ordinance O-2012-73 on October 23, 2012, which requires Water Board action during annexation review and when further raw water deficit satisfaction is required pursuant to a particular development activity. Listed below are two development activity categories: Development Activity Requiring Water Board Action and Development Activity Submitted for Water Board Information Only.

- 7a. Development Activity Requiring Water Board Action
 - i. North Star Filing 1 Final Plat
- 7b. Development Activity Submitted for Water Board Information Only
 - i. None

North Star Filing 1 Final Plat
Packet Information for Water Board Review
July 20, 2020

DESCRIPTION

North Star Filing 1 Final Plat is a 34.768 acre parcel located Northeast of Plateau Road and N 79th Street, west of Renaissance Drive and south of Clover Basin Drive.

HISTORICAL WATER RIGHTS

Historical water rights consist of 29.000 shares of Left Hand Ditch Company stock.

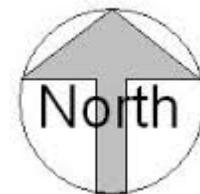
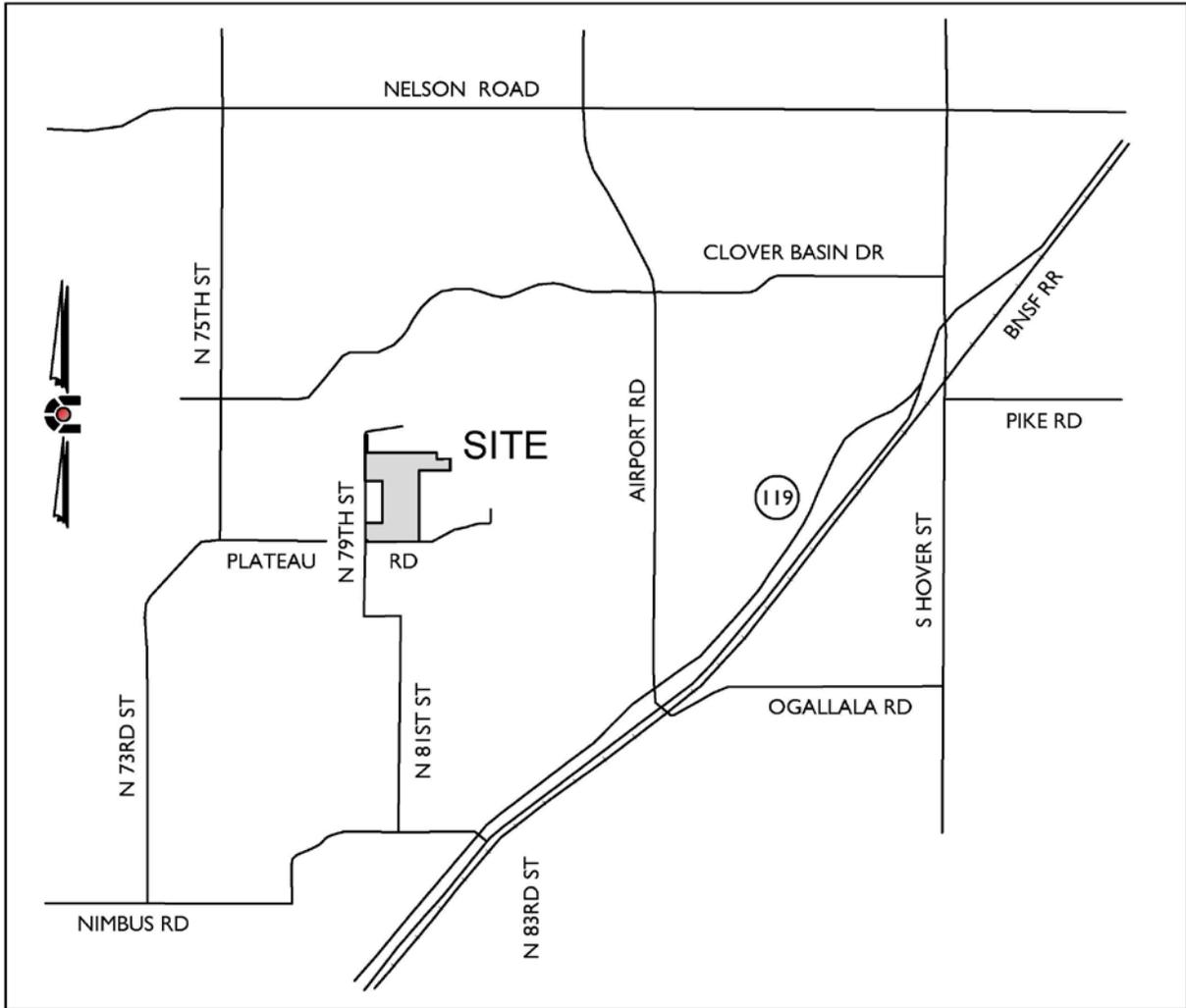
RAW WATER REQUIREMENT POLICY

The full 34.768 acres are subject to the full requirements of the Raw Water Requirement Policy. After application of the historic water rights a remaining deficit of 34.698 acre feet or 0.998 acre feet per acre of land remains in the direct flow requirement and a deficit of 34.768 acre feet of water or 1.000 of an acre foot of water per acre of land remains in the storage requirement. The total raw water deficit for North Star Filing 1 Final Plat is 69.466 acre feet or 1.998 acre foot of water per acre of land.

POLICY COMPLIANCE

North Star Filing 1 Final Plat will be in compliance with the City's Raw Water Requirement Policy upon transfer to the City all historic water rights at time of annexation and satisfaction of the 69.466 acre foot deficit at time of final plat approval.

North Star Filing 1 Final Plat





CITY OF LONGMONT | Water Board

Meeting Date: July 20, 2020

Item Number: 8a

Subject: Climate Action Task Force Recommendation - Water

Type of Item: General Business

From: Lisa Knoblauch, Sustainability Program Manager, (303) 651-8403, lisa.knoblauch@longmontcolorado.gov
Francie Jaffe, Water Conservation & Sustainability Specialist, (303) 774-4468, francie.jaffe@longmontcolorado.gov

Suggested Action: Water Board discuss the Climate Action Task Force water conservation recommendation and provide advice to City Council.

Background Information

History of the Climate Action Recommendations Report

On October 8, 2019, [the Longmont City Council passed a resolution declaring a climate emergency](#), establishing Longmont's intent to take immediate and accelerated action to address the climate crisis. City Council voted unanimously to pass this resident-initiated resolution. The resolution called for the convening of a working group, dubbed the “Climate Action Task Force,” to develop a Climate Action Report outlining action City should take to promote a carbon-free, sustainable city.

On December 3, 2019, City Council approved the composition and members of the Climate Action Task Force as recommended by the selection committee. The Task Force convened on December 18, 2019 and met a total of eight times to discuss and research steps the City should take to reduce (mitigate) greenhouse gas emissions, along with ways to adapt to the impacts of climate change .

The Task Force’s six focus areas are:

1. Adaptation and Resilience;
2. Building Energy Use;
3. Education and Outreach;
4. Land Use and Waste Management;
5. Renewable Energy;

6. Transportation

On March 2, 2020, City staff released a climate action questionnaire for both residents and business to receive feedback from the community and assist the Climate Action Task Force in finalizing its recommendations. The final questionnaire report and key findings are included in the report to City Council. Due to COVID-19, in-person outreach for this questionnaire was interrupted.

On June 30, and July 7, 2020 the Climate Action Task Force presented the recommendations report to the Longmont City Council. These report dates were rescheduled from an original report date in April due to COVID-19.

[The Just Transition Plan](#) Committee is working alongside the Climate Action Task Force to ensure recommendations are inclusive and accessible to all members of the community with a specific focus of including the perspectives of communities who are not often heard and most often impacted by the effects of climate change. The Committee's final recommendations are included in the report to Longmont City Council.

For more information, [visit Engage Longmont's Climate Emergency Resolution site](#).

Climate Action Task Force Water Conservation Recommendation

There are 28 total Climate Action Task Force recommendations. Water Board can provide feedback on all recommendations, but the presentation from City staff will focus on the water conservation recommendation. The water conservation recommendation states that the City needs to expand and create new programs and initiatives to achieve a 35%-40% reduction in overall water consumption below a 2019 baseline by 2025. The recommendation acknowledges that there is still work that needs to be done by City staff to evaluate the budget to reach this goal.

The water conservation recommendation is included in the adaptation and resilience section of the climate action report. This section was focused on strategies the City can take to adapt to climate change. This Climate Action Task Force is included to prepare the City for sustained drought conditions from changes in temperature and precipitation.

[The full report](#) can be viewed in the City Council communication for the June 30th agenda.

Attachments:

1. The full Climate Action Task Force water conservation recommendation (these pages have been pulled from the full report)

Action Items:

1. Water Board discuss the Climate Action Task Force water conservation recommendation and provide advice to City Council.

- a. Potential options:
 - i. Accept the recommendation as written
 - ii. Accept the subject of the recommendation, perform a technical analysis and public input analysis and develop different scenarios to present to City Council for further direction
 - iii. Recommend a revised water conservation recommendation goal (e.g. timeline or goal percentage) that be accepted by City Council.
 - iv. Do not accept the recommendation
2. This recommendation will be taken to the Sustainability Advisory Board, Parks and Recreation Advisory Board, and Transportation Advisory Board, do you recommend it be taken to any other advisory board (e.g. Golf Course Advisory Board)?

- Plan for health emergencies for novel diseases.

Achievable:

Funding for implementation will need to be part of the planning process and become available for implementation.

Once the plan is developed, residents need to be aware of resources such as wading pools and access to creek wading areas to cool off on high heat days. Health care providers will need to be aware of the plan and how/when to access that plan if they see a new public health threat not previously seen in the community.

Relevant:

The goal is to mitigate effects on public health by carefully planning and being ready to implement solutions.

Time-bound:

Meetings with Boulder County and CDPHE could start this summer or fall of 2020. The group should have a plan outlined within one and a half years (by January 2022) or sooner, depending on the timeline of the COVID-19 pandemic.

Social and Economic Impacts

Failing to implement could have impacts on community health. Those without adequate cooling and/or shelter will be more adversely impacted as will those who have existing health conditions such as asthma, COPD, or heart ailments. The purpose of this goal is to develop a plan that looks at all those potential impacts and provide pathways to lessen those impacts.

AR.2) Water Conservation

Goal/Objective

Prepare the City of Longmont for potential sustained drought conditions from changes in temperature and precipitation.

Recommendation Summary

Water conservation measures and policies should include the promotion of xeriscaping, use of native vegetation in parks and open spaces, city programs that offer support for xeriscaping for residents and businesses (free architectural designs, free pea gravel, mulch, classes and plant giveaways). Educational awareness programs and promotional events offered by the City's Public Works and Natural Resources Department should inform residents about the benefit of carbon sequestration, forest canopies, using native plants, low water use appliances, and xeriscaping. HOA and city

ordinances will offer incentives to promote xeriscaping and low drought gardening. In addition, a plan for water rationing in the event of a prolonged drought will need to be reviewed and updated.

Target

Specific:

Significantly expand the Longmont water conservation program to reduce citywide water usage by 35 to 40% by 2025.

Measurable:

Water consumption should show a decline in use. The Water Efficiency Master Plan can be updated to adopt a measure that tracks excessive use by residences and businesses and charges higher rates for overconsumption.

Achievable:

Financial Summary: An estimation of staff time and landscape transitions need will need to be evaluated and then added to the city budget.

Marketing, Training, and Incentives: Education, training, and promotion will be key to getting resident ownership and participation in conservation efforts.

Relevant:

Water conservation efforts will assist in addressing climate change issues by conserving our water and preparing for potential droughts.

“This climatic change could have a negative effect on agriculture, wildfires, energy and water availability in the area. Additional costs that may be incurred to mitigate the effects of these droughts include increasing water supply from external sources, compensating agricultural operations for reducing water-intensive crops, incentivizing homeowners to change landscape items to be more drought resistant, and increasing fire mitigation procedures to reduce wildfire hazards. Concurrently, the impact on usage from both underground aquifers and reservoirs will need to be examined to determine if traditional usage levels can be continued, or whether usage levels may have to be monitored to ensure long-term availability of water.”

Source: [Resilient Analytics April 2018 Report on Boulder County Climate](#)

Time-bound:

By 2025, total city water use should decline by 35 to 40% below the 2019 baseline.

Social and Economic Impacts

Water conservation helps to ensure adequate supply for necessary uses in a changing climate with unpredictable impacts to water availability. Golf courses and city parks may change in appearance and functionality to achieve this goal.

AR.3) Flooding Mitigation and Preparedness Education

Goal/Objective

Climate change will produce more severe flooding events in Longmont. An outreach program will help to familiarize the public on current City flood mitigation and the benefits for property owners.

Recommendation Summary

Flood mitigation is a complex process that involves State and local regulations needed to preserve property values and protect the public from damages associated with flooding events. Developers, builders and property owners are not always aware of the complex regulations when building or preserving buildings in 100-year floodplain (areas designated by FEMA prone to flooding with at least 1% chance of a 100-year size flood every year.) More work is needed to make the public aware of how flood regulations work to mitigate the damaging effects of flooding for new and existing buildings. Making the public aware of ongoing processes and changes in floodplain management will help to prepare the city by empowering communities to better understand flood management and how development regulations minimize damages and improves public safety. Public awareness can be improved by providing flood awareness events and information to educate the public on how to prepare for future flooding. Community preparedness is enhanced by understanding how flood waters affect new or existing buildings and informing property owners of construction enhancements that will help protect their buildings from flood damage.

Target

Specific:

Public awareness can be enhanced with outreach activities such as:

- Sending out brochures to residents in flood plains each year.
- Initiating a flood awareness week where the city may publish articles in the local newspapers and provide information at the Longmont Library and other locations or venues.
- Provide information to realtors on how to read flood maps and determine if new buildings or improvements to buildings in flood plains are allowed who in turn communicate this information to clients.

Measurable:

It is not the intent to educate the public on the complex engineered requirements of flood mitigation but rather to inform and educate them on how the City's Emergency Action Plan helps prepare for



CITY OF LONGMONT | Water Board

Meeting Date: July 20, 2020

Item Number: 8b

Subject: Windy Gap Firming Project – Allotment Contract

Type of Item: General Business

From: Ken Huson (303-651-8340); Ken.huson@longmontcolorado.gov

Suggested Action: Provide Recommendation to City Council

The Windy Gap Firming Project has entered the final allotment contract review period, with an overall goal of having final allotment contracts signed by all participants by October 1, 2020. Longmont will review the allotment contract in July and August, with a goal of approval in September. Water Board is being asked to give City Council input on the project and allotment contract at this July meeting, with a goal of providing a final recommendation on the allotment contract at the August meeting. City Council will review the project, including allotment contract in early August. After receiving Water Boards final recommendation at the August meeting, City Council will be asked to review and approve the allotment contract in September.

Current Status of Project:

State Water Court Filings: The Division 5 water court referee filed the decree on July 6th. There is a 21 day protest period, after which the water judge will enter the decree if there are no subsequent objections. Please see the attached decree for more information.

Project Allotment Contract and Financing: The Allotment Contract legal committee has been diligently working on an allotment contract for some time now. Attached to this communication is a copy of the Allotment Contract in its current form. The Windy Gap Firming Project Enterprise board at Northern Water reviewed the form of this contract at its July 9th board meeting and approved the current version. While some minor

modifications will be necessary to bring the contract to final form, it is currently in near final form. The City Attorney's office has relied on Dave Hayes, special water counsel to participate in the preparation of this allotment contract and they are also comfortable with the current form of this allotment contract.

Most project financing aspects have been finalized and are incorporated in the allotment contract. This agreement is flexible to allow participants to become a cash finance or pooled bond participant, or a combination of both. Longmont will be a fully cash financed participant. As such, the pertinent language for Longmont is the cash finance (Section 6)

Project Final Design: The Colorado State Engineers Office has approved the final project design and is currently working with the contractor and project proponents on review of project submittals (such as pipe material, valving design, methods of construction etc.).

Grand Lake Clarity: No new status.

Windy Gap Reservoir Connectivity Channel: Property closing has been completed. Channel design is underway and has completed the 30% design phase; which is a significant milestone for this project. The final design will be accomplished as part of a design-build process. The full design-build will now be bid for completion of this project. The completion of the state water court process was critical for moving this project forward. Construction is still proposed for fall 2021 and summer 2022.

Federal Suit: Plaintiffs and interveners final briefs were filed July 25, 2019. Project proponents are still awaiting a federal district court decision as the one year final briefing anniversary approaches.

Barnard Construction: All project submittals have been received, with 75% being approved and the remaining 25% currently under review. Site clearing and grubbing underway.

Poudre Valley power line: A new power line will need to be installed by PVREA (the area power provider) to provide power for the project site. To date this project is fully designed, but a ROW issue is delaying installation. Installation of the power line should occur late this summer or fall.

WAPA power line relocation: WAPA is re-negotiating their cost and schedule, given the delay from the Federal suit. WAPA still indicates they will not begin installation until after the Federal suit is positively resolved, this position is still under negotiation.

Prior Project Milestones:

Final Purpose and Needs Study: Completed September 2005

Final EIS: Completed November 2011

HB-1041 Permit, Grand County: Received December 2012

Bureau ROD, Permit and Amendatory Carriage Contract: Issued December 2014

401 Certification: Received March 2016

Shoshone Outage Protocol: Final signature June 2016

Windy Gap Firming Project IGA: July 2016

404 Permit: Permit issued May 16, 2017

Project Participation: All 90,000 AF of permitted storage capacity has been subscribed.

State Water Court decree: Referee entry of decree July 6, 2020

Allotment Contract:

Attached is a preliminary copy of the Final Allotment Contract as well as a sample escrow agreement. The allotment contract is essentially in final form, but boards, commissions and councils from each participating entity have not reviewed it yet. As such, some minor modifications to the agreement can be expected before review of its final form at the August Water Board meeting.

Staff and special water counsel significantly participated in the legal review committee as the allotment contract was being prepared. As such we can recommend the allotment contract in substantially the form before you. Staff will further discuss specifics of the allotment contract at the Water Board meeting before we ask for a recommendation to Council. Of most importance, is the final participation level recommendation to City Council. This issue is more fully described below and we expect it to be the primary focus of the recommendation.

Project Financing:

The total current estimate for Longmont's interest in this project, at 8,000 AF, is \$59,483,042. In 2017 Longmont voters approved a \$36,300,000 bond issuance that will be used to obtain part of the funding for this project. The remaining funding will need to come from a variety of cash funds. Those funds include the Water Storage fund, Cash-in-lieu fund, Water Operating fund and Water Construction fund. Our financial staff has been closely reviewing these funds, and currently there is not sufficient funding to completely fund the Windy gap Firming project at 8,000 AF without significantly impacting the on-going asset management of the overall water system.

After reviewing the current budget situation, deferring many on-going and planned projects and still anticipating the possibility of presenting an \$80,000,000 bond question before the voters this fall, there is currently only sufficient capital to fund the project at 7,500 AF. Staff will further discuss this issue at the board meeting.

Final Capacity Recommendation:

There are a number of different considerations that can be used when making the final capacity recommendation. Currently, City Council has provided staff direction to participate in the planning phase of this project at a capacity level of 8,000 AF. Following are some possible considerations that Water Board can use when considering the final capacity recommendation. Staff will further discuss these criteria with Water Board as you consider your final recommendation.

1. Capacity based upon evaluation of Longmont's future water supply needs at Longmont's eventual planning horizon **(6,300 AF)** – This evaluation, based upon the City's adopted Future Water Supply Evaluation, has been previously reviewed. Staff will be happy to give any additional information from those efforts if Water Board is interested.
2. Capacity based upon current financial ability of the utility to sustain **(7,500 AF)** – The financial models that the City relies upon the fund long term capital needs and on-going operational and maintenance of the water utility indicate that the maximum capacity the City can currently afford would limit the participation level to 7,500 AF.
3. Capacity based upon prior City Council direction and potential for other stressors impacting the City's water supply **(8,000 AF)** – Prior council direction and many reviews of the question of eventual firming project have previously centered on the current subscribed amount of 8,000 AF.
4. Capacity based upon Climate Change Task Force (CCTF) recommendations **(amount unknown)** – The CCTF has recommended changes to the City's adopted Water Efficiency Master Plan, specifically the water conservation savings goal. This recommendation is still uncertain and it is not possible to determine if it will be adopted or successful. As such it should be considered, but staff does not yet recommend using this as a significant criteria in the evaluation of final capacity recommendation. After Water Board reviews the CCTF recommended items, also included on this Water Board meeting, the board may have additional information and insight into this question.

Related Underlying Documents: Inherent in the entire process of moving this allotment contract forward are a number of the major underlying agreements and documents that ultimately guide construction and operation of the firming project. These documents need no action from Water Board, but are referenced to give water board and the public perspective on the allotment contract and how the project will ultimately operate after construction. Staff would be happy to discuss any of these documents at the Water Board meeting as well. Because of size, these documents have not been included in the board packet but can be accessed on the City's web page, under the Windy Gap Firming Project page. A link to each document is on that Windy Gap Firming Project webpage located at:

<https://www.longmontcolorado.gov/departments/departments-n-z/water/water-resources-supply/windy-gap-firming-project> . Following is a list of those underlying documents.

- WGFP Permit & Record of Decision from US Bureau of Reclamation
- WGFP 2012 IGA with western slope interests
- USBR 2014 Amendatory Carriage Contract
- WGFP Areas and Activities of State Interest Permit (1041 permit) from Grand County
- 404 Permit and Record of Decision from the US Army Corp of Engineers
- Shoshone Outage Protocol agreement (ShOP agreement) with western slope

Attachments:

Final Allotment Contract

Escrow Agreement

State Water Court Decree

**ALLOTMENT CONTRACT BETWEEN THE WINDY GAP FIRING PROJECT
WATER ACTIVITY ENTERPRISE, MUNICIPAL SUBDISTRICT, NORTHERN
COLORADO WATER CONSERVANCY DISTRICT, AND THE CITY OF
LONGMONT, A MUNICIPAL CORPORATION ACTING BY AND THROUGH ITS
WATER UTILITY ENTERPRISE, FOR CAPACITY IN THE WINDY GAP
FIRMING PROJECT**

This Allotment Contract (“Contract”) for an allotment of capacity in the hereinafter defined and described Windy Gap Firing Project is entered into this ____ day of _____, 2020, by and between the Windy Gap Firing Project Water Activity Enterprise (“WGFP Enterprise”) and The City of Longmont, a municipal corporation acting by and through its Water Utility Enterprise (“Longmont”), pursuant to C.R.S. § 37-45-131 and C.R.S. §§ 37-45.1-103(4), 106(4).

RECITALS

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

B. Longmont is Municipal Corporation organized under the laws of the State of Colorado.

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

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

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

terms on Default and forfeiture under this Contract. **Section 6** includes provisions relating to Longmont's obligations to pay for the WGFP.

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

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

AGREEMENT

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

PART I – CONTRACT DEFINITIONS

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

District, and the United States of America for the purpose of utilizing the unused capacity of the facilities of the Colorado–Big Thompson Reclamation Project for the carriage of Windy Gap Project Water, and any subsequent amendments or successor contracts for the same purpose.

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

(3) to meet regulatory requirements associated with the WGFP. Operating C&E specifically includes any and all “Costs and Expenses” that are not Capital C&E that may accrue after execution of this Contract.

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

five-year rolling average (except in the first five years of the Operating Reserve Fund's existence, during which time the WGFP Enterprise will estimate based on available information) and taking into consideration the WGFP Enterprise's reasonable expectations as to future Operating C&E.

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

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

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

PART II – PROVISIONS APPLICABLE TO ALL WGFP ALLOTTEES

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

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

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

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

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

 - 3.4.2. Upon the adoption of a WGFP Winding-Up Resolution by the Enterprise Board under Section 3.4.1*, and consistent with the rights, if any, of Larimer County, the WGFP Enterprise shall first offer to the Subdistrict to

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

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

4. WGFP Operation After WGFP Completion.

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

of estimated C&E on or before the last business day of January of the succeeding calendar year*.

- 4.6. **Billing Statement Dispute Resolution.** If Longmont disputes the correctness of any billing statement by the WGFP Enterprise, it shall pay the WGFP Enterprise the full amount billed when due and shall, before or contemporaneously with such payment, inform the WGFP Enterprise that such payment is made wholly or partially under protest and request an explanation of the billing statement from the WGFP Enterprise. If the bill is determined to be incorrect, the WGFP Enterprise shall issue a corrected billing statement to Longmont. Any overpayment shall be refunded to Longmont within sixty (60) days. If the WGFP Enterprise and Longmont fail to agree on the correctness of a bill within one hundred twenty (120) days after Longmont gives notice to the WGFP Enterprise that a payment is made wholly or partially under protest, then the parties may agree to submit the dispute to binding arbitration or, failing such agreement, proceed to protect and enforce their respective rights by appropriate judicial proceeding.
- 4.7. **Operating Criteria.** Longmont acknowledges and understands that the storage and delivery of water in the WGFP will require and will be implemented pursuant to operating criteria agreed upon between the WGFP Allottees and the WGFP Enterprise that will address additional operational, financial, and other details of the WGFP. Longmont's WGFP Allotment will be operated on substantially the same terms as all other WGFP Allottees. The operating criteria shall not modify or amend this Contract or result in a material adverse effect on Longmont's rights under this Contract to control its WGFP Allotment, or its ability to have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees.
- 4.8. **Delivery Points.** The WGFP Enterprise's liability and responsibility to Longmont to deliver a quantity of water ordered for delivery by release from the WGFP under this Contract shall end and cease at the moment that such quantity of water is released out of WGFP structures or facilities. The WGFP Enterprise agrees to cooperate with Longmont in the coordination and accomplishment of conveyance and delivery of water from that point to Longmont through structures or facilities not owned by the WGFP Enterprise.
- 4.9. **Capacity Limitations.** In the event that orders of water from the WGFP exceeds available delivery capacity at any WGFP structure or facility, the available capacity at such structure or facility shall be allocated between the WGFP Allottees requiring delivery through such structure or facility in proportion to their respective WGFP Participation Percentages.
5. **Other General Terms.**
- 5.1. **Effective Date and Term.** No provision of this Contract shall take effect until each WGFP Allottee identified in **Exhibit A*** duly authorizes, executes, and delivers to the WGFP Enterprise its respective WGFP Allotment Contract, and the WGFP Enterprise duly authorizes, executes, and delivers to the WGFP Allottees their respective WGFP Allotment Contracts. Sections 1, 2, 4, 5, and 6* of this Contract shall be perpetual unless terminated pursuant to this Contract. Section 3*

shall be in effect until WGFP Completion. Section 7* of this Contract shall be in effect during the term of any payments of Capital C&E using proceeds from Capital C&E Funding Cash Payments made by such WGFP Allottee. Section 8* of this Contract shall be in effect during the term of any WGFP Financing in which Longmont participates.

5.2. **Transfer of a WGFP Allotment.**

5.2.1. **Transfer to Existing WGFP Allottee.** Subject to the terms and conditions set forth in any Financing Documents, the Enterprise Board shall approve a requested transfer of WGFP Units constituting all or a portion of Longmont's WGFP Allotment to one or more other WGFP Allottees that have a WGFP Allotment as of the time of the transfer if the Enterprise Board determines that (1) the WGFP Allottee receiving the additional WGFP Units has an existing or future need for additional WGFP Units, (2) the WGFP Allottee receiving the additional WGFP Units has sufficient financial capacity, and (3) the transfer will not create a material risk under applicable law.

5.2.2. **Transfer to Other Parties.** Longmont may transfer all or a portion of its WGFP Allotment to an entity that will use the WGFP Allotment within the Subdistrict that is not an existing WGFP Allottee at the time of the proposed transfer but that holds, or has the legal ability to acquire, an allotment of Windy Gap Project Water with the approval, in its discretion, of the Enterprise Board; provided, however, that the Enterprise Board shall disclose, in writing, the basis for a decision to not approve a proposed transfer under this Section 5.2.2*.

5.2.3. If Longmont, with approval of the Enterprise Board as required by this Section 5.2*, transfers a part of its WGFP Allotment to another entity, then Longmont shall be relieved of its obligations hereunder to the extent of said transfer, except as otherwise provided herein, specifically including in Section 8*. If Longmont, with approval of the Enterprise Board as required by this Section 5.2*, transfers all of its WGFP Allotment to another entity, then Longmont shall no longer participate in the WGFP and Longmont shall be relieved of its obligations, except as otherwise provided herein, specifically including in Section 8*.

5.3. **Default.**

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

5.3.1.1. Capital C&E Funding Cash Payments. The failure of Longmont to pay when due amounts payable pursuant to Sections 6.2* and 7* of this Contract for Initial C&E. As provided in Section 6.2.2.1*, if Longmont elects to pay its Capital C&E Funding Obligations for Completion C&E or Future Extraordinary C&E under this Contract through Capital C&E Funding Cash Payments, then failure to timely make its Capital C&E Funding

Cash Payment for such Completion C&E or Future Extraordinary C&E after so electing shall not constitute an event of Default, but in such event Longmont shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E or Future Extraordinary C&E through participation in a WGFP Financing in the same manner as provided in Section 6.2.2.2* and Section 8*.

- 5.3.1.2. WGFP Financing. The failure of Longmont to pay when due amounts payable pursuant to Sections 6.2* and 8* of this Contract.
- 5.3.1.3. Operating Costs & Reserves. The failure of Longmont to pay when due amounts payable pursuant to Section 6.3* of this Contract.
- 5.3.1.4. The violation of C.R.S. § 37-45-101 *et seq.*, C.R.S. § 37-45.1-101 *et seq.*, or the rules and regulations of the WGFP Enterprise, as may be established or amended from time to time.
- 5.3.2. **Notice of Default**. Upon a Default, the WGFP Enterprise in the case of a Default by Longmont, or Longmont in the case of a Default by the WGFP Enterprise, shall give the defaulting party and all other WGFP Allottees written notice of the Default in accordance with Section 5.16* and, if applicable, Section 5.4.3* or Section 5.5.4*, on or before the first business day of March following the Default.
- 5.3.3. **Use of WGFP Allotment While in Section 5.3.1* Default**. Beginning on the day notice is received under Section 5.3.2* and continuing for so long as Longmont is in Default under this Section 5.3*, Longmont may place water into storage in its WGFP Allotment but shall have no rights to take water out of storage from or otherwise use any water stored therein; provided, however, that if Longmont is in Default under Section 5.3.1.4* for violation of a rule or regulation of the WGFP Enterprise and such rule or regulation authorizes a WGFP Allottee to take water out of storage from or otherwise use any water stored in its WGFP Allotment during the term of any Default for violation of the rule or regulation, those terms of the rule or regulation shall control. Longmont may continue to use and exercise its rights in the Windy Gap Project during any time it is in Default under this Section 5.3*. Water in storage under Longmont's WGFP Allotment shall continue to be assessed evaporative and other losses during any period of Default under this Section 5.3*. The Subdistrict may continue to use the WGFP Allotment of Longmont under this Section 5.3.3* for storage of Prepositioned C-BT Project Water; however, other WGFP Allottees shall have no right to use the WGFP Allotment of Longmont under this Section 5.3.3* for the term of the Default. Upon Longmont's cure of its Default under Section 5.3.4*, Longmont's rights to use its WGFP Allotment and any water stored therein shall be restored, subject to any operational limitations that may exist.

- 5.3.4. **Cure.** For events of Default other than those Defaults under Sections 5.3.1.1* (Capital C&E Funding Cash payments), 5.3.1.2* (WGFP Financing payments), and 5.3.1.3* (payments of and into Operating Costs & Reserves), Longmont or the WGFP Enterprise, as the case may be, shall have 60 days from receipt of a Notice of Default given under Section 5.3.2.* to cure a Default by performance or acceptance by the non-defaulting party of an alternate means of or plan for cure of the Default. In the case of a proposed alternate means of or plan for cure of a Default by Longmont, the WGFP Enterprise shall give notice of the proposed alternate means or plan for cure to all other WGFP Allottees before taking formal action rejecting or accepting the same. A non-defaulting party's acceptance of a plan for cure of a Default under this Section 5.3.4* shall not constitute a waiver of any rights, claims, defenses, or remedies under this Contract. Longmont's rights to cure events of Default under (1) Sections 5.3.1.1* and 5.3.1.2* are as provided in Section 5.4.5* and (2) Section 5.3.1.3* are as provided in Section 5.5.5*.
- 5.3.5. **Final Default.** For events of Default other than those Defaults under Sections 5.3.1.1* (Capital C&E Funding Cash payments), 5.3.1.2* (WGFP Financing payments), and 5.3.1.3* (payments of and into Operating Costs & Reserves), a Final Default shall occur upon (i) the expiration of the period for cure of a Default if Longmont or the WGFP Enterprise, as the case may be, does not cure the Default or the non-defaulting party does not accept, within the period for cure, a plan for an alternate means of or plan for cure of the Default, or (ii) failure of Longmont or the WGFP Enterprise, as the case may be, to perform under a duly accepted alternate means of or plan for cure of the Default. Notice of a Final Default under this Section 5.3.5* shall be given to the WGFP Enterprise and all WGFP Allottees no later than the first business day of the first February after the cure period terminates. Final Default with respect to events of Default under (1) Sections 5.3.1.1* and 5.3.1.2* shall occur as provided in Section 5.4.6*, and (2) Section 5.3.1.3* shall occur as provided in Section 5.5.6*.
- 5.3.6. **Consequences of Final Default.** The consequences of Final Default shall be as specified in this Contract.
- 5.3.6.1. Capital C&E Funding Cash Payments. The consequence of Longmont's Final Default under Section 5.3.1.1* shall be as described in Section 5.4* of this Contract.
- 5.3.6.2. WGFP Financing. The consequence of Longmont's Final Default under Section 5.3.1.2* shall be as described in Section 5.4* of this Contract.
- 5.3.6.3. Operating Costs & Reserves. The consequence of Longmont's Final Default under Section 5.3.1.3* shall be as described in Section 5.5* of this Contract.

- 5.3.6.4. The consequence of Longmont's Final Default for any breach of this Contract other than a failure to pay amounts due under this Contract shall be as described in Section 5.5.6* and Section 5.5.7* of this Contract, except that Final Defaults for violations of the rules and regulations of the WGFP Enterprise shall be remedied as provided in such rules and regulations and shall result in forfeiture and termination of Longmont's WGFP Allotment in accordance with Section 5.5.6* and Section 5.5.7* only if the violated rule or regulation so provides.
- 5.3.6.5. A Final Default by Longmont shall not terminate any obligation to pay amounts due under this Contract as established by Sections 6*, 7*, and 8* of this Contract.
- 5.3.6.6. Upon a Final Default for any breach of this Contract by the WGFP Enterprise, Longmont and the WGFP Enterprise agree to confer in good faith to attempt to resolve the Final Default, and if conferral fails to resolve the Final Default, then to participate in nonbinding mediation.
- 5.3.7. **Enforcement of Remedies.** In addition to the other remedies set forth herein, including in this Section 5.3*, upon the occurrence of a Final Default as defined herein, the WGFP Enterprise or Longmont, as the case may be, shall be entitled to proceed to protect and enforce the rights vested in such party by this Contract by such appropriate judicial proceeding as such party shall deem most effectual, either by action of law or by suit in equity, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in such party by this Contract or by law, and the prevailing party shall be entitled to an award of its reasonable costs and attorney fees.
- 5.4. **Default on Capital C&E Funding Obligations Under Sections 5.3.1.1* and 5.3.1.2***
- 5.4.1. **Capital C&E Funding Obligations Default.** Failure of Longmont to pay amounts due under Section 6.2* and in accordance with Section 7* or Section 8*, as applicable, shall constitute an event of Default under Section 5.3.1.1* or Section 5.3.1.2*, as applicable.
- 5.4.2. **Grace Period.** If Longmont is in Default under Section 5.4.1* and fully pays its defaulted payments within 30 days after such payments are due, then Longmont shall no longer be considered in Default under Section 5.4.1* and no interest, penalties, or other Default obligations or consequences shall attach.
- 5.4.3. **Notice of Default.** On the first business day after the grace period under Section 5.4.2* runs, the WGFP Enterprise shall notify each WGFP Allottee of the names of all WGFP Allottees, if any, in Default under Section 5.4.1*.

- 5.4.4. **WGFP Financing Liquidity Fund.** For each Loan Allottee in Default under Section 5.4.1*, the WGFP Enterprise shall on the first business day after the grace period under Section 5.4.2* runs apply such Loan Allottee's Liquidity Fund to cover that Loan Participant's defaulted payment.
- 5.4.5. **Cure Period.** Longmont has until the last business day of January of the succeeding calendar year to cure any Default under Section 5.4.1*. A Loan Allottee cures a Default under Section 5.4.1* by reimbursing the Liquidity Fund, plus a late-fee penalty of 5%, and by reimbursing any other expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. A Cash Allottee cures a Default under Section 5.4.1* by paying the defaulted Capital C&E Funding Cash Payment and reimbursing any expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. If Longmont timely cures a Default under this Section 5.4.5*, then no part of Longmont WGFP Allotment shall be forfeited and reallocated under Section 5.4.6*.
- 5.4.6. **Final Default; Penalties and Reallocation of WGFP Allotment.** If Longmont does not timely cure a Default under Section 5.4.5*, then Final Default shall be deemed to have occurred and all or a portion of Longmont's WGFP Allotment shall be permanently forfeited and reallocated as follows:
- 5.4.6.1. For purposes of this Section 5.4.6*, to the extent that Longmont is a Loan Allottee for Initial C&E and Completion C&E (if any) and in Default under Section 5.3.1.2*, "**Vested Allotment**" shall mean that proportion of Longmont's WGFP Allotment attributable to its participation in a WGFP Financing for Initial C&E and Completion C&E (if any) that is equal to the quotient of the amount of its Capital C&E Funding Obligations (not including WGFP Financing Costs other than principal) paid by Longmont immediately prior to the date of the Default under Section 5.4.1* divided by the total amount of Longmont's Capital C&E Funding Obligations for Initial C&E and Completion C&E (if any) satisfied through participation in a WGFP Financing (not including WGFP Financing costs other than principal), rounded down to the nearest whole WGFP Unit; and "**Unvested Allotment**" shall mean the remainder of Longmont's WGFP Allotment attributable to Longmont's participation in a WGFP Financing for Initial C&E and Completion C&E (if any).
- 5.4.6.2. For purposes of this Section 5.4.6*, to the extent that Longmont is a Cash Allottee for Initial C&E and in default under Section 5.3.1.1*, "**Vested Allotment**" shall mean that proportion of Longmont's WGFP Allotment attributable to its satisfaction of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments that is equal to the quotient of the amount of such Capital C&E Funding Obligations for Initial C&E paid by Longmont through Capital C&E Funding Cash Payments, if any, immediately prior to the date of the Default

under Section 5.4.1* divided by the total amount of such WGFP Allottee's Capital C&E Funding Obligations for Initial C&E satisfied through Capital C&E Funding Cash Payments, rounded down to the nearest whole WGFP Unit; and "**Unvested Allotment**" shall mean the remainder of Longmont's WGFP Allotment attributable to Longmont's satisfaction of such Capital C&E Funding Obligations through Capital C&E Funding Cash Payments.

- 5.4.6.3. Upon Longmont's satisfaction of all Capital C&E Funding Obligations for Initial C&E under Section 6.2.1* and Completion C&E under Section 6.2.2*, Longmont's "Vested Allotment" shall be considered to be all (100%) of Longmont's WGFP Allotment, and any other Capital C&E Funding Obligations for Future Extraordinary C&E under Section 6.2.3* shall have no effect on Longmont's "Vested Allotment."
- 5.4.6.4. A WGFP Allottee in Final Default under this Section 5.4.6* shall forfeit any and all right, title, claim, or interest, whether express or implied, in or to its Unvested Allotment plus fifty percent (50%) of its Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment. The WGFP Enterprise shall give notice to all WGFP Allottees of such forfeiture by the first business day of February of the calendar year in which such forfeiture occurs. Longmont, by executing this Agreement, certifies that it has fully disclosed to the governing body of Longmont the existence and consequence of this Contract, and agrees that but for its acceptance of the forfeiture of a WGFP Allotment pursuant to this Section 5.4.6.4*, the WGFP Enterprise would not have entered into this Contract or any other agreement related to WGFP. Longmont waives any and all legal or equitable claims, in any forum, to WGFP, WGFP Allotments, or WGFP assets, or against the WGFP Enterprise, arising out of a Final Default under this Section 5.4* by Longmont. Irrespective of such forfeiture, a WGFP Allottee shall remain liable to the WGFP Enterprise to pay the full amount of its Capital C&E Funding Obligations.
- 5.4.6.5. A defaulting Loan Allottee's forfeited Unvested Allotment and Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment, shall be reallocated under Section 5.4.6.6* to all Loan Allottees that step up in proportion to the amounts each Loan Allottee stepped up thereunder. A defaulting Cash Allottee's forfeited Unvested Allotment and Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment, shall be reallocated to all non-defaulting WGFP Allottees by the WGFP Enterprise under the terms of Section 5.5.7*.
- 5.4.6.6. **Loan Allottee Step-Up.**

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

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

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

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

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

5.5.1. **Operating Costs & Reserves Default.** Longmont's failure to fully pay its payments due under Section 6.3.1* by the last business day of January of each calendar year shall constitute an event of Default.

5.5.2. **Operating Reserve Fund to Cover Deficiency.** In the event that Longmont fails to fully and timely pay its pro-rata share of Operating C&E under Section 6.3.1*, the WGFP Enterprise may draw upon Longmont's portion of the Operating Reserve Fund or such other reserves as the Enterprise Board may establish and maintain in relation to Operating C&E pursuant to Section 6.1.2* to make up any deficiency as a result of the failure of Longmont to make a payment required under Section 6.3*.

- 5.5.3. **Grace Period.** If Longmont is in Default under Section 5.5.1* and fully makes its payments due under Section 6.3* by the last business day of February, then Longmont shall no longer be considered in Default under Section 5.5.1* and no penalties or other Default obligations or consequences shall attach.
- 5.5.4. **Notice of Default.** On the first business day of March of each calendar year, the WGFP Enterprise shall notify Longmont of the names of all WGFP Allottees, if any, whose payments due under Section 6.3* remain in Default after the grace period provided in Section 5.5.3*.
- 5.5.5. **Cure.** Longmont may cure a Default under this Section 5.5* by paying, on or before the last business day of January of the succeeding calendar year, an amount equal to (1) any Operating C&E then due or in Default; (2) a late-fee penalty of 1.5% of the amount of Operating C&E in Default for each month in Default after the grace period provided in Section 5.5.3* terminates, which shall be deposited into the Operating Reserve Fund in addition to any other amounts owed to such fund under this Contract; and (3) any other expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. Alternatively, Longmont may cure a Default under this Section 5.5.5* by obtaining the WGFP Enterprise's acceptance, on or before the last business day of January of the succeeding calendar year, of an alternate means of or plan for cure of the Default and thereafter fully performing under such alternate means of or plan for cure; the WGFP Enterprise shall give notice of the proposed alternate means or plan for cure to all other WGFP Allottees before taking formal action rejecting or accepting the same. The WGFP Enterprise's acceptance of a plan for cure of a Default under this Section 5.5.5* shall not constitute a waiver of any rights, claims, defenses, or remedies under this Contract.
- 5.5.6. **Final Default and Forfeiture.** Final Default shall occur if Longmont fails to cure its defaulted payment under Section 5.5.5* by the date provided therein or fails to fully perform under a duly accepted alternate means of or plan for cure of the Default. If Longmont has committed a Final Default under this Section 5.5.6*, then Longmont shall completely forfeit any and all right, title, claim, or interest, whether express or implied, in or to WGFP, including, without limitation, any and all WGFP Allotments or rights to WGFP assets under this Contract or any other agreement related to the WGFP. Any water in storage under a forfeited WGFP Allotment at the time of forfeiture shall not be available to the defaulting party and shall be reallocated along with the WGFP Allotment as provided in Section 5.5.7*. Longmont, by executing this Contract, certifies that it has fully disclosed to the governing body of Longmont the existence and consequence of this Contract, and agrees that but for its acceptance of the termination of a WGFP Allotment and the consequences of Default, the WGFP Enterprise would not have entered into this Contract or any other agreement related to WGFP. Except for claims of breach under the express terms of this Contract, Longmont waives any and all legal or equitable claims, in any forum, to WGFP, WGFP Allotments, or WGFP Assets, or against the

WGFP Enterprise, arising out of a Final Default under this Contract by Longmont. Irrespective of such termination, Longmont shall remain liable to the WGFP Enterprise to pay the full amount of its Capital C&E Funding Obligations under this Contract. The WGFP Enterprise shall send a notice of forfeiture under this Section 5.5.6* to all WGFP Allottees on the first business day of February in the calendar year in which the cure period terminates.

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

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

of the WGFP Allotment shall pay the deficiency attributable to the amount of WGFP Units purchased.

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

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

5.6. **Liability of WGFP Enterprise and Longmont.**

5.6.1. **WGFP Enterprise Liability.** Any and all obligations of the WGFP Enterprise that may arise under this Contract, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by the WGFP Enterprise. Nothing herein shall be deemed to prevent the WGFP Enterprise from making any payments from any other legally available source. In no event shall the WGFP Enterprise be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Contract or which would cause the WGFP Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, neither the WGFP Enterprise, the Subdistrict, nor the District shall be required to expend any funds or impair any assets of the Subdistrict or the District in the performance of any of the WGFP Enterprise's obligations under this Contract. The obligations of the WGFP Enterprise under this Contract do not constitute a debt or indebtedness of the WGFP Enterprise, the Subdistrict, or the District within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of the WGFP Enterprise, the Subdistrict or the District.

5.6.2. **Allottee Liability.** Any and all obligations of Longmont that may arise under this Contract whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by Longmont from the operation of its [water activity] enterprise. Nothing herein shall be deemed to prevent Longmont from making any payments from any other legally available source. In no event shall Longmont be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado

Constitution in the performance of its obligations under this Contract or which would cause Longmont to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, Longmont shall not be required to expend any funds or impair any assets of its parent entity in the performance of its obligations under this Contract. The obligations of Longmont under this Contract do not constitute a debt, indebtedness or multiple fiscal year obligation of its parent entity within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of Longmont or of its parent entity.

- 5.6.3. Longmont shall not be liable to another WGFP Allottee or to the WGFP Enterprise, and the WGFP Enterprise shall not be liable to the WGFP Allottees, for consequential, indirect, punitive, or special damages arising under this Contract.
- 5.6.4. **Governmental Immunity.** The WGFP Enterprise and Longmont are each relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, defenses, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended from time to time.
- 5.7. **Amendments.** This Contract may be amended only with the written consent of (1) the WGFP Enterprise, (2) at least 75.0% of the WGFP Allottees, and (3) WGFP Allottees that collectively hold at least 75.0% of all WGFP Units; provided, however, that if any WGFP Financing is outstanding, any amendment to this Contract will be subject to the terms and conditions set forth in any Financing Documents; and further provided that this Contract may not be amended without Longmont's written consent in a manner that results in a material adverse impact on the rights of Longmont under this Contract to control its WGFP Allotment or have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees.
- 5.8. **Limitations on Rights of Allottee.** In addition to all the other terms, conditions and covenants contained herein, it is specifically understood and agreed by and between the parties hereto that the rights of Longmont hereunder are subject to the following terms, conditions and limitations, to all intents and purposes as though set forth verbatim herein, and made a part hereof by reference:
- 5.8.1. The Water Conservancy Act of Colorado, C.R.S. § 37-45-101 *et seq.*;
- 5.8.2. The water activity enterprise statute, C.R.S. § 37-45.1-101 *et seq.*;
- 5.8.3. The Carriage Contract; provided that if any amendment to the Carriage Contract is proposed which would affect the right of Longmont to use or reuse its full allotment of Windy Gap Project Water, the approval of such amendment shall first be obtained from Longmont;
- 5.8.4. The rules, regulations and policies of the Enterprise Board, as may be established and amended from time to time; provided, however, that any

such rules, regulations or policies shall not result in a material adverse impact on the rights of Longmont under this Contract to control its WGFP Allotment or to have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees; and

- 5.8.5. The requirements or conditions of any state or federal law, permits or regulatory approvals for the WGFP.
- 5.9. **Future Participation.** Nothing herein shall be construed in any manner that will obligate Longmont to participate in any future or other project of the Subdistrict or the WGFP Enterprise that is not a part of the WGFP or preclude Allottee from participation therein.
- 5.10. **Third Party Beneficiaries.** Any WGFP Allottee shall have the right as a third-party beneficiary to initiate and maintain suit to enforce the obligations of other WGFP Allottees hereunder. The Subdistrict shall have the right as a third-party beneficiary to initiate and maintain suit to enforce its rights under Section 3.4.2*. Except as otherwise provided by this Section 5.10*, Section 3.4.2*, and Section 8.17*, enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the parties.
- 5.11. **Authorization.** Longmont attaches hereto a true and correct copy of Longmont's records authorizing the officers, whose names appear hereon, to enter into this Contract.
- 5.12. **Counterparts.** This Contract may be executed by the WGFP Enterprise and Longmont in separate counterparts, each of which when so executed and delivered shall be an original, and all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes.
- 5.13. **Entire Agreement; Merger of Prior Agreements.** This Contract, together with the statutes, contracts, rules, regulations and policies listed in Section 5.8*, constitute the entire agreement and understanding of the parties and supersedes all prior agreements and understanding between the parties relating to the subject matter hereof. This Contract may not be interpreted, modified or changed by reference to other documents, understandings or agreements, whether written or oral, unless the interpretation, modification or change is subsequently agreed to in writing by the parties hereto.
- 5.14. **Severability.** If one or more clauses, sentences, Sections, paragraphs or provisions of this Contract shall be held to be unlawful, invalid or unenforceable, the remainder of this Contract shall not be affected thereby.
- 5.15. **Choice of Law; Venue.** This Contract shall be governed by the laws of the State of Colorado, and each party hereto consents and submits to venue in the District Court of Weld County, Colorado.

- 5.16. **Notices.** Notices authorized or required to be given under this Contract shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the relevant party's address set forth in **Exhibit C***, or to such other address as a party may provide to the other party and all other WGFP Allottees from time to time. If specified herein, notice required to be given to all WGFP Allottees shall be given to the addresses set forth in **Exhibit C*** or to such other addresses as the WGFP Allottees may provide to the WGFP Enterprise and the other WGFP Allottees from time to time.
- 5.17. **Construction Reports and Meetings.** The WGFP Enterprise will provide Longmont with written monthly reports, together with financial reports regarding payment of charges and costs and expenditures during construction of the WGFP, on the progress of construction and the expenditure of funds. In addition, the WGFP Enterprise shall schedule and hold meetings of all WGFP Allottees at the offices of the District at least quarterly at which time the WGFP Enterprise shall present and discuss the financial reports regarding payment of charges and costs by the WGFP Allottees and the expenditure of funds.
- 5.18. **Financial Reporting Requirements; Audits.** The WGFP Enterprise shall furnish to Longmont, as soon as available and in any event within one hundred eighty (180) days after the end of each Fiscal Year, the financial statements of the WGFP Enterprise as of the end of such Fiscal Year, all prepared in accordance with generally accepted accounting principles and in reasonable detail; provided that the WGFP Enterprise shall be in compliance with this reporting requirement when such information is published on the WGFP Enterprise's website or the Municipal Securities Rulemaking Board's Electronic Municipal Marketplace Access System (EMMA), or any service or services established by the Municipal Securities Rulemaking Board (or any of its successors) as a successor to EMMA. Longmont may request an independent audit of the WGFP Enterprise's financial statements for a Fiscal Year (as well as associated WGFP accounting records, supporting documentation, and billings to WGFP Allottees), to be paid for by Longmont, by sending a written audit request to the WGFP Enterprise before the end of the succeeding Fiscal Year. If more than one WGFP Allottee requests an independent audit for a given Fiscal Year, then only one audit shall occur, and the audit shall be paid for by the WGFP Allottees that requested the audit based on their respective WGFP Participation Percentages.
- 5.19. **Most Favored Party.** The terms and provisions of the WGFP Allotment Contracts for each of the WGFP Allottees will be substantially similar and in no event shall the WGFP Enterprise offer an Allotment Contract to another WGFP Allottee with more favorable provisions based on all of the terms and conditions of the WGFP Allotment Contract as a whole without first offering to Longmont the opportunity to amend this Contract to contain such favorable provisions.
6. **WGFP Funding.**
- 6.1. **Establishment of Funds.**
- 6.1.1. In addition to the funds established in Sections 7.4* and Section 8.4*, the WGFP Enterprise shall establish and maintain an Operating Fund and an

Operating Reserve Fund, with segregated accounts for each WGFP Allottee, to be used for disbursements to pay for the Operating C&E of the WGFP under the WGFP Allotment Contracts.

- 6.1.2. The WGFP Enterprise may establish and maintain additional reserve funds as it shall determine are necessary for operation, maintenance, repair, replacement, rehabilitation, or improvement of WGFP structures or facilities, with segregated accounts for each WGFP Allottee.
- 6.2. **Payment of Capital C&E Funding Obligations.** Longmont agrees to pay its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments under the terms of Section 7*, participation in a WGFP Financing under the terms of Section 8*, or a combination thereof.
- 6.2.1. Initial C&E. The Initial C&E to be funded by the WGFP Allottees shall be \$[XXXXXXXX]*. Longmont agrees to pay its Capital C&E Funding Obligations for Initial C&E under this Section 6.2.1* through [Capital C&E Funding Cash Payments under the terms of Section 7*] [participation in a WGFP Financing under the terms of Section 8*]. **Exhibit A*** indicates each WGFP Allottee's Capital C&E Funding Obligation for such Initial C&E and chosen means of payment for such Initial C&E.
- 6.2.2. Completion C&E. If the WGFP Enterprise determines that the WGFP Allottees' payment of their respective Capital C&E Funding Obligations to fund Initial C&E under Section 6.2.1* will be depleted and Completion C&E must be incurred to complete construction of the WGFP, then the WGFP Enterprise shall give notice as soon as reasonably practicable to the WGFP Allottees of the need to pay additional Capital C&E Funding Obligations under this Section 6.2*, the estimated total amount of Completion C&E to be incurred, and whether the WGFP Enterprise will undertake additional WGFP Financing for the Completion C&E. If the WGFP Enterprise offers the option to participate in additional WGFP Financing, then Longmont shall, within ninety (90) days of such notice, elect in writing to the WGFP Enterprise to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof. If no such election is made, Longmont shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E through participation in a WGFP Financing under Section 6.2.2.2*. The WGFP Enterprise will update **Exhibit B*** from time to time as needed under this Section 6.2.2*.
- 6.2.2.1. To the extent that Longmont elects to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through Capital C&E Funding Cash Payments, then it shall make such payments in accordance with Section 7* and on substantially the same terms as other WGFP Allottees making Capital C&E Funding Cash Payments, and agrees to execute any documents and agreements necessary to bind Longmont to such terms. If Longmont fails to timely make its Capital C&E

Funding Cash Payment for such Completion C&E after so electing, then Longmont shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E through participation in a WGFP Financing in the same manner as provided in Section 6.2.2.2*.

- 6.2.2.2. To the extent that Longmont is obligated to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through participation in a WGFP Financing, then it shall make such payments and participate in such WGFP Financing in accordance with Section 8* and any applicable Financing Document and on substantially the same terms as any other WGFP Allottees participating in the WGFP Financing, and agrees to execute any documents and agreements necessary to bind Longmont to such terms.
- 6.2.3. Future Extraordinary C&E. If the WGFP Enterprise determines that Future Extraordinary C&E must be incurred, then the WGFP Enterprise shall give notice as soon as reasonably practicable to Longmont of the need to pay additional Capital C&E Funding Obligations under this Section 6.2* and the estimated total amount of Future Extraordinary C&E to be incurred. The Enterprise Board, in consultation with the WGFP Allottees, shall set a timeline for the WGFP Allottees to elect in writing to pay the Capital C&E Funding Obligations for such Future Extraordinary C&E under this Contract through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof in accordance with the process described in Sections 6.2.2.1* and 6.2.2.2*, and for the WGFP Allottees to make such payments of their respective Capital C&E Funding Obligations for such Future Extraordinary C&E to the WGFP Enterprise. If no such election is made, Longmont shall be obligated to pay its Capital C&E Funding Obligations for such Future Extraordinary C&E through participation in a WGFP Financing in accordance with the process described in Section 6.2.2.2*.
- 6.2.3.1. Notwithstanding the foregoing in Section 6.2.3*, if an emergency or natural disaster imminently threatens life, health, safety, or damage to the WGFP, the WGFP Enterprise may incur Future Extraordinary C&E to make reasonably necessary emergency repairs to mitigate threatened damage, provided that the WGFP Enterprise shall notify Longmont of such emergency and the need for such expenditures in advance (or if not possible in advance, then as soon as practicable), and whether the WGFP Enterprise will undertake additional WGFP Financing for the future Extraordinary C&E. In the event that the WGFP Enterprise incurs such emergency Future Extraordinary C&E, and if the WGFP Enterprise offers the option to participate in additional WGFP Financing, then Longmont shall have thirty (30) days to elect in writing to pay its Capital C&E Funding Obligations for such emergency Future Extraordinary C&E through Capital C&E Funding Cash Payments in accordance

with the process described in Section 6.2.2.1*. If no such election is made, then Longmont shall be obligated to pay its Capital C&E Funding Obligations for such emergency Future Extraordinary C&E through participation in a WGFP Financing in accordance with the process described in Section 6.2.2.2*.

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

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

- 6.3.1. To the extent that Longmont meets its Capital C&E Funding Obligations under Section 6.2* through participation in WGFP Financing, Longmont hereby agrees to fund all of its portion of Operating Costs & Reserves during the term(s) of any debt incurred for WGFP Financing in which Longmont participates in accordance with Section 8* hereof. When Longmont is not participating in any WGFP Financing or no debt is outstanding on WGFP Financing in which Longmont participates, Longmont agrees to fund its portion of Operating Costs & Reserves by paying to the WGFP Enterprise, on or before the last business day of January of each calendar year, the following amounts:

6.3.1.1. An amount equal to the product obtained by multiplying Longmont's WGFP Participation Percentage by the total amount of all Operating C&E estimated by the WGFP Enterprise to be incurred by the WGFP Enterprise in the then current calendar year, which the WGFP Enterprise shall deposit in the Operating Fund to be drawn upon in proportion to the WGFP Longmont's WGFP Participation Percentages to pay for Operating C&E as they are incurred;

6.3.1.2. Any amount needed to replenish any draws theretofore made on Longmont's subaccount in the Operating Reserve Fund, which the WGFP Enterprise shall deposit in the Operating Reserve Fund;

6.3.1.3. An amount equal to the product obtained by multiplying Longmont's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in the Operating Reserve Fund to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20*, which the WGFP Enterprise shall deposit in the

Operating Reserve Fund to be drawn upon when the moneys contained in Longmont's subaccount in the Operating Fund are insufficient to make payments on Operating C&E; and

- 6.3.1.4. An amount equal to the product obtained by multiplying Longmont's WGFP Participation Percentage by the total amount needed to replenish and maintain such other reserves as the Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2*.

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

Longmont shall to the fullest extent permitted by law fix rates, charges, or assessments so that Longmont will at all times have sufficient money to meet its obligations hereunder, and confirms (1) that, in accordance with C.R.S. § 31-35-402(1)(h), payments of its outstanding obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract (i) constitute special obligations of Longmont, payable solely from the revenues and other moneys derived by Longmont from its water utility enterprise, and (ii) shall be treated as expenses of operating such water utility enterprise; and (2) that there are no liens, charges or encumbrances thereon, or priority of payments with respect thereto, prior to the payment of the expenses of operating such water utility enterprise, including amounts hereunder. Longmont represents that it constitutes an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution (TABOR) and does not have the legal authority to levy a tax. Longmont's outstanding obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations if any, under this Contract do not constitute a general obligation debt or indebtedness of Longmont within the meaning of any constitutional or statutory debt limitations or provisions, and are not payable in whole or in part from the proceeds of ad valorem property or other taxes of Longmont.

- 6.4.1. Nothing herein shall be construed as prohibiting Longmont from (1) using any other funds and revenues legally available therefor for purposes of satisfying any provisions of this Contract or (2) incurring obligations payable on a parity with the obligations under this Contract so long as Longmont's obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract continue to constitute special obligations of Longmont, payable solely from the revenues and other moneys derived by Longmont from its water utility enterprise, and are treated as expenses of operating such water utility enterprise.
- 6.4.2. Longmont shall make payments required by this Contract whether or not the WGFP is permitted, undertaken, completed, operable, operated or retired and notwithstanding the suspension, interruption, interference, reduction, or curtailment of operation of the WGFP in whole or in part for

any reason whatsoever. Such payments are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by the WGFP Enterprise or any other WGFP Allottee under this Contract or any other agreement.

- 6.4.3. Longmont shall take all reasonable steps to maintain its status as an enterprise as defined in Section 20 of Article X of the Colorado Constitution.
- 6.4.4. Longmont shall not be liable under this Contract for the obligations of any other WGFP Allottee except as otherwise expressly set forth herein. Each WGFP Allottee shall be solely responsible and liable for performance of its obligations under its respective WGFP Allotment Contract. The obligation of each WGFP Allottee to make payments under its respective WGFP Allotment Contract is a several obligation and not a joint obligation with those of the WGFP Allottees.
- 6.5. **Security.** Longmont hereby represents and warrants that the revenues of its water utility enterprise are pledged to pay the operation and maintenance expenses of such water utility enterprise along with any indebtedness incurred by Longmont for the purpose of financing or refinancing improvements to its water utility enterprise. Furthermore, Longmont hereby represents and warrants that, in accordance with C.R.S. § 31-35-402(1)(h), Longmont's obligations to pay its pro rata portion of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract constitute special obligations of Longmont, payable solely from the revenues and other moneys derived by Longmont from its water utility enterprise, and shall be treated as expenses of operating such water utility enterprise. Longmont hereby covenants that it will not issue or otherwise incur any indebtedness or other obligation that has a lien on the revenues of its water utility enterprise prior or superior to its obligation to pay the operating expenses of its water utility enterprise.
- 6.6. **Cooperation, Disclosure and Documents.** Longmont shall cooperate with the WGFP Enterprise for the purpose of expediting the issuance of WGFP Financing Obligations (as defined in Section 8.2*) to finance the applicable portion of Capital C&E by providing such information and disclosure as may be reasonably required for such purpose, and by delivering all closing documents reasonably required by the WGFP Enterprise's counsel at the closing of each series of WGFP Financing Obligations. The WGFP Enterprise and Longmont will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to effect any financing and refinancing of Capital C&E and to allow the WGFP Enterprise to comply with reporting obligations, to assure the WGFP Enterprise of Longmont's intention to perform hereunder and for the better assuring and confirming unto the WGFP Enterprise and any Lender (as defined in Section 8.2*) the rights and benefits provided to them herein.
- 6.7. **Maintenance of Tax-Exempt Status of WGFP Financing Obligations.** Notwithstanding any other provision of this Contract, no WGFP Allottee will take any action or omit to take any action, directly or indirectly, in any manner, which would result in any of the WGFP Financing Obligations (as defined in Section

8.2*), the interest on which was intended to be excludable from gross income for federal income tax purposes, being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1986, as amended, by reason of classification of such WGFP Financing Obligations as a “private activity bond” within the meaning of Section 141 of said Code, by reason of classification of such WGFP Financing Obligations as an “arbitrage bond” within the meaning of Section 148 of said Code, or for any other reason.

PART III – PROVISIONS APPLICABLE TO CASH ALLOTTEES

7. Provisions Applicable to Cash Allottees.

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

WGFP Financing (exclusive of a CWCB Loan) to the WGFP Enterprise within sixty (60) days after WGFP Enterprise sends the notice described herein; in such event, the remainder of Longmont's Capital C&E Funding Obligations for Initial C&E under Section 6.2.1* shall still be due to the WGFP Enterprise on or before the date of sale of any WGFP Financing for such amount of Capital C&E, exclusive of a CWCB Loan.

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

proceeds provided by all other WGFP Allottees, whether through the provision of Capital C&E Funding Cash Payments or through participation in WGFP Financing, and each disbursement from the Escrow Fund shall be in an amount where the ratio of such amount to the total disbursements for Capital C&E Funding Obligations for such period is equal to the Cash Allottee's pro-rata share of Capital C&E Funding Obligations attributable to its Capital C&E Funding Cash Payment at the time of any such disbursement.

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

PART IV – PROVISIONS APPLICABLE TO LOAN ALLOTTEES

8. WGFP Financing.

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

- 8.2.6. **“Subordinated Lien Loan Fund”** means a fund established hereunder to provide for the payment of any lien borrowings that are subordinate to WGFP Financing Obligations, including the CWCB Loan.
- 8.2.7. **“Subordinated Lien Loan Reserve Fund”** means a reserve fund established under Section 8.4*.
- 8.2.8. **“WGFP Financing Costs”** means any and all costs associated with a WGFP Financing, including but not limited to (a) the principal of and interest on all WGFP Financings, (b) fees payable to Lenders and others related to the issuance and administration of a WGFP Financing, and (c) reserves required in connection with a WGFP Financing, if any. WGFP Financing Costs are included in the definition of Capital C&E.
- 8.2.9. **“WGFP Financing Obligation”** means the obligation of the WGFP Enterprise to repay an amount of money borrowed from a Lender through a WGFP Financing.
- 8.3. **Issuance or Incurrence of WGFP Financing Obligations.** The WGFP Enterprise will use its best efforts to issue or cause to be issued WGFP Financing Obligations. The WGFP Enterprise may obtain such WGFP Financing in one or more transactions and by one or more means. The WGFP Financing Obligations shall be issued, in one or more issuances, only upon approval of the Enterprise Board. To the extent Longmont participates in any WGFP Financing, Longmont authorizes an initial WGFP Financing for the Initial C&E (less that amount funded by Capital C&E Funding Cash Payments) as described in Section 6.2.1* and defined in **Exhibit A**, and such WGFP Financing for Completion C&E or Future Extraordinary C&E as determined by the Enterprise Board to be necessary under Section 6.2.2* and Section 6.2.3*, respectively.
- 8.4. **WGFP Financing Funds.** In addition to the funds established in Section 6.1*, there shall be established and maintained either by the WGFP Enterprise or under any Financing Documents the following funds and reserve funds, with segregated accounts for each Loan Allottee, to be used under the terms of this Section 8*: a Revenue Fund; a Debt Service Fund; a Debt Service Reserve Fund; a Subordinated Lien Loan Fund; a Subordinated Lien Loan Reserve Fund; and a Liquidity Fund.
- 8.4.1. **Liquidity Fund.** For each WGFP Financing undertaken by the WGFP Enterprise, whether senior lien or subordinate lien, in which Longmont participates, and to the extent of such participation, Loan Allottees shall, on a due date or due dates set by the WGFP Enterprise in its discretion and noticed to the WGFP Allottees, deposit with the WGFP Enterprise an amount equal to the product of Loan Allottee’s WGFP Financing Participation Percentage multiplied by 30% [NOTE: Tentative consensus of 7/6/2020 Legal Committee Meeting] of the maximum annual debt service on such WGFP Financing, which the WGFP Enterprise shall deposit in the Liquidity Fund in segregated accounts for each Loan Allottee. Such Liquidity Fund shall be held by the WGFP Enterprise to be applied separately from any reserves required for the borrowings. Upon full repayment of a WGFP Financing, the WGFP Enterprise shall return the

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

- 8.5. **Payment of Loan Allottee's Capital C&E Funding Obligations and Operating C&E.** To the extent Longmont participates in any WGFP Financing and for the term of any such WGFP Financing, Loan Allottee hereby agrees to pay, on or before the last business day of January of each calendar year, an amount equal to the sum of the following:
- 8.5.1. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount of all Operating C&E estimated by the WGFP Enterprise to become due in the then current calendar year;
 - 8.5.2. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount of principal of and interest to become due, on or prior to January 14 of the following calendar year, on all WGFP Financing;
 - 8.5.3. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Operating Reserve Fund;
 - 8.5.4. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in the Operating Reserve Fund to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20*;
 - 8.5.5. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Debt Service Reserve Fund;
 - 8.5.6. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount needed to increase the amount on deposit in the Debt Service Reserve Fund to equal the amount required to be on deposit therein under any Financing Document;
 - 8.5.7. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Subordinated Lien Loan Reserve Fund;
 - 8.5.8. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount needed to increase the amount on deposit in the Subordinated Lien Loan Reserve Fund to equal the amount required to be on deposit therein under any Financing Document;

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

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

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

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

- 8.15. **Allocation of Project Expenses; Disbursements.** Allottee agrees that all WGFP Financing Costs are to be paid solely from the amounts received by the WGFP Enterprise from the Loan Allottees under the WGFP Allotment Contracts, and are not the responsibility of the WGFP Enterprise, the WGFP Allottees that did not participate in WGFP Financing to the extent that they did not participate, or the District.
- 8.15.1. The Financing Documents relating to WGFP Financing Obligations shall provide that simultaneously at the time of the disbursement of any proceeds of WGFP Financing Obligations there will be a disbursement of proceeds from the funds holding cash payments made by WGFP Allottees not participating in WGFP Financing, and that in each instance the disbursement of proceeds of WGFP Financing Obligations and the disbursement of proceeds from the funds holding cash payments made by WGFP Allottee not participating in WGFP Financing shall be in proportion to the applicable WGFP Participation Percentage of each WGFP Allottee.
- 8.16. **Pledge or Assignment to Lender.** The WGFP Enterprise may pledge and assign to any Lender all or any portion of the payments received under this Contract from Allottee. Such pledge and assignment by the WGFP Enterprise shall be made effective for such time as the WGFP Enterprise shall determine and provide that the Lender shall have the power to enforce this Contract if an event of default occurs under the applicable Financing Document.
- 8.17. **Lender is Third Party Beneficiary.** Any Lender shall have the right as a third-party beneficiary to initiate and maintain suit to enforce this Contract to the extent provided in any Financing Document.

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DATED: _____

WATER UTILITY ENTERPRISE

THE CITY OF LONGMONT

THE CITY OF LONGMONT,

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

Proofread:

Atasi Bhavsar, Assistant City Attorney

APPROVED AS TO CONTENT:

Dale Rademacher, Deputy City Manager

Raymond L. Petros, Jr.
Petros & White, LLC
Special Water Counsel for the City

ATTEST:

By: _____
Title: _____

DATED: _____

WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE

By: _____
[NAME]
[TITLE]

DRAFT

EXHIBIT A
Initial C&E

WGFP Allottee	WGFP Allotment (WGFP Units)	WGFP Participation Percentage	Capital C&E Funding Obligation (Initial C&E)	Capital C&E Funding Cash Payment (Initial C&E)	WGFP Units Attributable to Capital C&E Funding Cash Payment (Initial C&E)	WGFP Financing (Initial C&E)	WGFP Units Attributable to WGFP Financing (Initial C&E)	WGFP Financing Participation Percentage (Initial C&E)
Broomfield	26,464	29.40%	\$0.00	\$0.00	0	\$0.00	0	0.00%
Platte River Power Authority	16,000	17.77%	0.00	0.00	0	0.00	0	0.00%
Loveland	9,587	10.65%	0.00	0.00	0	0.00	0	0.00%
Greeley	9,189	10.21%	0.00	0.00	0	0.00	0	0.00%
Longmont	8,000	8.88%	0.00	0.00	0	0.00	0	0.00%
Erie	6,000	6.66%	0.00	0.00	0	0.00	0	0.00%
Little Thompson Water District	4,850	5.38%	0.00	0.00	0	0.00	0	0.00%
Superior	4,726	5.25%	0.00	0.00	0	0.00	0	0.00%
Louisville	2,835	3.15%	0.00	0.00	0	0.00	0	0.00%
Fort Lupton	1,103	1.22%	0.00	0.00	0	0.00	0	0.00%
Lafayette	900	1.00%	0.00	0.00	0	0.00	0	0.00%
Central Weld County Water District	346	0.38%	0.00	0.00	0	0.00	0	0.00%
Totals	90,000	100.00%	\$ 0.00	\$ 0.00	0	\$ 0.00	0	100.00%

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

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

EXHIBIT C

IF TO:	MAILING ADDRESS
Windy Gap Firming Project Water Activity Enterprise	c/o WGFP Project Manager 220 Water Avenue Berthoud, CO 80513
Broomfield	
Central Weld County Water District	
Greeley	
Erie	
Fort Lupton	
Lafayette	
Little Thompson Water District	
Longmont	
Louisville	
Loveland	
Platte River Power Authority	
Superior	

EXHIBIT D

[Form of Escrow Agreement]

DRAFT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made effective as of _____, 2020, by and between the Windy Gap Firming Project Water Activity Enterprise (the “**WGFP Enterprise**”), and The City Of Longmont, A Municipal Corporation Acting By And Through Its Water Utility Enterprise (the “**Cash Allottee**”), and is made with reference to the following facts:

RECITALS

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

B. Cash Allottee is a municipal corporation, organized under the laws of the State of Colorado and which wholly owns the water utility enterprise that is entering into this agreement.

C. Pursuant to the WGFP Allotment Contract between the WGFP Enterprise and Cash Allottee, Cash Allottee has elected to make an upfront cash payment (the “Capital C&E Funding Cash Payment”) to the WGFP Enterprise for the purpose of paying Cash Allottee’s pro rata obligation, based on the WGFP Participation Percentages, to fund all of Cash Allottee’s pro rata obligation, (“Capital C&E Funding Obligations”). Specifically, Cash Allottee has elected to make a Capital C&E Funding Cash Payment of \$[XXXXXXXX], which is equal to 100% of its Capital Funding Obligations.

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

AGREEMENT

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

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

2. Establishment of Longmont’s Proceeds Fund. Within the Escrow Fund, there is hereby created and established a special fund designated “Longmont’s – Capital C&E Funding Cash Payment Proceeds Fund” (the “Longmont Proceeds Fund”), which shall be held in trust by

the WGFP Enterprise separate and apart from all other funds of the WGFP Enterprise. The Longmont Proceeds Fund shall be a separate account from any other funds or accounts in the Escrow Fund funded with proceeds provided by other WGFP Allottees.

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

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

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

6. Reporting. The WGFP Enterprise shall provide Cash Allottee with periodic reports regarding the disbursement of funds from the Longmont Proceeds Fund under the terms of this Escrow Agreement.

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

8. Counterparts. This Escrow Agreement may be executed by the WGFP Enterprise and the Cash Allottee in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes

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

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

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

THE CITY OF LONGMONT WATER UTILITY ENTERPRISE

THE CITY OF LONGMONT,

ATTEST:

Mayor

City Clerk

APPROVED AS TO FORM:

Proofread:

Atasi Bhavsar, Assistant City Attorney

APPROVED AS TO CONTENT:

Dale Rademacher, Deputy City Manager

Raymond L. Petros, Jr.
Petros & White, LLC
Special Water Counsel for the City

WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE

By: _____

[NAME]

[TITLE]

DRAFT

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 (970) 928-3065	DATE FILED: July 6, 2020 9:22 AM CASE NUMBER: 2017CW3176 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION OF MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AND COLORADO RIVER WATER CONSERVATION DISTRICT FOR AMENDMENT AND DETERMINATION OF DECREES ENTERED IN CASE NOS. CA1768, W-4001, 80CW108, 85CW135, 88CW169, AND 89CW298 In Grand County, Colorado	Case Number: 17CW3176 (CA1768, W-4001, 80CW108, 85CW135, 88CW169, 88CW170, 88CW171, 89CW298)
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, AND ORDER APPROVING APPLICATION FOR AMENDMENT AND DETERMINATION OF DECREES ENTERED IN CASE NOS. CA 1768, W-4001, 80CW108, 85CW135, 88CW169, AND 89CW298 AND FOR DETERMINATION REGARDING THE COLORADO RIVER CONNECTIVITY CHANNEL	

1. This matter comes before the Court pursuant to the Application of the Municipal Subdistrict, Northern Colorado Water Conservancy District (“Municipal Subdistrict”), and, with respect to matters pertinent to the relief requested in Paragraphs 2.A and 2.B of the Application, the Colorado River Water Conservation District (“River District”). The Application relates to the following “Windy Gap Decrees” for the “Windy Gap Water Rights”:

- A. Civil Action No. 1768, District Court, Grand County, State of Colorado, and Case Nos. W-4001 and 80CW108, District Court, Water Division No. 5, entered on October 27, 1980;
- B. Case No. 85CW135, District Court, Water Division No. 5, entered on August 26, 1985;
- C. Case Nos. 88CW169, 88CW170, and 88CW171, District Court, Water Division No. 5, entered on February 6, 1989; and
- D. Case No. 89CW298, District Court, Water Division No. 5, entered on July 19, 1990.

- E. All other decrees entered regarding the above water rights, including, without limitation, decrees entered in Case Nos. 84CW110, 84CW111, 84CW112, 95CW033, 01CW203, and 08CW92.

Descriptions of the Windy Gap Water Rights decreed therein are as follows:

- i. **Name of structure: Windy Gap Reservoir, a part of the Windy Gap Water System.**
- a. Relevant Decrees: CA1768; 84CW112; 88CW169; 95CW33; 01CW203; 08CW92.
 - b. Decreed appropriation date and amounts: June 22, 1967: 445 acre-feet, absolute.
 - c. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
 - d. Legal description of reservoir location and initial point of survey: An onstream reservoir located in Sections 25 and 26, T. 2 N., R 77 W. of the 6th P.M. The northwest corner of the dam is located at a point which bears S. 52°00' W. 1660 feet from the N.E. corner of section 26, T. 2 N., R. 77 W. of the 6th P.M.
 - e. Sources: Colorado River.
- ii. **Name of structure: Windy Gap Pump, Pipeline, and Canal, a part of the Windy Gap Water System.**
- a. Relevant Decrees: CA1768; 84CW112; 88CW169; 89CW298.
 - b. Decreed appropriation date and amount: June 22, 1967: 300 cfs, absolute.
 - c. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
 - d. Legal descriptions of river points of diversion: A point on the north bank of the Colorado River whence the northwest corner of Section 25, T. 2 N., R. 77 W. of the 6th P.M. bears north 17°30' west a distance of 2,380 feet.
 - e. Sources: Colorado River through the Windy Gap Reservoir.
- iii. **Name of structure: Windy Gap Pump, Pipeline, and Canal, First Enlargement**
- a. Relevant Decrees: W-4001; 84CW110; 88CW170; 89CW298.
 - b. Decreed appropriation date and amount: July 9, 1976: 100 cfs, absolute.
 - c. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
 - d. Legal descriptions of river points of diversion: At a point on the north bank of the Colorado River whence the northwest corner of Section 25, Township

2 North, Range 77 West of the 6th P.M. bears north 17°30' West a distance of 2,380 feet.

e. Sources: Colorado River.

iv. **Name of structure: Windy Gap Pump, Pipeline, and Canal, Second Enlargement**

a. Relevant Decrees: 80CW108; 84CW111; 88CW171; 89CW298.

b. Decreed appropriation date and amount: April 30, 1980: 200 cfs, absolute.

c. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.

d. Legal descriptions of river points of diversion: At a point on the north bank of the Colorado River whence the northwest corner of Section 25, Township 2 North, Range 77 West of the 6th P.M. bears north 17°30' West a distance of 2,380 feet.

e. Sources: Colorado River.

The common terms in this Decree are the same as the definitions for those same terms in the 2012 Windy Gap Firing Project Intergovernmental Agreement (the “2012 WGFP IGA”), a copy of which is attached as Exhibit 1. The related agreements described in Exhibit 3 in the 2012 WGFP IGA are not attached to this Decree. The 2012 WGFP IGA includes operational constraints regarding the operation of the Windy Gap Project and Windy Gap Firing Project that, *inter alia*, are intended to protect water uses on the west slope of the continental divide.

2. The Application seeks an amendment of the Windy Gap Decrees and other relief that constitute a “determination of a water right” within the meaning of C.R.S. § 37-92-302(1) and the approval of a plan required by C.R.S. § 37-45-118(1)(b)(II), which states in part that “[a]ny works or facilities planned and designed for the exportation of water from the natural basin of the Colorado River and its tributaries in Colorado” by a water conservancy district “shall be designed, constructed, and operated in such manner that the present appropriations of water and, in addition thereto, prospective uses of water . . . within the natural basin of the Colorado river in the state of Colorado from which water is exported will not be impaired nor increased in cost at the expense of the water users within the natural basin. The facilities and other means for the accomplishment of said purpose shall be incorporated in and made a part of any project plans for the exportation of water from said natural basin in Colorado.” In particular, the Application requests that:

A. The Windy Gap Water Rights be amended to incorporate the 2012 WGFP IGA as an integral and non-severable part of the Windy Gap Decrees, pursuant to the

2012 WGFP IGA Paragraphs V.D. and VI.I, which is further described in Paragraphs 23 and 24 of this Decree;

- B. This Court decree that the “Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project” dated April 30, 1980 (the “1980 Agreement”), as supplemented and amended by the “Supplement to Agreement of April 30, 1980” dated March 29, 1985 (the “1985 Agreement”) and the 2012 WGFP IGA, constitutes full and complete satisfaction of the requirements of C.R.S. § 37-45-118(1)(b)(II) and *Colorado River Water Conservation District v. Municipal Subdistrict, Northern Colorado Water Conservancy District*, 198 Colo. 352, 610 P.2d 81 (1979), for the “Windy Gap Project” and for the “Windy Gap Firming Project” (“WGFP”) as a component of the Windy Gap Project;
- C. This Court decree that the Windy Gap Water Rights may be exercised and shall be administered in accordance with the Windy Gap Decrees for the Windy Gap Water Rights, including and as further described in this Decree, *inter alia*, the operation of the Windy Gap Project and Windy Gap Firming Project as a component of the Windy Gap Project pursuant to the 2012 WGFP IGA and the 2014 Contract between the Municipal Subdistrict and the United States for the Introduction, Storage, Conveyance, Exchange, Substitution and Delivery of Water for Municipal Subdistrict, Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado, 2014 Contract No. 15XX650003, dated December 19, 2014 (the “2014 Contract”). Both the 2012 WGFP IGA and the 2014 Contract contain provisions which address among other things: (i) storage on the east slope of the continental divide of water diverted under the Windy Gap Water Rights; (ii) the exchange of diverted “Windy Gap Project Water” for C-BT Project Water stored in “Chimney Hollow Reservoir” pursuant to “Prepositioning” operations; and (iii) the delivery to and use by the “Middle Park Water Conservancy District” and “Grand County” of water diverted under the Windy Gap Water Rights;
- D. This Court decree that the Colorado River Connectivity Channel may be operated as is further described in Paragraphs 33.D and 33.F of this Decree without the need for a plan for augmentation, and that such operation does not change the Windy Gap Water Rights or the Windy Gap Decrees, modify or change the point of diversion of the Windy Gap Project, or change the location of the Colorado River.

3. The Municipal Subdistrict is a quasi-municipal subdivision of the State of Colorado created pursuant to the provisions of C.R.S. § 37-45-101 et seq.
4. The River District is a political subdivision of and a body corporate under Colorado law, created by the provisions of C.R.S. § 37-46-101 et seq., for the purposes stated therein.
5. The River District and the Municipal Subdistrict were co-applicants in the May 28, 1985, Application for Approval of Modification and Change to Plan of Municipal Subdistrict under C.R.S. § 37-45-118(1)(b)(IV) in Connection with the Windy Gap Project and including in said Modification and Change as an Additional Stipulation Incorporated as an Integral Part of the Windy Gap Decrees, for which a decree was entered on August 26, 1985, in Case No. 85CW135, Water Division No. 5. The River District participates as a co-Applicant in this proceeding for similar purposes as in Case No. 85CW135, specifically for the limited purpose of the relief sought in Paragraphs 2.A. and 2.B, above.
6. Grand County is a signatory to the 2012 WGFP IGA, issued a 1041 permit for the operation of the Windy Gap Project and the Windy Gap Firing Project, and is a recipient of the “Grand County Water Apportionment” pursuant to the 2012 WGFP IGA.
7. Middle Park Water Conservancy District (“Middle Park”) is a political subdivision of the State of Colorado, created under the provisions of C.R.S. § 37-45-101, et seq., for the purposes stated therein. Middle Park is a signatory to the 2012 WGFP IGA and is a recipient of the “Middle Park Water Apportionment” pursuant to the 2012 WGFP IGA.

FINDINGS OF FACT

8. The Application was published in the September 2017 Water Division 5 Resume and published in the following newspapers: the Grand Junction Daily Sentinel, the Rifle Citizen Telegram, and the Middle Park Times. The Application was also sent by certified first class mail to the last known address of every signatory of the 1980 Agreement and the 1985 Agreement described in Paragraph 2.B of this Decree, or the last known address of such signatories’ known successors in interest. Statements of opposition were required to be filed by November 30, 2017. The Board of County Commissioners for the County of Grand, the City and County of Denver acting by and through its Board of Water Commissioners, the Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission, the Colorado River Preservation Group, the Colorado Water Conservation Board, Middle Park Water Conservancy District, the Schmuck

Children’s Trust, the State Engineer and Division Engineer for Water Division 5, Trout Unlimited, and the Upper Colorado River Alliance filed timely statements of opposition in this case. The Colorado River Preservation Group withdrew its statement of opposition on May 23, 2018. The Schmuck Children’s Trust withdrew its statement of opposition on October 7, 2019. The Referee did not consult with the Division Engineer for Water Division 5 due to the statement of opposition filed by the State Engineer and Division Engineer for Water Division 5.

The Windy Gap Project.

9. The Municipal Subdistrict is the owner of the Windy Gap Project, which diverts water from the Colorado River and its tributaries in Grand County, Colorado. The Windy Gap Project may store water in Windy Gap Reservoir or divert water directly from the Colorado River pursuant to the Windy Gap Water Rights. Windy Gap Project Water that has been stored or diverted is conveyed through the Windy Gap Pipeline into Granby Reservoir, a facility of the Colorado-Big Thompson Project (“C-BT Project”). C-BT Project facilities are located in Grand, Summit, Larimer, Weld and Boulder Counties, Colorado. Portions of the C-BT Project facilities are owned by the United States of America, and ownership of portions of C-BT Project facilities, known as the single purpose water facilities, have been transferred by act of the United States Congress to the Northern Colorado Water Conservancy District (“Northern Water”). C-BT Project facilities have in the past and will in the future be used to store, convey, and deliver, including by substitution and exchange, water diverted pursuant to the Windy Gap Water Rights in accordance with such contracts as required by federal law. The most recent contract between Northern Water, the Municipal Subdistrict, and the United States is the 2014 Contract. The 2014 Contract was attached to the Application filed in this case.

10. Windy Gap Project Water is water that is diverted pursuant to the Windy Gap Decrees for the Windy Gap Water Rights. Windy Gap Project Water is delivered to “Windy Gap Project Participants” (also referred to in this Decree as the “Windy Gap Allottees”) of the Municipal Subdistrict. Windy Gap Allottees may, with the approval of the Board of Directors of the Municipal Subdistrict and subject to the requirements of the Water Conservancy Act, lease Windy Gap Project Water or transfer an Allotment of Windy Gap Project Water. Windy Gap Project Water is also delivered from Granby Reservoir to Middle Park and to Grand County in accordance with the terms and conditions of the 2012 WGFP IGA and in accordance with this Decree.

11. The purpose of the Windy Gap Project and the WGFP is to meet the existing and future demands for water for municipal, irrigation, industrial and recreational uses within the existing

and future boundaries of the Municipal Subdistrict and for the purposes and in a manner that satisfies the requirements of section 37-45-118(1)(b)(II) of the Water Conservancy Act and the 2012 WGFP IGA. These demands occur throughout the water year, which requires that Windy Gap Project Water be diverted by the Municipal Subdistrict when the Windy Gap Water Rights are in priority and legally entitled to divert, and then delivered to Windy Gap Project Allottees for beneficial use at times when the Windy Gap Water Rights may or may not be in priority. Windy Gap Project Water is either (i) delivered directly to a Windy Gap Project Allottee, (ii) stored in Granby Reservoir for subsequent delivery to a Windy Gap Project Allottee for beneficial use or for storage and subsequent beneficial use by a Windy Gap Project Allottee, or (iii) stored in Granby Reservoir for delivery to Middle Park and Grand County to meet the requirements of section 37-45-118(1)(b)(II) of the Water Conservancy Act and the 2012 WGFP IGA. Windy Gap Project Water is and may in the future be used to generate hydroelectric power prior to and after delivery.

Windy Gap Water Rights.

12. Conditional water rights for the Windy Gap Water Rights were originally confirmed in decrees entered in Case Nos. CA1768, W-4001, and 80CW108. The Decree entered in Case No. 85CW135 amended the decrees entered in CA1768, W-4001, and 80CW108.

13. Diligence decrees for the Windy Gap Water Rights were entered in Case Nos. 84CW110, 84CW111, 84CW112, 88CW169, 88CW170, 88CW171, 95CW033, 01CW203, and 08CW92.

14. Decrees to make portions of the Windy Gap Water Rights absolute were entered by this Court on February 6, 1989 in Case No. 88CW169 and on July 19, 1990 in Case No. 89CW298. These Decrees found that Windy Gap Project Water was “subsequently delivered to Windy Gap Participants through the storage, carriage and delivery facilities of the Colorado-Big Thompson Project. . . .” 88CW169 Decree at 6; *see also* 89CW298 Decree at 5–6 (similar language). The C-BT Project includes storage facilities on both the west slope and the east slope of the continental divide.

15. The absolute decrees for the Windy Gap Water Rights include the right to the “reuse and successive uses of the water to extinction.” 88CW169 Decree at 8, ¶ 20. “The Subdistrict has also asserted and exercised its right to use, reuse, and successively use to extinction all water diverted pursuant to the Windy Gap Decrees.” 89CW298 Decree at 6, ¶ 11.k. Accordingly, this Court decreed that: “Absolute water rights are hereby awarded to the Subdistrict . . . , including reuse, successive use and use to extinction of such waters . . .” 89CW298 Decree at 6–7, ¶ 14.

16. The absolute decrees for the Windy Gap Water Rights include “municipal” and “industrial” uses, both of which include the generation of hydropower. 88CW169 Decree at 4, ¶ 16; 89CW298 Decree at 3, ¶ 10.E. Windy Gap Project Water is used to generate hydroelectric power after diversion through the Adams Tunnel, and may be used to generate hydroelectric power before or after delivery to Middle Park and Grand County in accordance with the 2012 WGFP IGA.

17. The 1980 Agreement and the 1985 Agreement have been incorporated as an integral part of the Windy Gap Water Rights in prior water court proceedings and Decrees. For example, the Decree entered in Case No. 89CW298 found, *inter alia*, that:

The decrees entered in Case Nos. C.A. 1768, W-4001, 80CW108 and 85CW135 approved, and incorporated as an integral part of these decrees, the “Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project”, dated April 30, 1980, as modified in part by the “Supplement to Agreement of April 30, 1980”, dated March 29, 1985 . . . [which agreements] constitute[] a full and complete plan which satisfies the requirements of C.R.S. § 37-45-118(1)(b)(IV) for the diversion by the Windy Gap Project under its decrees of up to 65,000 acre feet annually on a ten-year running average with no more than 90,000 acre feet in any given year, as measured through the Alva B. Adams Tunnel of the C-BT Project. In addition, up to 3,000 acre feet of water shall be diverted annually by the Windy Gap Project for Middle Park Water Conservancy District upon the request of that District.

89CW298 Decree at 4, ¶ 11.c. C.R.S. § 37-45-118(1)(b)(IV) is now codified as C.R.S. § 37-45-118(1)(b)(II). The limitation on diversions by the Windy Gap Project of an annual average of 65,000 acre feet as calculated on a ten-year running average with no more than 90,000 acre feet in any given year is referred to in this Decree as the “WG Volumetric Limits.” Other decrees for the Windy Gap Project include similar language. *See, e.g.*, 88CW169 Decree at 5, 7; 88CW170 Decree at 4; 88CW171 Decree at 4–5.

18. The 1980 Agreement that is incorporated in the Decrees for the Windy Gap Water Rights provides that: “Within the limits and conditions contained herein, Subdistrict may build and operate such facilities as needed to accomplish the purposes of this Agreement.” 1980 Agreement at 23. The “limits and conditions contained herein” include, *inter alia*, the WG Volumetric Limits. The 2012 WGFP IGA recognizes the right of the Municipal Subdistrict to

construct facilities to include the construction and use of Chimney Hollow Reservoir or “Alternative Reservoirs” provided that the cumulative “active storage capacity” in the combination of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet.

19. The Court record for the adjudication of the Windy Gap Water Rights provides confirmation that, subject to the WG Volumetric Limits contained in the 1980 Agreement and 1985 Agreement and subject to the terms and conditions of this Decree, storage of Windy Gap Project Water on the east slope of the continental divide was and is contemplated by the Windy Gap Water Rights, including¹:

- A. Exhibit MS 1, which was introduced into evidence in Case No. CA1768, depicts the Windy Gap Water System and the facilities of the C-BT Project, which includes storage facilities in Grand, Boulder, and Larimer Counties.
- B. Exhibit MS 6, which was introduced into evidence in Case No. CA1768, states that: “Mr. Hallenbeck stated that the prime object seemed to be how to find a way to get western slope water through the Big Thompson project. The tunnel was designed for 310,000 acre feet per year. . . . Without eastern slope storage we cannot expect 100%, and we should still pursue this storage . . . [with] the Windy Gap [P]roject.”
- C. The 1980 Agreement, which was filed as a Stipulation and incorporated within the Decrees in Case Nos. CA1768, W-4001, 80CW108, and 89CW298, explicitly refers to the Draft Environmental Impact Statement for the Windy Gap Project (“Windy Gap Project DEIS”). The Windy Gap Project DEIS contains the following references to the storage of water on the east slope of the continental divide:
 - i. Figure II-1 of the Windy Gap Project DEIS depicts water storage facilities associated with the C-BT Project and other non-C-BT Project storage facilities in Larimer, Weld, and Boulder Counties. Table II-I further describes C-BT Project storage facilities.

¹ Applicants summarized the agreements and factual record for the Windy Gap Water Rights during a status conference held in this case on November 27, 2018.

- ii. Figure II-9a of the Windy Gap Project DEIS is a map titled “East Slope Storage and Exchange Facilities 1979” that lists and depicts numerous storage reservoirs located on the East Slope under the categories of “Rawhide Exchange” and “Windy Gap East Slope Storage.” Page II-38 of the Windy Gap Project DEIS states that “Once the [Windy Gap] project is in full operation, delivery from the eastern slope reservoirs will occur on a relatively firm basis each year. . . .”
- iii. Section IV.C.2.d of the Windy Gap Project DEIS is titled “East Slope Distribution and Storage.” This section explains that “The [Windy Gap] project water will then be transferred from one of the above locations through facilities or to the existing storage locations throughout the project area. . . . A list of the respective cities’ owned or leased storage facilities which are to be used for regulating Windy Gap water is shown in table IV-5 (locations are shown in Figure II-9A). When the reservoirs listed cannot be directly supplied from C-BT Project facilities, an exchange will be effected with other users in the project area. Unused storage capability in the vicinity of the Windy Gap entities has been reported to be in excess of 90,000 acre-feet (NCWCD, 1978).” Windy Gap Project DEIS at IV-10, IX-7.
- iv. The 1981 Final Environmental Impact Statement (“1981 FEIS”) for the Windy Gap Project stated that “. . . Windy Gap participant storage capabilities other than the C-BT Project must be utilized. The study indicates that this participant storage capacity should be approximately 90,000 acre feet. . . .” 1981 FEIS at IV-68. Figure II-1 of the 1981 FEIS is a map titled “East Slope Storage and Exchange Facilities” that lists numerous water storage reservoirs located on the East Slope of the continental divide under the categories of “Rawhide Exchange” and “Windy Gap East Slope Storage.”

20. The WG Volumetric Limits for the Windy Gap Project and the terms and conditions for the operation of the Windy Gap Project contained in the 1980 Agreement, 1985 Agreement, 2012 WGFP IGA, and the 2014 Contract protect existing and future water rights on the west slope of the continental divide by ensuring that there will be no expansion of use under the Windy Gap Decrees.

21. The Windy Gap Decrees for the Windy Gap Water Rights approved the Municipal Subdistrict's plan as satisfying the requirements of C.R.S. § 37-45-118(1)(b)(II) and *Colorado River Water Conservation District v. Municipal Subdistrict, Northern Colorado Water Conservancy District*, 198 Colo. 352, 610 P.2d 81 (1979), for the Windy Gap Project. See 89CW298 Decree at 4, 88CW169 Decree at 5, 88CW170 Decree at 4, 88CW171 Decree at 4–5; 85CW135 Decree at 3. The plan confirmed by the previously cited decrees, as supplemented and partially amended by the 2012 WGFP IGA, protects present appropriations of water and prospective users of water on the west slope of the continental divide from injury or expanded use of Windy Gap Project Water for the Windy Gap Project as authorized by the Windy Gap Decrees.

The Windy Gap Firming Project.

22. The Municipal Subdistrict plans to construct and operate the Windy Gap Firming Project as a component of the Windy Gap Project. The Windy Gap Firming Project includes the construction of Chimney Hollow Reservoir, which will be located in Sections 4, 5, 8, and 9, T4N, R70W, and Sections 33 and 34, T5N, R70W, 6th P.M., Larimer County, Colorado, or an Alternative Reservoir as described in the 2012 WGFP IGA and 2014 Contract.

23. The 2012 WGFP IGA was entered into by the Municipal Subdistrict and its Windy Gap Firming Project Water Activity Enterprise, River District, Middle Park, Grand County and the Northwest Colorado Council of Governments on July 12, 2016. The 2012 WGFP IGA was attached to and incorporated within the Application filed in this case; the 2012 WGFP IGA, including the letter dated May 14, 2020, which is attached to the 2012 WGFP IGA as part of Exhibit 1, are incorporated within and are a non-severable part of this Decree. As was the case with the 1985 Agreement, the 2012 WGFP IGA is an Additional Stipulation in this case. The 2012 WGFP IGA provides, *inter alia*, for the construction by the Municipal Subdistrict of up to 90,000 acre feet of cumulative active storage capacity in the combination of Chimney Hollow Reservoir and any Alternative Reservoirs constructed pursuant to Paragraph I.G of the 2012 WGFP IGA as a part of the Windy Gap Firming Project (the “Authorized WGFP Reservoir Capacity”). The 2012 WGFP IGA also provides, *inter alia*, that: “Except to the extent and unless it is terminated, this WGFP IGA shall be incorporated within and be a non-severable part of the Windy Gap Decrees.” 2012 WGFP IGA, Paragraph VI.I. The 2012 WGFP IGA includes, *inter alia*, operational constraints regarding the operation of the Windy Gap Project and Windy Gap Firming Project that are intended to protect water uses on the west slope of the continental divide. The Windy Gap Firming Project also includes the exchange of Windy Gap Project Water for C-

BT Project Water stored in Chimney Hollow Reservoir pursuant to Prepositioning operations described in the 2012 WGFP IGA and the 2014 Contract.

24. Operation of the Windy Gap Firming Project as a component of the Windy Gap Project will result in Windy Gap Project Water being (i) delivered directly to Windy Gap Project Allottees for beneficial use, (ii) stored in Granby Reservoir for subsequent delivery to Windy Gap Project Allottees, (iii) stored in Granby Reservoir for subsequent delivery to and use by Middle Park pursuant to and for the uses provided in the 1980 Agreement, 1985 Agreement, and 2012 WGFP IGA (“Such uses shall include direct use or use by substitution, augmentation, or exchange, including but not limited to, exchange into Wolford Mountain Reservoir or replacement to Denver Water by entities that have Middle Park Contracts, and any other use authorized in a subsequent written agreement between Middle Park, the [Municipal] Subdistrict, and WGFP Enterprise”), (iv) stored in Granby Reservoir for subsequent delivery to and use by Grand County in the Colorado River or downstream of Grand County pursuant to the 2012 WGFP IGA, (v) delivered directly for storage by Windy Gap Project Allottees in Chimney Hollow Reservoir pursuant to the 2012 WGFP IGA and the 2014 Contract for subsequent release for beneficial use or, subject to the provisions of this Decree, subsequent storage and beneficial use, and/or (vi) stored in Granby Reservoir and delivered for subsequent storage either directly, by exchange, or by substitution by Windy Gap Project Allottees in Chimney Hollow Reservoir pursuant to the 2012 WGFP IGA and the 2014 Contract for subsequent release for beneficial use or, subject to the provisions of this Decree, subsequent storage and subsequent beneficial use.

25. Windy Gap Project Water that is delivered directly to a Windy Gap Project Allottee, or stored in Granby Reservoir and subsequently delivered to a Windy Gap Project Allottee, or delivered to, stored in, and released from Chimney Hollow Reservoir, may also be stored in (i) any Existing Local Storage facilities (facilities owned, controlled, or used pursuant to contract by a Windy Gap Project Allottee as of July 12, 2016) on the east slope of the continental divide, (ii) any Windy Gap Project Allottee’s “Operational Storage” (meaning structures used as terminal storage for water supply system management, the operation of which when analyzed on a first-in-first-out (FIFO) basis verifies that water retention does not exceed 12 months) on the east slope of the continental divide, and (iii) any “Reuse Storage” (meaning storage on the east slope of the continental divide following delivery to and initial beneficial use by a Windy Gap Participant of Windy Gap Project Water for subsequent reuse, successive use, or other disposition to its extinction). For purposes of the foregoing definition of Reuse Storage in this Decree only, a beneficial use for non-consumptive hydropower generation before or after delivery to a Windy Gap Participant shall not be considered an initial beneficial use.

26. Except as authorized by Paragraph 24 and Paragraph 25 of this Decree or precluded by Paragraph 30.B. of this Decree, this Decree neither precludes nor permits storage of Windy Gap Project Water in reservoirs on the east slope of the continental divide that are constructed, owned, controlled, or used pursuant to contract or agreement by a Windy Gap Project Allottee after July 12, 2016, and the doctrines of issue preclusion and claim preclusion shall not affect any future litigation on the issue of storage of Windy Gap Project Water in reservoirs on the east slope of the continental divide constructed after July 12, 2016 that are not authorized by Paragraph 24 and Paragraph 25 of this Decree, or precluded by Paragraph 30.B. of this Decree.

27. The Municipal Subdistrict will, on an annual basis, provide to Grand County and the River District a list identifying the location and amount of any Windy Gap Project Water in storage on the east slope of the continental divide that is not stored in Operational Storage or Reuse Storage.

28. Applicants Municipal Subdistrict and the River District have entered into Stipulations for Entry of Decree with the Objectors who did not file withdrawals in the case. The Stipulations for Entry of Decree address all issues and claims that the Parties to the Stipulations for Entry of Decree filed with the Court in this case would otherwise assert in this case. The Stipulations for Entry of Decree and the entry of this Decree do not provide any legal or factual precedent for, or waiver of claims and defenses related to, any other projects, water rights, or agreements.

29. The 1980 Agreement, 1985 Agreement, and 2012 WGFP IGA were the subject of evidence considered by the Court in this matter. The 2012 WGFP IGA supplements and partially amends the 1980 Agreement and the 1985 Agreement.

30. The Stipulations for Entry of Decree between the Municipal Subdistrict and Grand County and Middle Park contained the following provisions that interpret the 2012 WGFP IGA, which provisions are incorporated into and made a part of this Decree:

- A. For the purpose of the calculation required by Paragraphs III.E.3.c. (i) and (ii) of the 2012 WGFP IGA, Windy Gap Project Water that is in any local east slope storage used by a WGFP Participant shall be added to the amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Granby Reservoir on behalf of WGFP Participants. The Subdistrict will provide Middle Park with a list of storage facilities where WGFP Participants' Windy Gap Project Water is stored and an accounting of the calculation referenced above prior to any

reduction in delivery to Middle Park. Storage for the purposes of this Paragraph does not include Reuse Storage.

- B. For the purposes of preventing an expansion of Prepositioning under the 2012 WGFP IGA and the 2014 Contract, any water delivered to WGFP Participants through Chimney Hollow Reservoir, either directly or by exchange, will not be placed in New Local Storage on the east slope. “New Local Storage” is storage, other than Operational Storage or Reuse Storage, constructed after July 12, 2016.

31. The 2012 WGFP IGA, in combination with the 1980 Agreement and 1985 Agreement, satisfy the requirements of C.R.S. § 37-45-118(1)(b)(II). The 2012 WGFP IGA includes, *inter alia*, the following elements:

- A. A requirement that “the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet.” (Authorized WGFP Reservoir Capacity) (2012 WGFP IGA, ¶ I.G)
- B. Preservation of certain benefits and measures for the benefit of water rights and water users on the west slope of the continental divide in the event that the Windy Gap Firming Project is not completed. (2012 WGFP IGA, ¶ II)
- C. The Apportionment of Windy Gap Project Water to Middle Park. (2012 WGFP IGA, ¶ III. E, G, H, I, J and K)
- D. The Apportionment of Windy Gap Project Water to Grand County. (2012 WGFP IGA, ¶ III. F, G, H, I, J and K)
- E. Protection of the water supply for Wolford Mountain Reservoir. (2012 WGFP IGA, ¶ IV.A)
- F. Protection of present and future water rights on the Colorado and Fraser Rivers above Windy Gap Reservoir. (2012 WGFP IGA, ¶ IV.B)
- G. An agreement to abandon the conditional water right held by the Municipal Subdistrict for Jasper Reservoir, as was decreed in Case No. CA1768 and the subsequent diligence decrees in Case Nos. 84CW112, 88CW169, 95CW33,

01CW203, and 08CW92, upon completion of the Windy Gap Firming Project.² (2012 WGFP IGA, ¶ IV.E.)

- H. Requirements for water accounting for the Windy Gap Project and Windy Gap Firming Project. (2012 WGFP IGA, ¶ IV.G)
- I. Limitations on the Municipal Subdistrict’s acquisition of existing water rights, construction of additional water supply facilities, appropriation of new water rights in Grand County and appropriation of new water rights in Water Division No. 5 that will result in depletions of water from Grand County. (2012 WGFP IGA, ¶ IV.H.2)
- J. Execution of an agreement regarding the “Shoshone Outage Protocol” and the obligation to participate in future negotiations regarding Colorado River management. (2012 WGFP IGA, ¶ IV.K)
- K. Limitations on the diversion of water by the Windy Gap Project and Windy Gap Firming Projects during free-river conditions. (2012 WGFP IGA, ¶ IV.O)
- L. Agreement to conditions of the federal authorization for the Windy Gap Project and Windy Gap Firming Project including:
 - i. A provision relating to the active storage and total combined volume of C-BT Project Water in both Granby and Chimney Hollow Reservoirs of 465,568 acre feet of water. (2012 WGFP IGA, ¶ VI.C.1), and
 - ii. Provisions relating to spills and releases from Granby Reservoir.
- M. A provision that states that: “The Parties agree that performance of this WGFP IGA, compliance with any mitigation requirements for the WGFP imposed by a

² In Case No. 08CW92, the Municipal Subdistrict filed a Statement of Abandonment and Cancellation on April 30, 2018, and the Water Referee issued an order of abandonment and cancellation on May 1, 2018, for the conditional aspects of the Jasper Reservoir water right, the Jasper Pump and Pipeline water right, and the Windy Gap Reservoir water right. Pursuant to the Referee’s May 1, 2018, order, the Municipal Subdistrict fully retained and specifically did not abandon or cancel the 445 acre-foot portion of the Windy Gap Reservoir water right that is absolute.

federal or state agency, and compliance with the requirements of a Grand County 2012 Windy Gap Firming Project ("1041") Permit for the WGFP shall constitute full and complete satisfaction of the obligations of the Subdistrict and WGFP Enterprise to set forth and complete a plan with respect to the WGFP which satisfies the requirements of C.R.S. § 37-45-118(1)(b)(II) of the Water Conservancy Act.” (2012 WGFP IGA, ¶ VI.F)

This is a partial list of elements of the 2012 WGFP IGA. The 1980 Agreement, the 1985 Agreement, and the 2012 WGFP IGA are incorporated in whole within and made a non-severable part of the Windy Gap Water Rights and this Decree. This partial list and the omission of other elements or aspects of these Agreements does not modify or affect the validity or enforceability of any of the provisions of the 1980 Agreement, the 1985 Agreement, and the 2012 WGFP IGA.

32. The history of the Windy Gap Water Rights, which includes extensive litigation and negotiations over a period of decades that resulted in the 1980 Agreement, 1985 Agreement, and 2012 WGFP IGA, and the compliance with the requirements of the Water Conservancy Act for the Windy Gap Project and Windy Gap Firming Project provide a unique factual basis for confirming that storage of water on the east slope and the west slope of the continental divide, as described in this Decree, is authorized by the Windy Gap Water Rights, and that the Windy Gap Decrees, including this Decree and the 2012 WGFP IGA incorporated herein, contains terms and conditions that ensure that the operation of the Windy Gap Project and Windy Gap Firming Project will not result in an expanded use of the Windy Gap Water Rights.

Colorado River Connectivity Channel.

33. Windy Gap Reservoir is an on-channel reservoir on the Colorado River. Consistent with its permits and prior agreements, the Municipal Subdistrict, with the support of the River District, Grand County, Colorado Water Conservation Board, Colorado Parks and Wildlife, Trout Unlimited, the Upper Colorado River Alliance, and other persons and entities, intends to construct and operate the Windy Gap Connectivity Channel from a point on the Colorado River just upstream of Windy Gap Reservoir to a point just downstream from Windy Gap Reservoir in order to provide environmental benefits to the Colorado River as described below (hereinafter the “Colorado River Connectivity Channel” or “CRCC”). As further described below, the Application included a request for determinations concerning the Windy Gap Water Rights as they pertain to the CRCC pursuant to C.R.S. § 37-92-302(1)(a) and consistent with *Southern Ute Indian Tribe v. King Consolidated Ditch Company*, 250 P.3d 1226, 1233-34 (Colo. 2011).

- A. CRCC Location. The CRCC will be constructed within a portion of what is now the footprint of the on-channel Windy Gap Reservoir, as depicted in Exhibit 2 hereto, and located in Section 25 and 26, T. 2 N., R 77 W. of the 6th P.M, Grand County, Colorado.

- B. Benefits of the CRCC. Based upon studies completed to date, the CRCC is expected to provide significant environmental benefits for the Colorado River by enhancing sediment transport, reducing streambed armoring, moderating elevated water temperatures, providing connectivity for aquatic life and fish passage, and enhancing aquatic habitat.

- C. Location of Colorado River. The mainstem channel of the Colorado River will remain in the existing natural channel flowing into and through the Windy Gap Reservoir and the construction and operation of the CRCC will not modify the location of the mainstem channel of the Colorado River. An on-channel gated structure or similar structure will separate and control the river flow into the mainstem channel and the CRCC.

- D. CRCC Operations. Subject to Paragraph 33.F below, the CRCC will be operated by the Municipal Subdistrict so that water not needed in the mainstem of the Colorado River to satisfy the in-priority needs of the Windy Gap Water Rights will flow down the CRCC up to its full capacity including the capacity of the CRCC floodplain. The only exceptions to the aforementioned CRCC operations are the minimum flow necessary to protect the water quality in Windy Gap Reservoir to a reasonable degree; flows legally required for delivery to downstream water rights that can only be delivered through Windy Gap Reservoir, if any; flow modifications required for construction, operation, maintenance, repair, and replacement of the CRCC; or requirements of state or federal authorizations, approvals, or agreements that are required for the construction, operation, maintenance, repair, and replacement of the CRCC. A study and an operations agreement is planned to address management of Windy Gap Reservoir water quality while maximizing flows down the CRCC, and such study and agreement must be reasonably acceptable to the Municipal Subdistrict and the other parties specifically named in Paragraph 33. A water right was not sought in the Application, and is not decreed herein, for the CRCC and thus no priority is assigned to the CRCC and it will not be entitled to call for water.

Subject to the exceptions identified above, it is intended that all physically available water, such as water being delivered to or called by water rights downstream of Windy Gap Reservoir, free-river water, and water released from upstream storage, will be conveyed through the CRCC, including without limitation, water made available as described in Case No. 11CW152, water released from Lake Granby pursuant to Municipal-Recreation contracts with the City of Grand Junction or other municipal entities in the Grand Valley, and water made available to Grand County and Middle Park pursuant to the 2012 WGFP IGA. Exchanges of water may be made by any water user through the CRCC, subject to the requirements of applicable law. The CRCC will be located within the existing footprint of the on-channel Windy Gap Reservoir, which will reduce the surface area of the on-channel Windy Gap Reservoir. The CRCC will be a bypass structure that is part of a streambed reservoir facility contemplated under section 37-84-117(5), C.R.S. Replacement of evaporation from the CRCC is not required because evaporation from the CRCC will be less than the natural depletions to the stream flow that would have resulted if the reservoir facility were not in existence in the location of the CRCC. § 37-84-117(5), C.R.S. Such evaporation also will be no greater than presently occurs as such water is passed through the existing Windy Gap Reservoir. Evaporation from the re-sized on-channel Windy Gap Reservoir will be less than occurs from the existing on-channel Windy Gap Reservoir, and will be replaced in accordance with the applicable policies of the State Engineer for on-channel reservoirs.

- E. Requests for Determinations of the Water Court. The Application seeks a ruling regarding the following determinations: (1) that the flow of water through the CRCC as described herein is lawful, will not result in injury to any water rights, and will be administered by State Water Officials consistent with the terms and conditions of this decree; (2) that the mainstem of the Colorado River will remain within the existing natural channel flowing into and through the Windy Gap Reservoir and that construction and operation of the CRCC consistent with this Decree does not and will not, in any way, modify that location of the Colorado River; (3) the construction and operation of the CRCC consistent with this Decree does not and will not, in any way, modify or change the Windy Gap Water Rights, or result in a change in the point of diversion for the Windy Gap Water Rights from the Colorado River; (4) augmentation or replacement of any evaporative losses associated with the CRCC is not required; and (5) exchanges of water may

be made by any water user through the CRCC, subject to the requirements of applicable law.

- F. Prior Agreements and Permit Conditions. This Decree does not modify prior agreements and obligations regarding the construction and operation of the CRCC.

CONCLUSIONS OF LAW

34. The Findings of Fact set forth above are incorporated in the Conclusions of Law in this Decree.

35. This Court has jurisdiction to make determinations concerning the Windy Gap Water Rights as pertains to the CRCC and the lawfulness of the operations of the CRCC pursuant to C.R.S. § 37-92-302(1)(a) and consistent with *Southern Ute Indian Tribe v. King Consolidated Ditch Company*, 250 P.3d 1226, 1233-34 (Colo. 2011).

36. The Application seeks an amendment of the Windy Gap Decrees and other relief that constitute a “determination of a water right” within the meaning of C.R.S. § 37-92-302(1) and the approval of a plan required by C.R.S. § 37-45-118(1)(b)(II). The Court has jurisdiction to amend the Windy Gap Decrees and to grant the relief sought in the Application under C.R.S. § 37-92-302(1) and C.R.S. § 37-45-118(1)(b)(II). The relief sought in the Application and the Decree entered in this case does not constitute a change of the Windy Gap Water Rights.

37. The Windy Gap Decrees for the Windy Gap Water Rights are amended to incorporate the 2012 WGFP IGA as an integral and non-severable part of the Windy Gap Decrees.

38. The 1980 Agreement, as supplemented and amended by the 1985 Agreement and 2012 WGFP IGA, constitutes full and complete satisfaction of the requirements of C.R.S. § 37-45-118(1)(b)(II) and *Colorado River Water Conservation District v. Municipal Subdistrict, Northern Colorado Water Conservancy District*, 198 Colo. 352, 610 P.2d 81 (1979), for the Windy Gap Project and Windy Gap Firing Project.

39. The Windy Gap Water Rights may be exercised and shall be administered as described, and all terms and conditions necessary for the administration of the Windy Gap Water Rights are set forth in the Decrees entered in Case Nos. CA1768, W-4001, 80CW108, 85CW135,

88CW169, 88CW170, 88CW171, and 89CW298 and this case, including the exhibits or attachments that were expressly incorporated into such Decrees.

40. The WG Volumetric Limits for the Windy Gap Water Rights, as described in Paragraph 17 of this Decree, when combined with the requirements of the 2012 WGFP IGA and all the terms and conditions of this Decree, prevent the unlawful expansion of the Windy Gap Water Rights and prevent injury to other existing and conditional water rights from the operation of the Windy Gap Project and Windy Gap Firming Project in accordance with the Decrees for the Windy Gap Water Rights and this Decree.

41. This Decree does not and shall not alter or amend Senate Document No. 80, or the Blue River Decrees (Final Judgment entered on October 12, 1955, in Consolidated Cases Nos. 5016 and 5017, and the Findings of Fact, Conclusions of Law and Final Decree entered on October 12, 1955, in Consolidated Cases Nos. 2782, 5016, and 5017 by the United States District Court, District of Colorado, and all supplemental or amendatory orders, judgments, and decrees in said cases, including, without limitation, the Decree entered on April 16, 1964, therein ("1964 Decree") and the Supplemental Judgment and Decree dated February 9, 1978 ("1978 Judgment")).

42. The Court further concludes that: (1) The operation of the CRCC as described herein is lawful, will not result in injury to any water rights, and shall be administered by State Water Officials consistent with the terms and conditions of the Decree sought by this Application; (2) the mainstem of the Colorado River will remain within the existing natural channel flowing into and through the Windy Gap Reservoir and that construction and operation of the CRCC consistent with the Decree sought by this Application does not and will not, in any way, modify that location of the Colorado River; (3) the construction and operation of the CRCC consistent with the Decree sought by this Application does not and will not, in any way, modify or change Windy Gap Decrees for the Windy Gap Water Rights, or result in a change in the point of diversion for the Windy Gap Water Rights from the Colorado River; (4) under section 37-84-117(5), C.R.S., replacement of any evaporative losses associated with the CRCC is not required because evaporation from the CRCC will be less than the natural depletions to the stream flow that would have resulted if the reservoir facility were not in existence in the location of the CRCC; and (5) exchanges of water may be made by any water user through the CRCC, subject to the requirements of applicable law.

ORDER

43. The Findings of Fact and Conclusions of Law set forth above are incorporated in this Order.

44. THEREFORE, IT IS HEREBY ORDERED THAT the 2012 Windy Gap Firing Project Intergovernmental Agreement dated July 12, 2016, attached as Exhibit 1 is approved as an Additional Stipulation to the Stipulations entered by this Court on October 27, 1981 and August 26, 1985, in Case Nos. CA 1768, W-4001, 80CW108, and 85CW135, and is incorporated as an integral and non-severable part of the Windy Gap Decrees, which include the Decree entered in this case and in Case Nos. CA 1768, W-4001, 80CW108, 85CW135, 88CW16, 89CW298, and related diligence decrees, which shall be enforceable by the parties as part of said decrees;

45. IT IS FURTHER ORDERED THAT the 1980 Agreement, as amended and supplemented by the 1985 Agreement and the 2012 WGFP IGA, are hereby approved as the full and complete satisfaction of the requirements for a plan for the Windy Gap Project and Windy Gap Firing Project under C.R.S. § 37-45-118(1)(b)(II) and *Colorado River Water Conservation District v. Municipal Subdistrict, Northern Colorado Water Conservancy District*, 198 Colo. 352, 610 P.2d 81 (1979).

46. IT IS FURTHER ORDERED THAT the Windy Gap Water Rights may be exercised and shall be administered and subject to the terms of the Decrees entered in Case Nos. CA1768, W-4001, 80CW108, 85CW135, 88CW169, 88CW170, 88CW171, 89CW298, and this Decree, including, *inter alia*, (1) use of Windy Gap Project Water by substitution or exchange, and reuse or successive use, (2) subject to the WG Volumetric Limits and the terms and conditions of this Decree, (a) the storage of Windy Gap Project Water in and delivery of water from facilities of the C-BT Project in accordance with the 2012 WGFP IGA and 2014 Contract, or other approvals by the United States including the exchange of Windy Gap Project Water for C-BT Project Water stored in Chimney Hollow Reservoir pursuant to “prepositioning” operations described in the 2012 WGFP IGA and the 2014 Contract, and (b) the storage of Windy Gap Project Water in Chimney Hollow Reservoir on behalf of Windy Gap Project Allottees that are participants in the WGFP, (3) the storage of Windy Gap Project Water as described in Paragraphs 24 and 25 of this Decree, (4) the delivery to and use of Windy Gap Project Water by Middle Park, and (5) the delivery to and use of Windy Gap Project Water to and use by Grand County in the Colorado River or downstream of Grand County pursuant to the 2012 WGFP IGA.

47. IT IS FURTHER ORDERED THAT: (1) operation of the CRCC as described herein is lawful, will not result in injury to any water rights, and shall be administered by State Water Officials consistent with the terms and conditions of this decree; (2) that the mainstem of the Colorado River will remain within the existing natural channel flowing into and through the Windy Gap Reservoir and that construction and operation of the CRCC consistent with this Decree does not and will not, in any way, modify that location of the Colorado River; (3) the construction and operation of the CRCC consistent with this Decree does not and will not, in any way, modify or change Windy Gap Decrees for the Windy Gap Water Rights, or result in a change in the point of diversion for the Windy Gap Water Rights from the Colorado River; (4) under section 37-84-117(5), C.R.S., replacement of any evaporative losses associated with the CRCC is not required because evaporation from the CRCC will be less than the natural depletions to the stream flow that would have resulted if the reservoir facility were not in existence in the location of the CRCC; and (5) exchanges of water may be made by any water user through the CRCC, subject to the requirements of applicable law.

DATED: July 6, 2020.

BY THE REFEREE



Susan M. Ryan, Water Referee
Division 5, Water Court

NO PROTEST WAS FILED IN THIS MATTER. THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS MADE THE JUDGMENT AND DECREE OF THIS COURT.

DATED: _____

BY THE COURT:

James B. Boyd
Water Judge, Water Division No. 5

Windy Gap Firming Project Intergovernmental Agreement (WGFP IGA)

DATE FILED: June 16, 2020 5:48 PM

The Municipal Subdistrict, Northern Colorado Water Conservancy District and its Windy Gap Firming Project Water Activity Enterprise, Board of County Commissioners of Grand County, Colorado, Middle Park Water Conservancy District, Colorado River Water Conservation District and Northwest Colorado Council of Governments enter into this Windy Gap Firming Project Intergovernmental Agreement (“WGFP IGA”) as of the latest date of execution of this WGFP IGA by the Parties.

I) Definitions.

- A. “1980 and 1985 Agreements” are the April 30, 1980 “Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project” (“1980 Agreement”) and the March 29, 1985 “Supplement to Agreement of April 30, 1980” (“1985 Agreement”).
- B. “Accounting Year” for the Middle Park Water Apportionment will begin on August 1st and end on July 31st the following calendar year. Middle Park’s Accounting Year shall become effective on August 1 following execution of this WGFP IGA.
- C. “Active Storage” for Chimney Hollow Reservoir is that reservoir capacity contained between the invert of the reservoir outlet works and the normal high water line in Chimney Hollow Reservoir, or in the case of Alternative Reservoirs, the total capacity available for storage and release for the benefit of the WGFP.
- D. “Amendatory Contract” is the Amendatory Contract for the Introduction, Storage, Carriage, and Delivery of Water for Municipal Subdistrict, Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado dated March 1, 1990 among Reclamation, the Subdistrict and Northern Water and any amendments, replacements, or supplements thereto necessary to implement the WGFP.
- E. “Carryover Balance” is a portion of a Water Apportionment that is available for use pursuant to this WGFP IGA that can be stored for multiple years.
- F. “Carryover Balance Limitation” is the maximum total Carryover Balance that can be credited to Middle Park or Grand County at any point in time.
- G. Chimney Hollow Reservoir (“Chimney Hollow Reservoir”) is that reservoir located on the East Slope identified in the Final Environmental Impact Statement for the Windy Gap Firming Project as the proposed action and any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final

Environmental Impact Statement (“Alternative Reservoir”), provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet.

- H. Colorado River Water Conservation District, (“River District”) is a political subdivision of and a body corporate under the laws of Colorado, created by the provisions of C.R.S. §§ 37-46-101, et seq., for the purposes stated therein.
- I. Grand County (“Grand County”) is a county of the State of Colorado created by Article XIV of the Colorado Constitution and C.R.S. § 30-5-128, for the purposes stated therein.
- J. Middle Park Water Conservancy District (“Middle Park”) is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein.
- K. Municipal Subdistrict, Northern Colorado Water Conservancy District, (“Subdistrict”) is a political subdivision of the State of Colorado, and formed under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein and as created by the Decree dated July 6, 1970, Weld County District Court, State of Colorado.
- L. Municipal Subdistrict, Northern Colorado Water Conservancy District, Windy Gap Firming Project Water Activity Enterprise (“WGFP Enterprise”) is a water activity enterprise of the Subdistrict organized under and pursuant to Article X, Section 20, of the Colorado Constitution and C.R.S. §§ 37-45.1-101 et seq.
- M. “Net Credited Storage,” is the amount of Windy Gap Project Water pumped at the Windy Gap Pumping Plant and conveyed to Granby Reservoir less any losses charged pursuant to the Amendatory Contract.
- N. Northern Colorado Water Conservancy District (“Northern Water”) is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein, and is referenced in but not a party to this WGFP IGA.
- O. Northwest Colorado Council of Governments (“NWCCOG”) is a regional planning commission organized pursuant to C.R.S. § 30-28-105, and an association of local governments contracting pursuant to Article XIV, Section 18 of the Colorado Constitution and C.R.S. §§ 29-1-201, et seq., comprising municipalities and counties within the geographic boundaries of the Colorado counties of Grand, Eagle, Summit, Jackson, Routt, and Pitkin.

- P. “Prepositioning” is the manner of integrated operations of the Colorado-Big Thompson Project and WGFP described in the Final Environmental Impact Statement for the WGFP and as may be authorized by Reclamation in the Amendatory Contract and/or Reclamation’s Record of Decision for the WGFP.
- Q. “Pumping Costs” incurred by Middle Park or Grand County pursuant to this WGFP IGA are 110% of the average electrical power costs of pumping for the Windy Gap Project for that year on a per acre-foot basis for Net Credited Storage.
- R. United States Army Corps of Engineers (“USACE”) is referenced in but not a party to this WGFP IGA.
- S. United States Bureau of Reclamation, Department of the Interior (“Reclamation”) is referenced in but not a party to this WGFP IGA.
- T. “Water Apportionment” is Windy Gap Project Water that is made available for use by West Slope Parties pursuant to this WGFP IGA.
- U. “West Slope Parties” are Grand County, Middle Park, the River District, and NWCCOG.
- V. Windy Gap Firming Project (“WGFP”) is a proposed project that will use the Windy Gap Water Rights and that is described in the Final Environmental Impact Statement and Record(s) of Decision.
- W. “WGFP Completion” is the first time that the combined volume of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir is equal to 32% of the Active Storage of the constructed capacity of Chimney Hollow Reservoir.
- X. WGFP Participants (“WGFP Participants”) are those entities identified in the Final Environmental Impact Statement for the Windy Gap Firming Project, and also their successors and assigns, that hold a water allotment contract for the Windy Gap Project and own or are otherwise allocated a portion of the storage capacity of Chimney Hollow Reservoir.
- Y. “Windy Gap Project” is an existing water supply system defined in Part II.A. of the 1980 Agreement.
- Z. “Windy Gap Project Participants” are those entities that hold a water allotment contract for the Windy Gap Project.

- AA. “Windy Gap Project Water” is any water stored or diverted pursuant to the Windy Gap Water Rights. Both the Windy Gap Project and the Windy Gap Firming Project will divert and store Windy Gap Project Water. Windy Gap Project Water will be diverted under the Grand County 2012 WGFP (“1041”) Permit unless the Subdistrict notifies Grand County that it will divert under the original 1980 Windy Gap Project Permit. Only Windy Gap Project Water diverted under the terms and conditions of the 2012 WGFP (“1041”) Permit may be stored in Chimney Hollow Reservoir.
- BB. “WG Volumetric Limits” shall be those limitations set forth in Paragraph 34 of the 1980 Agreement, as modified by Paragraph 2 of the 1985 Supplemental Agreement. The WG Volumetric Limits are not affected or modified by this WGFP IGA.
- CC. “Windy Gap Water Rights” are defined in the Decrees entered on October 27, 1980 in Civil Action No. 1768, District Court, Grand County, State of Colorado and Case Nos. W-4001, 80CW108, and 85CW135, District Court, Water Division No. 5; the Decree entered on February 6, 1989 in Case No. 88CW169, District Court, Water Division No. 5, State of Colorado; and the Decree entered on July 19, 1990, in Case No. 89CW298, District Court, Water Division No. 5, State of Colorado (“Windy Gap Decrees”) and any subsequent diligence or other related decrees or amendments thereto.

II) Relationship to 1980 and 1985 Agreements.

This WGFP IGA supplements and partially amends the 1980 Agreement and the 1985 Agreement. The 1980 Agreement, as amended and supplemented by the 1985 Agreement, and the 1985 Agreement, remain valid and enforceable except as explicitly modified by this WGFP IGA. In the event of a termination of this WGFP IGA for any reason the 1980 and 1985 Agreements shall be enforceable according to their terms as if this WGFP IGA did not exist. While there are several signatories to the 1980 Agreement in addition to the undersigned parties, the rights of those additional signatories under the 1980 Agreement are not altered by this WGFP IGA.

III) Terms of the Agreement

- A. Enhancements. The benefits provided in this WGFP IGA are in addition to and are not a substitute for the mitigation required by governmental agencies with jurisdiction over the WGFP.
- B. Notification of Intent to Proceed with Windy Gap Firming Project.
 - 1) The Subdistrict will proceed as expeditiously as reasonably possible using its best efforts to cause the construction of Chimney Hollow Reservoir. The Subdistrict shall notify the West Slope Parties in writing whether or not it intends to proceed with the Windy Gap Firming Project within 10

years of the issuance of the 404 Permit for the WGFP by the United States Army Corps of Engineers (“USACE”) or upon execution of construction contracts for Chimney Hollow Reservoir, whichever occurs first.

- 2) This WGFP IGA shall terminate upon written notice to the West Slope Parties that the Subdistrict does not intend to proceed with the WGFP.
 - 3) If the Subdistrict notifies the West Slope Parties that it intends to proceed with the WGFP, then it shall have the right under this WGFP IGA, but not the obligation, to construct and operate a total of 90,000 acre feet of storage on the Front Range. If the Subdistrict proceeds with the WGFP, then it shall provide all of the West Slope mitigation required by the Records of Decision for the WGFP and satisfy all of the obligations set forth in this WGFP IGA, regardless of the storage capacity that is authorized by the 404 Permit issued by the USACE, or the storage capacity that is ultimately constructed or utilized for the WGFP.
- C. Except as necessary to ensure compliance with this WGFP IGA, all parties agree not to take any official action that results in a restriction of the right of the Subdistrict to construct, operate and use the full 90,000 acre feet of storage capacity of the Chimney Hollow Reservoir or Alternative Reservoir.
- 1) In the event of a breach of this obligation by Grand County, Paragraph IV. H. 2) of this WGFP IGA shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP IGA and to Middle Park pursuant to Paragraph III.E. of this WGFP IGA shall be subject to the proportional reduction determined using the methods described in III.D.1.
 - 2) In the event of a breach of this obligation by the River District, Paragraph IV. H. 2) of this WGFP IGA shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP IGA and to Middle Park pursuant to Paragraph III.E. of this WGFP IGA shall be subject to the proportional reduction determined using the methods described in III.D.1.
 - 3) In the event of a breach of this obligation by Middle Park, Paragraph III.E. of this WGFP IGA shall terminate and Middle Park shall receive water pursuant to the 1980 and 1985 Agreements, and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP IGA shall be subject to the proportional reduction determined using the methods described in III.D.1 .
 - 4) In the event of a breach of this obligation by NWCOG, Paragraph IV. H. 2) of this WGFP IGA shall terminate and be of no further force or affect and the benefits provided to Grand County pursuant to Paragraph III.F. of

this WGFP IGA and to Middle Park pursuant to Paragraph III.E. of this WGFP IGA shall be subject to the proportional reduction determined using the methods described in III.D.1.

- 5) The consequences provided for in Paragraphs III.C.1), III.C.2), III.C.3), and III.C.4) shall be suspended in the event that the Subdistrict later obtains the right to construct, operate, and use the full 90,000 acre feet of storage capacity of the Chimney Hollow Reservoir or Alternative Reservoir.

D. Proportional Reduction.

- 1) If a binding regulatory event, judicial determination, other implementation of existing or future legal requirements or restrictions, or other formal action of any entity causes or results in a permanent reduction in firm yield of the WGFP, other than a prohibition on prepositioning, then the West Slope Parties agree that the amount of water they receive pursuant to Paragraph III of this WGFP IGA will be subject to proportional reduction. The Parties agree to jointly determine the amount of said proportional reduction at the time the event takes effect or, as an alternative to the proportional reduction, identify measures that can be implemented to mitigate the reduction in firm yield of the WGFP. A proportional reduction shall be made to the Middle Park Water Apportionment and to the Grand County Water Apportionment under this WGFP IGA. In the event that the Parties cannot jointly determine what the proportional reduction should be, the issue of what constitutes a proportional reduction shall be resolved by a panel of three experts, one selected by the West Slope Parties, one selected by the WGFP Enterprise, and the third selected by the experts selected by the West Slope Parties and the WGFP Enterprise. If the determination of the expert panel is not acceptable, any Party may pursue any available judicial remedies.
- 2) If a binding regulatory event, judicial determination, other implementation of existing or future legal requirements or restrictions, or other formal action of any entity causes or results in a prohibition of prepositioning , then the West Slope Parties agree that the amount of water they receive pursuant to Paragraph III of this WGFP IGA shall be reduced in accordance with this Paragraph III.D.2).
 - (a) Middle Park Variable Water Supply will be reduced by reducing the 700 acre feet option in spill years in proportion to the amount of Windy Gap Project Water stored on August 1 in Chimney Hollow and Granby Reservoir, combined, as compared to the full storage capacity of Chimney Hollow Reservoir. If Middle Park elects to receive its portion of pumping in spill years, there shall be no reductions.

- (b) Grand County Variable Water Supply shall not be subject to reductions.
- (c) Middle Park Annual Water Supply shall not be subject to reductions.
- (d) Grand County annual amount of Transfer Water shall be reduced by 15%.

E. Middle Park Water Apportionment.

1) Middle Park Election to Receive Water.

The provisions of the 1980 and 1985 Agreements which relate to the operation of the Windy Gap Project and the rights and interests of Middle Park shall remain in place until such time as WGFP Completion, and the approval of this WGFP IGA by the Water Court, Water Division No. 5 by Decree not subject to appeal.

- (a) Middle Park shall have the right, within 1 year of WGFP Completion, to make a one-time and irrevocable election as to whether it will receive water pursuant to this WGFP IGA or receive water pursuant to the 1980 and 1985 Agreements.
- (b) If a binding regulatory event, judicial determination, or other implementation of existing or future legal requirements or restrictions occurs as provided in Paragraph III. D. then Middle Park shall have the right to make an election as to whether it will receive water pursuant to this WGFP IGA, or receive water pursuant to the 1980 and 1985 Agreements. Subdistrict shall notify Middle Park within 60 days of each regulatory event, judicial determination, or other implementation of existing or future legal requirements or restrictions and shall explain to Middle Park the effect(s) of the event, determination, or implementation on water available to Middle Park pursuant to this WGFP IGA. If Middle Park has not made this election pursuant to a previous event, this election will be made by Middle Park within one year after written notification of each event.
- (c) In the event that Middle Park elects to continue to receive water pursuant to the 1980 and 1985 Agreements following WGFP Completion, such water shall be available for use on August 1 of the Accounting Year immediately following pumping (except that any water pumped in August will be credited to the current Accounting Year), and any such water, which is unused on July 31st of that Accounting Year shall be transferred to Grand County on August 1st for use in accordance with Paragraph III. F. 2) and Paragraph III.F.4).

- 2) If Middle Park elects to receive water in accordance with this WGFP IGA, its apportionment will consist of the Middle Park Annual Water Supply and the Middle Park Variable Water Supply.
- 3) Middle Park Annual Water Supply.
 - (a) For the purposes of this WGFP IGA, Middle Park's Annual Water Supply is the combination of the 850 acre feet of Water defined in Section III.E.3)(b) and the 1,450 acre feet of Water defined in Section III.E.3)(c). Middle Park Annual Water Supply is not eligible to become a part of or contribute to the Middle Park Carryover Balance.
 - (b) 850 acre feet of Water. The Subdistrict and WGFP Enterprise will dedicate and set aside annually, but not cumulatively, at no cost to Middle Park, 850 acre feet of Windy Gap Project Water, which shall be available each and every year.
 - (c) 1,450 acre feet of Water.
 - (i) If the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir at any time between the start of pumping of the Windy Gap Project and August 1st of any year is equal to or greater than 32% of the constructed capacity of Chimney Hollow Reservoir, the Subdistrict and WGFP Enterprise will dedicate and set aside at no cost 1,450 acre feet of water for Middle Park.
 - (ii) If the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir at any time between the start of pumping of the Windy Gap Project and August 1st of any year does not equal or exceed 32% of the constructed capacity of Chimney Hollow Reservoir, the 1,450 acre feet of water will be reduced at the same proportion as the maximum amount of storage of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of the WGFP Participants in Granby Reservoir during the period between the start of pumping and August 1 is to 32% of the constructed capacity of Chimney Hollow Reservoir.
 - (iii) The Subdistrict and WGFP Enterprise shall provide Middle Park with the April 1st water supply forecast and any subsequent forecasts, which shall be used for planning

purposes to estimate the amount, if any, of the reduction in the 1,450 acre feet of water.

- (iv) In the event that Middle Park receives less than 1450 acre feet of water pursuant to paragraph III.E.3)(c)(ii), Middle Park may retain and use any unused Annual Water Supply from the prior Accounting Year to make up the difference between the amount which it receives pursuant to paragraph III.E.3)(c)(ii) and 1450 acre feet of water.
 - (d) The Middle Park Annual Water Supply is available to Middle Park during the Accounting Year. Unused water from the Middle Park Annual Water Supply from the prior Accounting Year will transfer on August 1st to Grand County pursuant to Paragraph III.F.2) unless some portion of the water from the prior year is required to make up for the reduction in the 1450 acre feet of Water pursuant to Paragraph III.E.3)(c)(iv). Grand County shall, subject to the limitations in Paragraph III.F.4), have the right to use Middle Park Annual Water Supply transferred from Middle Park to Grand County in accordance with this Paragraph III.E.3)(d).
 - (e) Middle Park's Annual Water Supply will not be reduced by any losses charged pursuant to the Amendatory Contract.
- 4) Middle Park Variable Water Supply.
- (a) Middle Park's Variable Water Supply is the water supply defined in this Paragraph III.E.4). Only Middle Park's Variable Water Supply is eligible to become part of or contribute to Middle Park's Carryover Balance and will be credited immediately upon pumping.
 - (b) The Subdistrict and WGFP Enterprise will provide a water supply forecast to Middle Park on April 1st.
 - (c) If the April 1st forecast does not anticipate a spill of Windy Gap Project Water, Middle Park may, on May 1st of that year, elect to receive 3.8% of the Windy Gap Project Water that will be diverted in the current water year in excess of 15,000 acre feet Net Credited Storage, up to a maximum of 1,500 acre feet Net Credited Storage as further limited by Middle Park's Carryover Balance Limitation. If the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Middle Park has received 1,500 acre feet of Variable Water Supply, and the Windy Gap Water Rights are still in priority, Middle Park may request that the Subdistrict continue diversions of Windy

Gap Project Water up to the 1,500 acre feet maximum, as limited by Middle Park's available Carryover Balance Limitation.

- (d) If the April 1st forecast anticipates a spill of Windy Gap Project Water or if a spill has actually occurred, Middle Park shall, by May 1st, elect whether it will:
 - (i) Receive 3.8% of the Windy Gap Project Water diverted and stored in the current water year in excess of 15,000 acre feet Net Credited Storage, up to a maximum of 1,500 acre feet of Net Credited Storage, and as further limited by Middle Park's available Carryover Balance Limitation. If the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Middle Park has received 1,500 acre feet of Variable Water Supply, and the Windy Gap Water Rights are still in priority, Middle Park may request that the Subdistrict continue diversions of Windy Gap Project Water up to 1,500 acre feet maximum, as limited by Middle Park's Carryover Balance Limitation; or
 - (ii) Receive from the Subdistrict and WGFP Enterprise by substitution such additional amount of Windy Gap Project Water stored in Chimney Hollow Reservoir as is required to result in a total Carryover Balance of 700 acre feet of Middle Park Variable Water Supply, which 700 acre feet shall not be subject to spill; or
 - (iii) Middle Park may elect to not receive any Middle Park Variable Water Supply.
- (e) Middle Park shall pay to the Subdistrict the Pumping Costs for pumping the Middle Park Variable Water Supply which it elects to receive pursuant to Paragraph III.E.4).
- 5) The Subdistrict will release Middle Park Annual Water Supply and Middle Park Variable Water Supply at the request of Middle Park for all beneficial uses allowed by the 1980 Agreement and 1985 Agreement. Such uses shall include direct use or use by substitution, augmentation, or exchange, including but not limited to, exchange into Wolford Mountain Reservoir or replacement to Denver Water by entities that have Middle Park Contracts, and any other use authorized in a subsequent written agreement between Middle Park, the Subdistrict, and WGFP Enterprise.

F. Grand County Water Apportionment.

- 1) For the purposes of this WGFP IGA, the Grand County Water Apportionment consists of the Grand County Transfer Water, the Grand County Interim Transfer Water, and the Grand County Variable Water Supply described in this Paragraph III.F. The Grand County Water Apportionment shall be used as directed by Grand County and consistent with this WGFP IGA.
- 2) Grand County Interim Transfer Water and Grand County Transfer Water.
 - (a) Grand County Transfer Water is any of the Middle Park Water Apportionment received by Middle Park which is transferred to Grand County on August 1st of each year pursuant to Paragraph III.E.1)(c) and Paragraph III.E.3)(d).
 - (b) Commencing on the first day of August, but no less than 12 months after the execution of this WGFP IGA, the Subdistrict shall make available for Grand County's use 50% of any of the Middle Park Water Apportionment that is unused from the previous year (the "Grand County Interim Transfer Water"). Upon WGFP Completion, the Grand County Interim Transfer Water shall vest as 100% of the water provided by Paragraph III.E.1)(c) and Paragraph III.E.3)(d). In the alternative, the Subdistrict's provision of the Grand County Interim Transfer Water will cease upon notice pursuant to III.B.2) that the Municipal Subdistrict does not intend to proceed with the WGFP.
 - (c) Grand County Transfer Water must be either: (1) used between August 1st and October 15th of the then current water year, or (2) on October 15th become Grand County Carryover Balance, as limited by Grand County's available Carryover Balance Limitation.
 - (d) Grand County's Transfer Water shall not be subject to any losses charged pursuant to the Amendatory Contract until such water is transferred to Grand County's Carryover Balance, at which time it will be assessed the appropriate losses, if any, specified in the Amendatory Contract.
- 3) Grand County Variable Water Supply shall include the following elements:
 - (a) Concurrent Pumping.
 - (i) Grand County Concurrent Pumping shall become available at WGFP Completion.

- (ii) Grand County may, by May 1st of each year, elect to receive 3.8% of the Windy Gap Project Water diverted and stored in the current water year in excess of 15,000 acre feet Net Credited Storage, up to a maximum of 1,500 acre feet Net Credited Storage, and as further limited by Grand County's available Carryover Balance Limitation.
- (b) Additional Pumping.
 - (i) Grand County Additional Pumping shall become available at WGFP Completion.
 - (ii) If Windy Gap Project Participants and WGFP Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Grand County has received 1,500 acre feet of water from Concurrent Pumping and the Windy Gap Water Rights are still in priority, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions up to a combined maximum of 1,500 acre feet of Concurrent and Additional Pumping, as further limited by the available Grand County Carryover Balance Limitation. The Subdistrict and WGFP Enterprise will make best efforts to provide five (5) days advance notice of the anticipated end of pumping for Windy Gap Project Participants and WGFP Participants.
- (c) End of Year Pumping.
 - (i) Prior to WGFP Completion, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions if the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping and the Windy Gap Project Water Rights are in priority, as limited by the Grand County Carryover Balance Limitation.
 - (ii) After WGFP Completion, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions if the Windy Gap Project Participants, WGFP Participants, and Middle Park have a need for additional water but do not wish to pay for the costs of additional pumping and the Windy Gap Project Water Rights are in priority, as limited by the Grand County Carryover Balance Limitation.
- (d) Grand County's Variable Water Supply shall be credited to Grand County's Carryover Balance immediately upon pumping.

- (e) Grand County shall pay pumping costs for the Grand County Variable Water Supply provided pursuant to Paragraph III.F.3).
- 4) The Subdistrict will release the Grand County Water Apportionment from Granby Reservoir at the request of Grand County or its designee for diversion for irrigation, domestic, municipal or industrial uses on the West Slope that do not require a change of the Windy Gap Water Rights. The Parties will use their best efforts to effectuate the purposes of the Grand County Water Apportionment in a manner that does not require a change of the Windy Gap Water Rights. The Parties acknowledge that Grand County intends to time such releases for beneficial use in a manner that results in optimizing the benefits to aquatic and recreation resources within the County and furthering the goals of the Learning by Doing Cooperative Effort (Exhibit 1). The Parties intend that the Grand County Water Apportionment not be diverted for irrigation, domestic, municipal or industrial uses upstream of the confluence of the Colorado River and Blue River by any person or any entity.
 - (a) The Parties intend for the reservoir releases of the Grand County Water Apportionment to increase the flow of water through the County above flows that would otherwise exist. To accomplish these objectives, the River District will make good faith efforts to arrange for the delivery of the Grand County Water Apportionment for diversion and beneficial use for irrigation, domestic, municipal or industrial uses on the Colorado River or its tributaries, below the confluence of the Blue and Colorado Rivers. Unless otherwise directed by Grand County, the River District's efforts will be focused on diversion and beneficial use downstream of the confluence of the Colorado and Roaring Fork Rivers but upstream of the Utah State Line.
 - (b) Grand County and the Subdistrict may request annual reports of the beneficial use made of the Grand County Water Apportionment. Any dispute regarding such use will be resolved in accordance with the Conflict Resolution provisions of this WGFP IGA (Paragraph VI.O.). Regardless of the outcome of any dispute regarding this paragraph, the Parties agree that the River District shall not bear any liability regarding the beneficial use of, or the failure to arrange for the beneficial use any of, the Grand County Water Apportionment.
 - (i) Following is a list of representative, but not exclusive, beneficial uses that the Parties agree satisfy the intent of this paragraph III.F.4):

Diversion for irrigation (including agriculture, lawn watering, parks, and stock-water), domestic, municipal, or industrial uses by: the Grand Valley Irrigation Company (irrigation, including uses incident of irrigation); Grand Valley Water Users Association (including irrigation, power generation, and uses incident to those uses); Orchard Mesa Irrigation District (irrigation, irrigation lift/pumping, power generation, and exchanges incident to such uses); Palisade Irrigation District (irrigation); Mesa County Irrigation District (irrigation); Ute Water Conservancy District (including municipal); Town of Clifton (municipal); Silt Water Conservancy District (irrigation and domestic); Town of Silt (municipal); Town of New Castle (municipal); City of Rifle (municipal); Battlement Mesa (municipal); diversions at the Bluestone or Town of Debeque intakes (municipal, irrigation, and industrial); substitutions in lieu of releases from Wolford Mountain Reservoir or Ruedi Reservoir for municipal, irrigation or industrial uses under the River District's water marketing program; substitutions in lieu of releases from, or exchanges into, Williams Fork Reservoir to increase the amount of, or flexibility of use, of water in Grand County's account in Williams Fork Reservoir; transit losses attributable to such uses as may be assessed by the State Engineer.

- 5) The Parties agree that, if Grand County determines then-current stream flow conditions in the County are sufficient to satisfy the purposes of the releases of water as described in Paragraph III.F.4), including downstream of the confluence of the Colorado and Blue Rivers, then the Grand County Water Apportionment may be exchanged or substituted for water that otherwise would be released from Wolford Mountain Reservoir, Green Mountain Reservoir or Williams Fork Reservoir in order to assist Front Range and West Slope water users in managing limited water supplies for use in the upper Colorado River basin.
- G. Priority of Pumping. The right of Middle Park and Grand County to pump additional water pursuant to Paragraphs III.E.4)(c), III.E.4)(d)(i) and III.F.3)(b)(ii) shall be shared on an equal basis between Middle Park and Grand County.
- H. Middle Park and Grand County Water Apportionments, Carryover Balances, and Carryover Balance Limitations.
- 1) Subject to the provisions of this Paragraph III.H., Middle Park and Grand County may each have a Carryover Balance derived from Water Apportionments made available pursuant to Paragraphs III.E.4), III.F.2) and III.F.3). The maximum Carryover Balance available to Middle Park

and Grand County shall not exceed their respective Carryover Balance Limitation.

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- 2) Middle Park shall have the right to a Carryover Balance Limitation of 3,000 acre feet for its Variable Water Supply for use in the then current or subsequent water years.
- 3) Grand County Carryover Balance Limitations.
 - (a) Upon execution of this WGFP IGA and until WGFP Completion, Grand County shall have the right to accrue a maximum of 7,500 acre feet of Carryover Balance for use in the then current or subsequent water years.
 - (b) Upon WGFP Completion Grand County's Carryover Balance Limitation shall be reduced to 6,000 acre feet until at such time as the Windy Gap Project Water stored in Chimney Hollow Reservoir has reached, at any point in time, 85% of the constructed active storage capacity of Chimney Hollow Reservoir .
 - (c) At such time as the Windy Gap Project Water stored in Chimney Hollow Reservoir has reached, at any point in time, 85% of the constructed active storage capacity of Chimney Hollow Reservoir, Grand County's Carryover Balance Limitation shall be reduced to 4,500 acre feet
 - (d) The permanent Grand County Carryover Balance Limitation shall be 4,500 acre feet. If Chimney Hollow Reservoir construction begins but is not completed as a result of actions by the West Slope Parties, any water stored in this account will revert to the Subdistrict.
- 4) Except during the first fill of Chimney Hollow, during which Paragraphs III.H.3) controls, Middle Park and Grand County can share a combined Carryover Balance Limitation of 7,500 acre feet. Middle Park and Grand County shall notify the Subdistrict before or during pumping of their intent to share the Carryover Balances and the respective amounts of water to be stored for each.
- 5) Any Carryover Balance of Middle Park or Grand County shall be reduced by any losses, if any, charged pursuant to the Amendatory Contract. Middle Park and Grand County shall be provided with documentation of such charges before any such reductions.
- 6) Any Variable Water Apportionment and any Carryover Balance made available to Middle Park or Grand County pursuant to this WGFP IGA shall be subject to a pro rata share of monetary charges, payable by Middle

Park or Grand County as applicable, for storage of Windy Gap Project Water in Granby Reservoir, if any, assessed pursuant to the Amendatory Contract. The Parties will advocate to Reclamation that no monetary charges be assessed for storage of Windy Gap Project Water in Granby Reservoir.

- 7) The Parties will advocate that Reclamation adopt specific and different shrink charges for introduction and storage of Windy Gap Project Water on the West Slope and conveyance and delivery of Windy Gap Project Water to the east slope.
- 8) All Carryover Balances referred to in this paragraph III.H. shall be Net Credited Storage.

I. Spill Criteria:

- 1) 1st to spill - Grand County Carryover Balance over 1,500 acre feet.
- 2) 2nd to spill - Any remaining Grand County Carryover Balance, any Middle Park Carryover Balance, and any Windy Gap Project Water stored on behalf of the WGFP Participants proportionally, based on Carryover Balances and Windy Gap Project Water in storage on behalf of the WGFP Participants as of the date(s) of spill.
- 3) 3rd to spill – Windy Gap Project Water stored on behalf of Windy Gap Project Participants that are not WGFP Participants.

J. No Paper Spills. In the event that Middle Park or Grand County have a Carryover Balance and the total amount of Colorado-Big Thompson Project water in active storage in Granby Reservoir and Chimney Hollow Reservoir, combined, reaches 465,568 acre feet, Middle Park's and Grand County's Water Apportionments will only spill in the event of a physical spill from Granby Reservoir. Any physical spill of Windy Gap Project Water will be allocated between WGFP Participants, Middle Park, and Grand County in accordance with Paragraph III.I.

K. Minimum Pumping. If Windy Gap Project Water is not already being pumped, the Subdistrict shall not be required to pump Variable Water Supply for any party unless the Subdistrict's water supply forecasts predict that there will be a minimum of 1,000 acre feet of water available for diversion and storage under the Windy Gap Water Rights at the time of the proposed pumping during the current pumping season.

L. Pumping Costs. Pumping Costs shall be payable 30 days after the submission of an invoice by the Subdistrict at the end of the then current pumping season to the appropriate entity. The invoice shall include the actual bills from the

power provider. In the event of a delinquency or failure to pay Pumping Costs by Middle Park or Grand County, the Subdistrict shall suspend release of any Variable Water Supply held by the Subdistrict for that entity and all future pumping for the delinquent Party pursuant to this WGFP IGA until any delinquent payments have been made in full.

IV) Additional Provisions

- A. Wolford Protection. The Subdistrict, and the WGFP Enterprise agree that the Windy Gap Project and the WGFP will be operated in a manner that does not diminish the ability of the Colorado River Water Conservation District to capture the natural flow of Muddy Creek up to a maximum of 65,998 acre feet pursuant to the water rights, applicable permits, and operating criteria for Wolford Mountain Reservoir.
- B. Future Uses. The Subdistrict and WGFP Enterprise agree to not place a call under the Windy Gap Decrees on any present or future water rights on the Colorado and Fraser Rivers and their tributaries above Windy Gap Reservoir; Provided, however, the Windy Gap Project and WGFP may divert any water which can be diverted in priority at the decreed point of diversion without placing a call as described above except for water provided as described in paragraph IV. M. of this WGFP IGA.
- C. Open Space. Upon execution of this WGFP IGA, the Subdistrict agrees to impose a deed restriction on the sale of any parcel that requires subsequent development of the parcel to be approved subject to the existing Grand County Rural Land Use Process in conformance with C.R.S. § 30-28-403, as it exists now or may be amended in the future; provided, however, that nothing in this WGFP IGA or in the deed restriction shall affect or preclude the sale or development of such parcel(s) pursuant to provisions of existing or future law that allow the sale or development of lands in a manner that is not within the definition of a “subdivision” or “subdivided land”.
- D. Public Access. Upon execution of this WGFP IGA, the Subdistrict will make arrangements with Northern Water to provide public access to that portion of Willow Creek located on Northern Water’s lands for as long as Northern Water owns the lands adjacent to Willow Creek, if and to the extent that the public access will be managed by the Colorado Division of Parks and Wildlife or other entity acceptable to Northern Water.
- E. Jasper Reservoir Conditional Water right. The Subdistrict will abandon the conditional water right for Jasper Reservoir upon WGFP Completion.
- F. Recording and Telemetry Devices. Recording and telemetry devices for flow measuring devices approved by the Colorado State Engineer will be acquired, installed, operated, maintained and replaced by and at the expense of the

WGFP Enterprise if it is able to obtain permanent access agreements allowing the WGFP Enterprise to install, operate, maintain, and replace such devices.

- G. Water Accounting. The Subdistrict agrees to submit detailed daily water accounting to the State of Colorado Division Engineer as required by the Division Engineer and provide copies to the West Slope Parties.
- H. Future Water Development.
- 1) Compact Curtailment Plan. The Signatories agree to cooperate in good faith toward the development of a plan to avoid and address a potential curtailment of existing Colorado water rights under the provisions of the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact. The Signatories agree to meet and confer before the Municipal Subdistrict or WGFP Enterprise take any action pursuant to Paragraph IV.H.3. of this WGFP IGA.
 - 2) The Subdistrict and WGFP Enterprise agree that, without the prior express written consent of Grand County and the Colorado River Water Conservation District, they will not (a) acquire any existing water rights in Grand County; (b) construct additional water supply facilities in Grand County, (c) appropriate new water rights in Grand County; or (d) appropriate any new water rights in Water Division No. 5 that will result in depletions of water from Grand County.
 - 3) Compact Curtailment Actions.
 - (a) To the extent, and during such time that the operation of the Windy Gap Project or WGFP, or the exercise of the Windy Gap Project Water Rights, is or may in the future be curtailed, limited, or otherwise restricted as the result of, or for the purpose of, compliance with the 1922 Colorado River Compact or 1948 Upper Colorado River Compact (“Compact Curtailment”), the Municipal Subdistrict or WGFP Enterprise may take any actions or use any existing or future facilities as may be required to provide a water supply to the Municipal Subdistrict or WGFP Enterprise, as limited by and subject to the WG Volumetric Limits (“Compact Curtailment Actions”) and the express obligations of the Subdistrict and WGFP Enterprise under this WGFP IGA. The Municipal Subdistrict or WGFP Enterprise may undertake such Compact Curtailment Actions as may be necessary to prudently plan and prepare in advance of any potential Compact Curtailment; Provided however, that any such advance Compact Curtailment Actions will be implemented only during such time that the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of a Compact

Curtailment. The West Slope Parties may oppose any Compact Curtailment Actions in any forum.

- (b) Nothing in this WGFP IGA, including without limitation Paragraphs IV.H.1) and IV.H.2) above, shall affect, limit, or otherwise restrict the right of the Municipal Subdistrict or WGFP Enterprise to take any actions or to use any existing or future facilities as required to provide a water supply to the Municipal Subdistrict or WGFP Enterprise, as limited by and subject to the WG Volumetric Limits, in the event, to the extent, and during such time that the operation of the Windy Gap Project or WGFP, or the exercise of the Windy Gap Project Water Rights, is or may in the future be curtailed, limited, or otherwise restricted as the result of or for the purpose of compliance with the 1922 Colorado River Compact or 1948 Upper Colorado River Compact. Nothing in this WGFP IGA shall limit or restrict the right of West Slope Parties to oppose any such actions or use of any such existing or future facilities.
 - (c) Nothing in this Paragraph IV.H.3 shall be construed to 1) allow the Subdistrict or WGFP Enterprise to increase the yield of the WG Project or WGFP at times other than when the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of the enforcement of the 1922 Colorado River Compact or 1948 Upper Colorado River Compact, or 2) use any banked or stored water in a manner that causes an increase in the yield of the Windy Gap Project or WGFP at times other than when the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of the enforcement of the 1922 Colorado River Compact or 1948 Upper Colorado River Compact.
 - (d) Nothing in this Paragraph IV.H.3) shall affect the obligations of the Subdistrict and WGFP Enterprise under Paragraph III. of this WGFP IGA.
- 4) Nothing in this WGFP IGA shall affect, limit, or otherwise restrict the right of the Municipal Subdistrict to fully utilize the Windy Gap Water Rights and associated existing facilities in Grand County or any existing or future facilities on the East Slope, or existing or future water rights in Water Division No. 1 in a manner that will not exceed the WG Volumetric Limits. The West Slope Parties reserve the right to oppose any actions taken by the Subdistrict intended to achieve the WG Volumetric Limits using existing or future facilities or water rights that are not expressly authorized by the 1980 Agreement, the 1985 Supplemental Agreement, and this WGFP IGA.

- 5) Any consent of Grand County under Paragraph IV.H.2) shall not be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action to be taken thereunder by Grand County.
 - 6) Nothing in this WGFP IGA shall affect, limit, or otherwise restrict the maintenance, repair, replacement or rehabilitation of the existing Windy Gap Project facilities, replacement facilities, or rehabilitated facilities located in Grand County.
- I. CWCBC Instream Flow. The Subdistrict and WGFP Enterprise will support the entry of a decree in accordance with applicable law for a CWCBC instream flow on the Colorado River mainstem from the confluence of the Blue and Colorado Rivers to a point immediately upstream of the confluence of the Eagle and Colorado Rivers if a) the CWCBC instream flow is not used as a basis for imposing restrictions or limitations on the WGFP, b) the West Slope Parties agree that they will never assert in any forum that the CWCBC Instream flow be used as a basis for restrictions or limitations on the WGP or WGFP, and c) the right is subject to substantively the same terms and conditions as are set forth in the Findings of the CWCBC in declaring its intent to appropriate dated _____, 2011.
 - J. Grand County RICD. Subdistrict and WGFP Enterprise will not oppose the entry of a decree in Case No. 10CW298 consistent with the draft decree dated September 20, 2012 and stipulation attached as Exhibit 2 to this WGFP IGA.
 - K. Shoshone Outage Protocol.
 - 1) For purposes of this WGFP IGA, the Shoshone Outage Protocol means that the Windy Gap Project and WGFP will operate as described in this paragraph IV.K.1), IV.K.2), and IV.K.3) during periods when the Shoshone Power Plant is shutdown or otherwise not able to divert the full amount of its 1,250 cfs senior water right due to repair, maintenance, or other reasons (“Shoshone Outage”). When the Windy Gap Project’s participation in the Shoshone Outage Protocol is in effect pursuant to this WGFP IGA, the Windy Gap Project and WGFP will bypass the amount of water that the Windy Gap Project and WGFP would have been required to bypass if the Senior Shoshone Call had been in effect in order to result in a flow of not more than 1,250 cfs at the Dotsero gage on the Colorado River (not including any water released for endangered fish species purposes). For purposes of this WGFP IGA, a Shoshone Outage does not include a shutdown of the Shoshone Power Plant for regularly scheduled maintenance for a cumulative period of 17-days during the period of November 1 through March 15.

- 2) The Windy Gap Project and WGFP will operate in accordance with the Shoshone Outage Protocol from July 16-April 14 of each year. Prior to WGFP Completion, the Windy Gap Project and WGFP may operate in accordance with the Shoshone Outage Protocol during the period of April 15-July 15 on a voluntary cooperative basis. Following WGFP Completion, the Windy Gap Project and WGFP will operate in accordance with the Shoshone Outage Protocol during the period April 15 – July 15 at any time during this period when the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir is greater than 50% of the Active Capacity of Chimney Hollow Reservoir.
 - 3) Participation in the Shoshone Outage Protocol by the Windy Gap Project and WGFP during the period of April 15-July 15 will be limited to a total maximum volume of foregone pumping equal to 10,000 acre feet (30 days with one pump running) in one year, a total of 20,000 acre feet (60 days with one pump running) in any 3 consecutive year period, and a total of 30,000 acre feet (90 days with one pump running) in any 5 consecutive year period.
 - 4) The Subdistrict agrees that it will participate in good faith in negotiations to achieve permanent management of the flow of the Colorado River to address certain flow changes that result during a Shoshone Outage.
- L. Cooperative Effort for Aquatic Environment. The Subdistrict and the WGFP Enterprise, Grand County, Middle Park, and the River District agree to participate in the Learning by Doing Cooperative Agreement (“Cooperative Agreement”) as defined in the Intergovernmental Agreement for The Learning by, Doing Cooperative Effort which is attached as Exhibit 1 but which is not a part of or incorporated within this WGFP IGA. Any amendments to the Cooperative Agreement shall not require amendment or modification of this WGFP IGA.
- M. Colorado River Cooperative Agreement. The Subdistrict and the WGFP Enterprise agree not to oppose or otherwise interfere with the efforts to obtain such court decrees and approvals as are necessary for the Colorado River Cooperative Agreement to the extent that the court decrees and approvals do not adversely affect the WGFP or Windy Gap Project. The Subdistrict further agrees that it will not divert water that would not have been available but for the actions of the Management Committee or Grand County pursuant to the Learning by Doing process.
- N. Wild and Scenic. Within one year of issuance of an acceptable permit for the WGFP, the Subdistrict shall pay \$50,000 and the River District shall pay \$25,000 to the Endowment Fund of the Upper Colorado River Wild and Scenic Stakeholder Group for use to protect Wild and Scenic resources

identified in the Colorado River from Kremmling downstream to No Name. The Subdistrict's contribution provided herein shall satisfy the obligation of the Subdistrict and WGFP Enterprise to contribute endowment funds for Wild and Scenic purposes under this WGFP IGA. The Subdistrict agrees that the River District's contribution provided herein shall satisfy the obligation of the River District to contribute endowment funds for Wild and Scenic purposes under the WGFP IGA. The Subdistrict will contribute 20% of the amount contributed by the River District, not to exceed \$5,000 annually adjusted annually by the Denver-Boulder-Greely CPI-U, for annual operating costs of the Upper Colorado River Wild and Scenic Stakeholder Group.

- O. Windy Gap Water Right Diversion at Granby Reservoir. Absent the express written consent of Grand County and the River District, the Subdistrict and WGFP Enterprise agree that neither will divert water at Granby Reservoir under the priority of the Windy Gap Decrees or during free-river conditions.
- P. Bypass of Windy Gap Reservoir. The Subdistrict will enter into an agreement with Colorado Division of Parks and Wildlife to provide up to \$250,000 to study methods for bypass of flows, sediment, and/or fish around or through Windy Gap Reservoir and identify potential modifications that would provide tangible benefits to aquatic resources below Windy Gap Reservoir. The implementation of recommendations resulting from the study will not constitute a violation of or require amendment of this WGFP IGA or the 1980 and 1985 Agreements.

V) West Slope Parties' Commitments

- A. No Opposition to WGFP. The West Slope Parties will not oppose final state and federal approvals of the WGFP, subject to performance of this WGFP IGA by the Subdistrict and WGFP Enterprise and the performance of such mitigation, requirements, and conditions as are required in those approvals, including but not limited to the Records of Decision by Reclamation and USACE, the Amendatory Contract, 401 Certification, or the 404 Permit. Nothing herein shall affect any 1041 authority of Grand County.
- B. Reopen Approvals or Authorizations. The West Slope Parties will not request that any governmental approval or authorization of the Windy Gap Project or the WGFP be subject to provisions that have the effect of reopening the governmental approval or authorization. For a period of five years from the date of the first diversions into the constructed Chimney Hollow Reservoir, no party will unilaterally request, or cause others to request, that the United States Army Corps of Engineers or other regulatory agency with jurisdiction and authority over the WGFP, reopen a permit or license for the Windy Gap Project or WGFP for any reason except as may be necessary to preserve any right to undertake such action prior to expiration of any applicable legal deadline or statute of limitation. Each party reserves the right to oppose any

such efforts to reopen the permits or licenses for the Windy Gap Project or WGFP. This Paragraph V.B. is not intended to prevent the West Slope Parties from commencing any legal action to enforce this WGFP IGA or to request enforcement of specific terms of federal permits.

- C. Windy Gap Reservoir Conditional Storage Right. The West Slope Parties will not oppose future applications to make the remaining conditional portion (1,101.14 acre feet) of the existing Windy Gap Reservoir storage right absolute.
- D. Modification of Windy Gap Decree. The West Slope Parties will consent to the entry of a decree modifying the existing Windy Gap Decrees to incorporate this WGFP IGA and will not assert that a change of the Windy Gap Water Rights is required for the operations of the Windy Gap Project or WGFP in a manner consistent with this WGFP IGA.

VI) Further Agreements of the Parties

- A. Reform of Invalid Provisions. Wherever possible each provision of this Agreement shall be interpreted and implemented to be effective and valid under applicable law. If any provision or portion of this WGFP IGA is determined to be invalid or unenforceable by a final, non-appealable order or decision of any judicial or administrative body with jurisdiction, the Parties agree to reform this WGFP IGA to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision. The provisions of this WGFP IGA shall be reasonably and liberally construed to achieve the intent of the Parties.
- B. No Party will oppose final state, local and federal approvals of the WGFP, subject to performance of this WGFP IGA by the Subdistrict and WGFP Enterprise and the performance of such mitigation, requirements, and conditions as are required in those approvals, including but not limited to the Records of Decision by Reclamation and USACE, the WGFP Amendatory Contract, 401 Certification, or the 404 Permit. Nothing herein shall affect any 1041 authority of Grand County.
- C. The Subdistrict agrees that conditions of the federal authorization for the WGFP will include provisions that substantially conform to the following:
 - 1) the total volume of Colorado-Big Thompson Project water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre feet. For the purposes of this Paragraph of the WGFP IGA, the amount of Colorado-Big Thompson Project water in storage in Granby Reservoir shall be the amount of Colorado-Big Thompson Project water

stored above the invert of the Farr Pumping Plant Intake and below the normal high water line; and

- 2) in any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, Colorado-Big Thompson Project water then in storage in Chimney Hollow Reservoir shall not be released to satisfy delivery requirements to Colorado-Big Thompson Project Allottees if such release would allow the capture and storage of additional Colorado-Big Thompson Project water in Granby Reservoir.
- D. Nothing in this WGFP IGA shall be construed to limit the discretion of the Northern Colorado Water Conservancy District or Reclamation regarding the operation of the Colorado-Big Thompson Project, including, without limitation the pre-emptive release of Windy Gap Project water from Granby Reservoir that may increase the risk of or result in a spill of water provided to Middle Park or Grand County (any such spill in accordance with Paragraph III.I of this WGFP IGA).
 - E. Except as necessary to comply with the express terms of this WGFP IGA, nothing in this WGFP IGA shall be construed to limit the discretion of the Subdistrict or WGFP Enterprise regarding the operation of the Windy Gap Project or Windy Gap Firming Project, including, without limitation, the pre-emptive release of Windy Gap Project Water from Granby Reservoir that may increase the risk of or result in a spill of water provided to Middle Park or Grand County in accordance with Paragraph III.I of this WGFP IGA (any such spill in accordance with Paragraph III.I of this WGFP IGA).
 - F. The Parties agree that performance of this WGFP IGA, compliance with any mitigation requirements for the WGFP imposed by a federal or state agency, and compliance with the requirements of a Grand County 2012 Windy Gap Firming Project ("1041") Permit for the WGFP shall constitute full and complete satisfaction of the obligations of the Subdistrict and WGFP Enterprise to set forth and complete a plan with respect to the WGFP which satisfies the requirements of C.R.S. § 37-45-118(1)(b)(II) of the Water Conservancy Act.
 - G. This WGFP IGA does not limit, change or expand the role of or protections afforded to all Parties with interests in the Colorado-Big Thompson Project as described in the Manner of Operation provisions of Senate Document No. 80, the 1961 Principles to Govern the Release of Water at Granby Dam To Provide Fishery Flows Immediately Downstream In The Colorado River ("1961 Principles"), and the Blue River Decrees. Water released from Granby Reservoir pursuant to this WGFP IGA shall be in addition to the then current bypass of water under the 1961 Principles.

- H. The obligations of the Parties to this WGFP IGA shall exist upon execution of this WGFP IGA unless otherwise specified in this WGFP IGA.
- I. Except to the extent and unless it is terminated, this WGFP IGA shall be incorporated within and be a non-severable part of the Windy Gap Decrees. The Subdistrict will not divert water into Chimney Hollow Reservoir unless this WGFP IGA is incorporated within the Windy Gap Water Rights.
- J. The West Slope Parties agree to not assert that the WGFP and Moffat Collection System Project are interdependent or interrelated.
- K. This WGFP IGA is an agreement between the Parties and does not bind or limit the authority or jurisdiction of agencies of the United States of America.
- L. Performance of the portions of this WGFP IGA that require the expenditure of funds are subject to future budgeting and appropriation of funds by the governing bodies of the Subdistrict, WGFP Enterprise, Middle Park, Grand County, and the River District. The Parties agree to make good faith efforts to appropriate such funds.
- M. The Parties agree that this WGFP IGA is an intergovernmental agreement pursuant to Article XIV, Sec. 18 of the Colorado Constitution and C.R.S. §§ 29-1-201 et. seq. inclusive, among all governmental entities hereto. In addition to any other remedy provided by law, the Parties further agree that the terms and conditions of this WGFP IGA are enforceable by specific performance and agree not to bring any defense to specific performance based on the doctrine of governmental immunity. The Parties also agree that a breach of this WGFP IGA will cause irreparable harm sufficient for injunctive relief.
- N. The Parties agree to work cooperatively to implement a stipulated resolution of the Green Mountain Reservoir Administrative Fill dispute.
- O. The Parties agree that if a dispute arises on any matter covered by this WGFP IGA, the Parties will confer in good faith and endeavor to resolve the concern. If the Parties reach an impasse, they will select a neutral third party mediator who would seek an acceptable voluntary solution to the conflict. For conflicts that involve a technical or scientific matter, the neutral third party mediator may select an independent technical or scientific expert, acceptable to the Parties involved in the mediation, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the affected Parties may pursue any available legal or administrative recourse. Nothing herein shall preclude the commencement of any action that would otherwise be barred by a statute of limitations or the timely participation in any judicial or administrative process.

- P. This WGFP IGA is the result of negotiations between the Parties and their respective counsel. These negotiations produced numerous drafts that were prepared by one or more of the Parties. The Parties agree that these drafts, including omissions, do not provide or represent evidence of intent of any Party and may not be relied upon for purposes of construction and enforcement of this WGFP IGA or for any other purpose.
- Q. Suspension and Termination of 1041 Permits. The Subdistrict and WGFP Enterprise shall not be obligated to perform or comply with Paragraphs III. E. through L. or IV.K. (SHOP) of this WGFP IGA during any period of suspension of the WGFP 1041 Permit issued by Grand County. This WGFP IGA shall be terminated and of no further force or effect if the WGFP 1041 Permit issued by Grand County is terminated or revoked. During such time of suspension, or in the event of termination or revocation of the WGFP Permit (1041), the 1980 Agreement, as amended and supplemented by the 1985 Agreement, and the 1985 Agreement, shall be in full force and effect according to their terms.
- 1) Suspension of 1041 Permit. The Subdistrict and WGFP Enterprise shall not be obligated to perform or comply with Paragraphs III.E through L, or IV.K. (SHOP) of this WGFP IGA during any period of suspension of the WGFP 1041 Permit issued by Grand County.
 - (a) During such time of suspension, the 1980 Agreement, as amended and supplemented by the 1985 Agreement, and the 1985 Agreement, shall be in full force and effect according to their terms.
 - (b) Any water stored on behalf of Grand County or Middle Park pursuant to Paragraph III.H. at the time the WGFP Permit (1041) suspension is imposed shall not be available for use by Grand County or Middle Park during the time of the suspension, but will be available for use pursuant to Paragraph III.H. at such time as the suspension is not in effect. Any such water shall be subject to all reductions, charges, restrictions and requirements applicable to the storage of water under this WGFP IGA, the Amendatory Contract, and any other contracts or laws applicable to the storage of water on behalf of Middle Park and Grand County. Any such payments shall be made by Grand County or Middle Park, as appropriate, at such time as the suspension is not in effect and prior to the use of such water.
 - 2) Termination or Revocation. In the event the WGFP Permit (1041) is revoked or terminated, any water stored on behalf of Grand County or Middle Park pursuant to Paragraph III.H. shall revert to the ownership and control of the Subdistrict. The Subdistrict will reimburse Grand County and Middle Park respectively for 91% of any pumping costs incurred by

the respective entity associated with the water stored on behalf of Grand County or Middle Park pursuant to Paragraph III.H.

VII) No Waiver

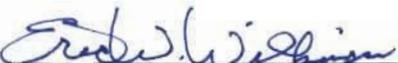
A. The Parties do not agree:

- 1) Whether amendment of the Blue River Decree or Senate Document No. 80 is required to authorize the storage of Colorado-Big Thompson Project water in Chimney Hollow Reservoir;
- 2) Whether a change of water right is required to allow the storage of Windy Gap Project Water in Chimney Hollow Reservoir; or
- 3) Whether the Section 390b(d) of the Water Supply Act of 1958 requires Congressional approval for the Windy Gap Firming Project.
- 4) Notwithstanding these disagreements, the West Slope Parties will not object to, litigate or otherwise dispute in any forum the storage of Colorado-Big Thompson Project water in Chimney Hollow Reservoir or the storage of Windy Gap Project Water in Chimney Hollow Reservoir in accordance with, and subject to the following provisions:
 - (a) The total volume of Colorado-Big Thompson Project water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre feet. For the purposes of this Paragraph of the WGFP IGA, the amount of Colorado-Big Thompson Project water in storage in Granby Reservoir shall be the amount of Colorado-Big Thompson Project water stored above the invert of the Farr Pumping Plant Intake and below the normal high water line.
 - (b) In any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, Colorado-Big Thompson Project water then in storage in Chimney Hollow Reservoir shall not be released to satisfy delivery requirements to Colorado-Big Thompson Project beneficiaries if such release would allow the capture and storage of additional Colorado-Big Thompson Project water in Granby Reservoir.
 - (c) The implementation of this WGFP IGA.
 - (d) The Parties do not waive any rights regarding any other changes to the historical operations of the Colorado-Big Thompson Project or Windy Gap Project.

- B. No Waiver – Colorado-Big Thompson. The Parties agree that the dispute concerning storage of Colorado-Big Thompson Project water in Chimney Hollow Reservoir has not been litigated. The Parties agree that, except as provided for in this WGFP IGA, in entering into the agreement and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A., above, that this WGFP IGA shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the Parties' respective positions regarding the storage of Colorado-Big Thompson Project water and the Parties' respective interpretations of Senate Document No. 80, the 1961 Principles, the 1938 Repayment Contract, Reclamation Law, the Blue River Decrees, or Colorado law. The Parties further agree that they do not intend this WGFP IGA to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party or entity on any other matter.
- C. No Waiver – WGFP. The Parties agree that the dispute concerning storage of Windy Gap Project Water in Chimney Hollow Reservoir has not been litigated. The Parties agree that, except as provided for in this WGFP IGA, in entering into this WGFP IGA and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A, above, that this WGFP IGA shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the Parties' respective positions regarding the storage of Windy Gap Project Water in Chimney Hollow Reservoir and the Parties' respective interpretations of federal or Colorado law. The Parties further agree that they do not intend this WGFP IGA to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.
- D. The Parties do not agree whether Grand County has the authority to regulate the WGFP pursuant to C.R.S. §§ 24-65.1-101, *et seq.*
- 1) Notwithstanding these disagreements, the Subdistrict will not object to, litigate, or otherwise dispute in any forum the authority of Grand County to require a permit for the WGFP issued by Grand County pursuant to C.R.S. §§ 24-65.1-101, *et seq.* (1041 Permit), including any terms and conditions thereof once said Permit has been accepted by the Subdistrict.

- 2) With the exception of a challenge to Grand County's authority to require a permit for the WGFP, the Subdistrict does not waive or relinquish its rights to raise any defense or assert in any forum that it has fully complied with and is not in violation of the WGFP 1041 Permit.
 - 3) The Subdistrict does not waive or relinquish its rights to object to, litigate, or otherwise dispute in any forum the authority of Grand County to modify, amend or terminate the WGFP 1041 Permit or to require a 1041 Permit or other Grand County permit or authorization for any other existing or future project, action, or other activity of the Subdistrict.
- E. Preservation of Governmental Powers. Except as specifically provided herein, nothing in this WGFP IGA shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity including, without limitation, the regulatory or quasi-judicial power or authority of Grand County.
- F. No Third-Party Beneficiaries. This WGFP IGA does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

ATTEST:


Secretary
Date: 1/3/13

MUNICIPAL SUBDISTRICT, NORTHERN
COLORADO WATER CONSERVANCY
DISTRICT

By: 
President

ATTEST:


Secretary
Date: 1/3/13

WINDY GAP FIRING PROJECT WATER
ACTIVITY ENTERPRISE

By: 
President

WGFP IGA Nov. 30, 2012

ATTEST:

R. Eric Kuhn
R. Eric Kuhn
Secretary/General Manager
Date: 07/12/16

COLORADO RIVER WATER
CONSERVATION DISTRICT

By: Jon Stavney
Jon Stavney
President

ATTEST:

Asia R. Hosone
Clerk and Recorder
Date: 12/4/2012

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GRAND, COLORADO

By: Nancy Stuart
Chairman

ATTEST:

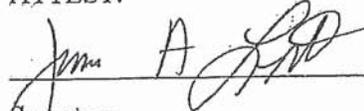
Sherry Hoopstak
Secretary
Date: 1/24/2013

NORTHWEST COLORADO COUNCIL
OF GOVERNMENTS

By: K. Swing
Chairman

WCFP IGA Nov. 30, 2012

ATTEST:


Secretary

Date: 2/1/13

MIDDLE PARK WATER CONSERVANCY
DISTRICT

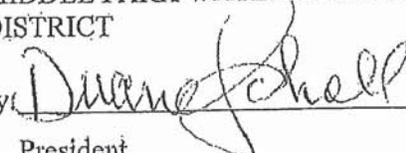
By: 
President

Exhibit 3

List of Related Agreements

1. Intergovernmental Agreement between the Northern Colorado Water Conservancy District, Grand County, Middle Park Water Conservancy District and Colorado River Water Conservation District
2. Memorandum of Understanding, Grand Lake Clarity Project (Umbrella Agreement)
3. Clarity Supplement to the 1938 Repayment Contract
4. Windy Gap Bypass Funding Agreement
5. Processed Material Supply Agreement (Gravel Pit Agreement)
6. Windy Gap Decree
7. Grand County RICD Stipulation
8. Learning by Doing Cooperative Effort
9. Green Mountain Reservoir Administration
10. Contracts for Delivery of Water to Grand Valley
11. Amendatory Contract
12. Letter from Subdistrict to River District re: no opposition to use of WG water for uses incidental to irrigation such as fish screen, fish ladder, etc
13. Letter from NW to GC stating how the 5,412.5 will be made permanent



May 14, 2020

Via Certified Mail

Andy Mueller, General Manager
Colorado River Water Conservation District
201 Centennial Street, Suite 200
Glenwood Springs, CO 81601

Dear Andy:

This letter is in reference to Paragraph VI.C.1 of the 2012 Windy Gap Firming Project Intergovernmental Agreement ("WGFP IGA") between the Municipal Subdistrict, Northern Colorado Water Conservancy District ("Subdistrict") and its Windy Gap Firming Project Water Activity Enterprise; the Board of County Commissioners of Grand County, Colorado; Middle Park Water Conservancy District; the Colorado River Water Conservation District; and the Northwest Colorado Council of Governments. That Paragraph states as follows:

[T]he total volume of Colorado-Big Thompson water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre-feet. For the purposes of this Paragraph of the WGFP IGA, the amount of Colorado-Big Thompson Project water in storage in Granby Reservoir shall be the amount of Colorado-Big Thompson Project water stored above the invert of the Farr Pumping Plant Intake and below the normal high water line;

By this letter, the Subdistrict wishes to clarify how the amount of Colorado-Big Thompson Project water in storage in Granby Reservoir is calculated under the WGFP IGA. For purposes of Paragraph VI.C.1, the invert of the Farr Pumping Plant Intake will be considered to be located at the actual minimum elevation required to deliver water through the Farr Pumping Plant Intake to the Plant's pumps. The U.S. Bureau of Reclamation's "Technical Record of Design and Construction" for the Colorado-Big Thompson Project, Volume II (April 1957), lists this level at an elevation of 8,186.0 feet above sea level. However, the elevation of this level may be calculated differently if a different survey datum is used. Reclamation calculates the active volume of storage in Granby Reservoir to be 465,568 acre-feet between the elevations of 8,186.0 feet and the high water line of 8,280.0 feet, and Northern Water uses this data to operate the project.

Andy Muller, General Manager

Page 2

May 14, 2020

Please signify the River District's agreement with the clarification provided herein by counter-signing both copies of this letter mailed to you. Please then mail one of the two original copies back to me; the other signed original copy is for your records.

Sincerely,



Brad Wind, General Manager
Municipal Subdistrict, Northern Colorado Water Conservancy District



Andy Mueller, General Manager
Colorado River Water Conservation District

Date: 05/20/2020



WATER BOARD

LONGMONTCOLORADO.GOV

Meeting Date: July 20, 2020

Item Number: 8c

Subject: Cash in Lieu Valuation

Type of Item: General Business

From: Ken Huson, Water Resources Manager (303-651-8340)
ken.huson@longmontcolorado.gov
Wes Lowrie, Water Resources Analyst (303-651-8314)
wes.lowrie@longmontcolorado.gov

Suggested Action: Review and if necessary make recommendation to City Council regarding adjusting the current fee for cash-in-lieu of water rights received.

As Water Board will recall, on February 25, 2020 City Council approved Resolution R-2020-18 establishing the fee for cash in lieu of water right received at the current \$17,683.00 per acre-foot.

Chapter 14.05.070 of the Longmont Municipal Code reads in part "...The per acre-foot fee for cash in lieu of water rights transfers will be reviewed by the Water Board at least quarterly at its meetings in March, June, September and December. The basis for the Water Board recommendation shall include the current cost of new water supply projects identified in the City of Longmont's Raw Water Master Plan, the current market value associated with the purchase of units of Colorado-Big Thompson water, and the current market value of non-historical native basin water rights identified in section 14.05.060. Recommendations to adjust the fee will be forwarded to city council if the need for such adjustment is indicated...".

A summary of the cash in lieu review criteria follows:

Criteria	Details (1)	Cost/AF (2)
1. Native Basin Water Rights Transactions (based upon credited average yield)	Lake McIntosh: \$15,094 / AF Oligarchy Ditch: \$15,106 / AF	\$ 15,100
2. Cost for New Water Supply	Water Conservation: \$ 10,600 / AF Windy Gap Firming Project: \$17,683 / AF Union Enlargement & Pumpback Pipeline: \$21,039 / AF Button Rock Enlargement: \$21,829 / AF	\$17,788 <i>(\$16,660)</i> <i>Weighted Average</i>
3. C-BT allotment unit transfer costs	February – 2 units @ average \$76,316/ AF March – 75 units @ average \$79,605 / AF April 287 units @ average \$80,825 / AF	\$80,549

- (1) Lake McIntosh credit yield is 0.53 AF/ share
Oligarchy Ditch credit yield is 26.48 AF / share

Water Conservation cost savings were updated using information provided by CH2M and the Water Efficiency Master Plan. City Council is evaluating the Climate Action Task Force recommendation regarding water conservation and this cost will be updated upon further evaluation.

Windy Gap Firming Project cost was updated using estimates which include an increase for escalation and owner's contingency. Union Enlargement & Pumpback Pipeline and the Button Rock Enlargement cost estimates were updated using the Bureau of Reclamation Construction Cost Index and include items such as property acquisition, permitting, planning, design, & mitigation.

CBT cost is calculated by taking the average unit purchase price and dividing by 0.76 which is the credit for which Longmont gives towards the transfer of 1 unit of CBT.

- (2) This amount represents the arithmetic average AF cost for each respective criteria group. The weighted average construction cost for new water supply is based on their respective dry yields.

As part of the most recent Water Board and City Council action regarding setting the fee for cash-in-lieu of water rights dedication, the above three criteria were evaluated. At that time it was determined that because the City was not actively in the market to purchase native basin water rights, as the majority of those which Longmont would accept already reside within the Longmont Planning Area and will be transferred to the City at time of annexation or development pursuant to the Raw Water Requirement Policy, this criteria would continue to be monitored but would not play a significant role in the setting of the cash-in-lieu fee.

Likewise the C-BT allotment unit transfer costs criteria would also continue to be monitored but would not play a significant role in the setting of the cash-in-lieu fee until that time when Longmont determined that purchase of these rights were being planned.

It was therefore determined that the construction cost for new water supply criteria would be the leading criteria used in setting the cash-in-lieu fee. The evaluation of this quarter's fee, includes updated adjustments for the Bureau of Reclamation Construction Cost Index.



Attachments: CBT transaction information



**Northern Colorado Water Conservancy District Water Transactions
(February 2020 Activity)**

Buyer	Seller	Previous Contract	New Contract	Units Purchased	Price Per Unit
Little Thompson Water District	Irrigator	Class D	Class C	2	\$58,000
Developer	Irrigator	Class D	Class B	1	N/A
Developer	Irrigator	Class D	Class B	1	N/A
Developer	Irrigator	Class D	Class B	1	N/A

Note: Information will be periodically updated as it becomes available

**Northern Colorado Water Conservancy District Water Transactions
(March 2020 Activity)**

Buyer	Seller	Previous Contract	New Contract	Units Purchased	Price Per Unit
North Weld County Water District	Irrigator	Class D	Class C	65	\$61,000
North Weld County Water District	Irrigator	Class D	Class C	10	\$60,000
Developer	Irrigator	Class C	Class D	28*	\$50,000

Note: Information will be periodically updated as it becomes available

*Units were under contract for over six months

**Northern Colorado Water Conservancy District Water Transactions
(April 2020 Activity)**

Buyer	Seller	Previous Contract	New Contract	Units Purchased	Price Per Unit
North Weld County Water District	Irrigator	Class D	Class C	20	\$62,000
North Weld County Water District	Irrigator	Class D	Class C	50	\$62,000
North Weld County Water District	Irrigator	Class D	Class C	4	\$62,500
North Weld County Water District	Irrigator	Class D	Class C	50	\$62,500
North Weld County Water District	Irrigator	Class D	Class C	16	\$60,000
North Weld County Water District	Irrigator	Class D	Class B	10	\$60,000
Developer	Irrigator	Class D	Class C	1	N/A
Developer	Irrigator	Class D	Class B	3	N/A
Developer	Irrigator	Class D	Class B	18	\$62,000
Developer	Irrigator	Class D	Class B	4	\$64,000
Developer	Irrigator	Class D	Class C	1	\$61,000
Developer	Irrigator	Class D	Class B	1	N/A
Developer	Irrigator	Class D	Class B	7	\$62,000
Irrigation Company	Irrigator	Class D	Class C	80	\$60,000
North Weld County Water District	Irrigator	Inactive Account	Class C	27	\$62,500

Note: Information will be periodically updated as it becomes available

Northern Colorado Water Conservancy District Water Transactions
(May 2020 Activity)

Buyer	Seller	Previous Contract	New Contract	Units Purchased	Price Per Unit
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No Transfers in May due to Covid 19

Note: Information will be periodically updated as it becomes available



CITY OF LONGMONT | Water Board

Meeting Date: July 20, 2020

Item Number: 9a

Subject: Water Conservation Update

Type of Item: Item From Staff

From: Francie Jaffe, Water Conservation & Sustainability Specialist,
303-774-4468 francie.jaffe@longmontcolorado.gov)

Suggested Action: Receive Information

Staff will provide a short verbal update on Longmont's water conservation programs.

History of Longmont Water Conservation

The first Longmont Water Conservation Master Plan was passed in 1996 with the goal to "promote water conservation by example, education, incentive and innovation, as a responsible approach to present and future management of a valuable resource."

The 2004 Raw Water Master Plan stated in Goal 7 that "[t]he City will strive to achieve water conservation that results in water demands at build out of the Longmont Planning Area that are 10 percent lower than current projections." Projected raw water demand at this time was 35,580 acre-feet (11,594 mG).

The Water Conservation Master Plan was next updated in 2008 to meet new State requirements and incorporate new developments in the field of water conservation. The goal was still to meet a 10 percent reduction or 3,500 acre-feet per year. This plan found that ignoring the drought year of 2003, since 2000 there had been a 10 percent drop in residential per capita when analyzing 1997 to 2006.

In 2013, the City performed a Water Conservation Program Evaluation to assess the effectiveness of the City of Longmont water conservation programs. This report analyzed the gross per capita (water produced from the water treatment plant divided by the population receiving treated water). From the first Water Conservation Master Plan in 1996, gross per capita has decreased from approximately 213 gallons per capita per day (gpcd) to 162 gpcd.

This plan estimated that the City to date had saved approximately 2,400 acre-feet, this savings does not include additional raw water savings.

Finally, the most recent Water Efficiency Master Plan was passed in 2017 to be the formal update to the 2008 Water Conservation Plan. This plan still worked to pursue the goal of a reduction in 10 percent of the project water supply or approximately 3,500 acre-feet per year. Gross per capita water use had further reduced to 140 gpcd in 2015. This plan recommended the hiring of a water conservation staff member and full-time engineer. A ½ FTE water conservation specialist and full FTE engineer were hired in 2019.

The five-year average gross per capita from 2015 to 2019 was 140 gpcd.



CITY OF LONGMONT | Water Board

Meeting Date: July 20, 2020

Item Number: 10

Subject: Review of Major Projects Listing and Items Tentatively Scheduled for Future Water Board Meetings

Type of Item: Informational

From: Water Board

Suggested Action: N/A

Attached is a copy of the most recent Water Board project status report. Please note the report includes expected future review date information for each item.

WATER BOARD PROJECT STATUS REPORT

	<u>ITEM</u>	<u>MOST RECENT WATER BOARD REVIEW DATE</u>	<u>PROJECTED NEXT WATER BOARD REVIEW DATE</u>	<u>MOST RECENT ACTION TAKEN AND/OR PROPOSED FUTURE ACTION</u>
1	Union Reservoir Enlargement Land Acquisition Program	February 25, 2019	August 17, 2020	Annual update was presented to Water Board February 25, 2019.
2	Water Supply and Drought Management Plan	June 15, 2020	April 19, 2021	2019 Plan presented to Water Board in April 2019 with recommendation to City Council to remain at a Sustainable Conservation Level.
3	Windy Gap Firming Project	June 15, 2020	July 20, 2020	Review of Longmont's 5th Interim Agreement.
4	Water Legislation & Guiding Water Principles	May 18, 2020	January 25, 2021	Review of current legislation.
5	Cash-In-Lieu Review	December 16, 2019	July 20, 2020	Currently at \$17,683 per Acre-Foot. Resolution R-2020-18.
6	Button Rock Preserve & Forest Stewardship	March 16, 2020	August 17, 2020	Review the Button Rock Preserve visitation policy.
7	Longmont Water System Yield	July 15, 2019	TBD	Ongoing discussion of future water projects and projected future water yields.

Tentative Future Event Schedule	
Event	Date
Water Board Monthly Meeting	August 17, 2020
Water Board Monthly Meeting	September 21, 2020
Water Board Monthly Meeting	October 19, 2020
Water Board Monthly Meeting	November 16, 2020

Water Board Member Terms

John Caldwell - 2020
 Kathy Peterson - 2021
 Todd Williams - 2022
 Roger Lange - 2023
 Renee Davis - 2024

Updated: July 2020



CITY OF LONGMONT | Water Board

Meeting Date: July 20, 2020

Item Number: 11

Type of Item: Informational Items & Water Board Correspondence

There were no information items or Water Board correspondence since the last meeting.