

RESOLUTION No. 2020-12-06

AUTHORIZING THE MAYOR TO EXECUTE THE SEVENTEENTH INTERIM AGREEMENT WITH NORTHERN COLORADO WATER CONSERVANCY DISTRICT, NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT

WHEREAS, the City of Fort Morgan, Colorado is a participant in the Northern Integrated Supply Project (NISP); and,

WHEREAS, NISP is developing a water project (the “Project”) for the purpose of developing a new reliable water supply for the beneficial use of the City and other entities; and,

WHEREAS, all costs of the Project will be divided among the City and other entities that participate in the Project; and,

WHEREAS, there are multiple Phases of this Project, as described in the attached Seventeenth Interim Agreement with NISP; and,

WHEREAS, the continuation and completion of the Project requires participants to provide continued funding for its completion; and

WHEREAS, the City wishes to continue pursuing the finalization of the Project by providing the funding necessary for its completion.

WHEREAS, the parties have set forth the terms of their agreement in the **SEVENTEENTH INTERIM AGREEMENT WITH THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT** (a copy of which is attached hereto and incorporated herein by this reference).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

SECTION 1: The City Council hereby authorizes the Mayor to execute the **SEVENTEENTH INTERIM AGREEMENT WITH THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT**.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 15th day of December 2020, the vote upon roll call being as follows:

Ayes: Mayor Protem Anderson, Councilmembers Deal, Kaper, Lindell, Schossow and Urdiales.

Nays: None.

Absent /Abstain: Mayor Shaver, Absent - Excused



THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY:


Ronald Shaver, Mayor

ATTEST:


John Brennan, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN) ss.
CITY OF FORT MORGAN)

CERTIFICATE

I, John Brennan, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 15th day of December, 2020.


John Brennan, City Clerk

**SEVENTEENTH INTERIM AGREEMENT WITH THE
NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE,
FOR PARTICIPATION IN THE
NORTHERN INTEGRATED SUPPLY PROJECT**

This Agreement is made and entered into as of _____, 2021, by and between the Northern Integrated Supply Project Water Activity Enterprise, 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., owned by the Northern Colorado Water Conservancy District, and whose address is 220 Water Avenue, Berthoud, Colorado 80513 (the "NISP Enterprise"), and Fort Morgan Water Works and Distribution Enterprise, an enterprise of the City of Fort Morgan, a Colorado home rule municipal corporation and political subdivision of the State of Colorado, whose address is 710 E. Railroad Avenue, Fort Morgan, CO 80701 ("Participant").

Recitals

- A. The NISP Enterprise is developing a water project (the "Project") for the purpose of developing a new reliable water supply for the beneficial use of the Participant and other entities.
- B. Overall Project costs will be divided among the entities that participate in the Project.
- C. The First, Second, and Fourth Phases of the Project, and years one through six of the Third Phase, have been completed.
- D. The Third Phase, Years 7 through 18 (hereinafter referred to as "Phase 3A"), will consist of further agency consultation, permitting with the U.S. Army Corps of Engineers and other agencies, compliance with the National Environmental Policy Act and other requirements for federal permitting, field work, and analysis for permitting, modeling, and other activities related to designing and permitting the Project.
- E. The Fifth Phase of the Project consists of the Glade Reservoir geotechnical investigation and embankment design advancement, Glade Reservoir Construction Manager/General Contractor (CM/GC) design involvement, Highway 287 relocation thirty percent design and CM/GC design involvement, and completion of the Galeton Dam preliminary design.
- F. The Sixth Phase involves continued NISP conveyance delivery refinement, South Platte Water Conservation Project negotiations, land and easement definition and potential purchase, and potential advancement of time-sensitive mitigation activities.
- G. The Seventh Phase involves the development of a NISP Allotment Contract, financial project planning, legal defense of the Project permits, and overall project administration.
- H. It is necessary that the NISP Enterprise pursue Phases 3A, 5, 6, and 7 of the Project at this time in order to be able to complete the Project on the time schedule desired by the

participants.

J. Pursuing this Phases 3A, 5, 6, and 7 of the Project on behalf of the participants will require continued funding from the participants.

Agreement

1. The Participant agrees to participate in Phases 3A, 5, 6, and 7 of the Project, under and pursuant to the terms and conditions of this Agreement. The Participant acknowledges that it shares a common interest in development of the Project and that privileged material may be shared with the Participant from time to time. A description of Phase 3A, Phase 5, Phase 6, and Phase 7 is included in Exhibit A. Participation in these phases of the Project in no way obligates the Participant to participate in subsequent phases of the Project or to continue involvement in the Project in any manner.
2. For the purposes of cost allocation in Phase 3A, Phase 5, Phase 6, and Phase 7, the cost is based upon the Participant's base requested capacity divided by the total requested base Project yield. The Participant's initial base requested capacity in the Project is 3,600 acre-feet of water yield. Attached hereto as Exhibit B is a table showing the currently anticipated permitted capacity in the Project and the pro rata share of the costs of the Project for 2021 for each Participant. Exhibit B also shows the projected budgets and projected pro rata shares of the costs of the Project for 2022 and 2023 for each Participant. The costs covered by this Agreement shall be separate from costs covered by the NISP Phase I Agreement between the NISP Enterprise and the Participant. The Participant may request a reduction, but not an increase, in base requested capacity, which will be implemented by the NISP Enterprise so long as any increased costs of design, environmental studies, permitting or other matters are paid by the Participant pursuant to its pro-rata cost basis. If a reduction in the Participant's base requested capacity is made, the formula for allocation of costs among the participants shall be changed accordingly so that all participants bear a pro rata share of the Phase 3A, Phase 5, Phase 6, and Phase 7 costs of the Project after the change based on their final base requested capacities. For purposes of the environmental analysis for the Project, the Participant's permitted capacity in the Project is 3,600 acre-feet of water yield. In the event that the Participant's base requested capacity is increased or decreased, the Participant's permitted capacity shall be increased or decreased in the same percentage as the percentage increase or decrease of the base requested capacity.
3. The Participant agrees to provide to the NISP Enterprise funds for its pro rata share of the anticipated 2021 costs necessary for Phase 3A, Phase 5, Phase 6, and Phase 7 of the Project. The NISP Enterprise estimates that the Participant's pro rata share of the costs of the Project is \$1,314,000.00 for 2021. The Participant will pay the NISP Enterprise its pro rata share of these 2021 costs on or before January 15, 2021. The NISP Enterprise will invoice the Participant for this payment. These estimated costs will not be increased or exceeded without the prior written approval of the Participant. Participant funds that are not expended during Phase 3A, Phase 5, Phase 6, and Phase 7 will be rebated back to each participant pro rata based on each participant's contribution of funds to the Project

in Phase 3A, Phase 5, Phase 6, and Phase 7.

4. In the event that the Participant fails to make the payment set forth above at the specified time, the NISP Enterprise shall have the right to terminate this Agreement and cease all work on the Project for the benefit of the Participant. The NISP Enterprise shall give the Participant thirty (30) days' advance written notice of its intention to terminate this Agreement and cease work on the Project for the Participant's benefit under this paragraph. The Participant shall have until the end of said 30-day period in which to make all past due payments in full in order to cure its default hereunder. The Participant shall in any event be responsible for its pro rata share of the 2021 costs of Phase 3A, Phase 5, Phase 6, and Phase 7 of the Project actually incurred by the NISP Enterprise up to the date of termination of this Agreement.
5. The NISP Enterprise agrees to diligently pursue Phase 3A, Phase 5, Phase 6, and Phase 7 of the Project in good faith to the extent that funds therefor are provided by the Participant under this Agreement and by other participants under similar agreements. By entering into this Agreement and accepting payments from the Participant, the NISP Enterprise does not obligate itself to, nor does the NISP Enterprise warrant that it will, proceed with the Project beyond Phase 7 or that it will construct or operate the Project. At the end of the Sixth Phase, the NISP Enterprise will determine after consultation with the participants whether to proceed with the Project. The NISP Enterprise agrees that, if the participants provide all required funding, if the NISP Enterprise has the ability, and if the Project is feasible and practical, it will pursue the construction and operation of the Project if requested to do so by a sufficient number of participants to fully fund the Project. In the event that the NISP Enterprise decides not to proceed with the Project, it will so notify the Participant and this Agreement will immediately and automatically terminate upon the giving of such notice.
6. In the event of termination of the Project, the Participant shall not be entitled to any return of funds paid to the NISP Enterprise for the Project, unless payments by participants exceed the NISP Enterprise's costs, in which case a pro rata refund will be made. In the event of such termination, the Participant shall be entitled to receive copies of any work products developed by the NISP Enterprise or its consultants on behalf of the Participant, and NISP Enterprise Board shall, in its sole discretion: (i) convey to the Participant, as a tenant in common with all other participants who have not been terminated under paragraph 4 above, a pro rata interest in all real and personal property acquired by the NISP Enterprise for the Project with funds provided under this Agreement or similar agreements with other participants; or (ii) disburse to the Participants the proceeds of any sale of assets in proportion to each Participant's Cost Share.
7. The Participant shall have the right to assign this Agreement and the Participant's rights hereunder, with the written consent of the NISP Enterprise, which consent shall not be unreasonably withheld, to any person or entity that is eligible to receive water deliverable through the Project and that is financially able to perform this Agreement.

8. In the event that this Agreement is terminated for any reason, the Participant shall not be entitled to any return of any funds paid to the NISP Enterprise for the Project, and the NISP Enterprise shall have no further obligations to the Participant, except as provided in Paragraphs 3 and 6 above for those participants who have not been terminated under Paragraph 4 above.
9. Notwithstanding any other provision of this Agreement to the contrary, the Participant's maximum financial obligation under this Agreement shall be the payment of \$1,314,000.00 set forth in paragraph 3 above. The Participant shall have the right to terminate this Agreement at any time. In the event of such termination, each of the parties hereto shall be immediately released from all obligations recited herein as if this Agreement had not been entered into, except that the Participant shall be entitled to a return of funds paid to the NISP Enterprise as provided in paragraph 8 above.
10. In the event that additional costs must be incurred for Phase 3A, Phase 5, Phase 6, and Phase 7 in 2021, the parties may amend this Agreement in writing to provide for further payment by the Participant of the costs for 2021. However, the Participant is not obligated under this Agreement to pay any costs for Phase 3A, Phase 5, Phase 6, and Phase 7 beyond the costs stated in paragraph 3 above.
11. This Agreement shall be interpreted under the laws of the State of Colorado. Venue for any disputes concerning this Agreement shall be in the Weld County, Colorado, District Court.
12. Nothing in this Agreement shall be construed to waive the protections and immunities afforded the NISP Enterprise and the Participant under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., and any similar or successor statutes of the State of Colorado.
13. Except for the obligation to pay money, neither party shall be liable to the other party for any delay or inability to perform its obligations hereunder by reason of acts of God, acts of the public enemy, riot, civil commotion, insurrection, acts or failure to act of governmental authorities, war, pandemic, or any other cause or causes beyond the party's reasonable control.
11. This Agreement is the entire agreement between the NISP Enterprise and the Participant regarding participation in Phase 3A, Phase 5, Phase 6, and Phase 7 of the Project and shall be modified by the parties only by a duly executed written instrument approved by the Participant and the NISP Enterprise's Board of Directors.
12. This Agreement is subject to approval by the NISP Enterprise's Board of Directors and shall become binding on the NISP Enterprise only upon such approval.

**The Northern Integrated Supply Project Water
Activity Enterprise**

By: _____
Bradley D. Wind

Title: General Manager

**Fort Morgan Water Works and Distribution
Enterprise, an enterprise of the City of Fort
Morgan, a Colorado home rule municipal
corporation and political subdivision of the State
of Colorado**

By: Ronald Shaver
Name: RONALD SHAVER
Title: MAYOR

EXHIBIT A
DESCRIPTION OF PHASE 3A, PHASE 5, PHASE 6, and PHASE 7
NORTHERN INTEGRATED SUPPLY PROJECT

Phase 3A consists of a continuation of the permitting work associated with NISP. The work in 2021 will largely be remaining efforts in support of the final 404 permit and Record of Decision, response to comments on the Final EIS, mitigation development, and continuation of the Larimer County IGA process. Additionally, there will be work in support of the public information effort for NISP as well as overall Northern Water administration and legal support.

Phase 5 will consist of the Glade geotechnical investigation and embankment design advancement and Highway 287 relocation thirty percent design. Additionally, Construction Management/General Contractors (CM/GC) will be selected for Glade Reservoir and Highway 287 and will assist in design development and cost estimating.

Phase 6 involves the following additional 2021 activities:

- NISP conveyance will continue to be refined including evaluation of Participant flow requirements, pipeline sizing and route refinement, delivery system exchange potential, C-BT exchange potential, conveyance cost estimating, and cost allocation methodology development.
- South Platte Water Conservation Project negotiations will be advanced with the affected ditch companies and shareholder cooperative agreements will be developed.
- Land and easement requirements will be more specifically identified.
- Mitigation plans will continue to be advanced and time sensitive mitigation activities may be pursued.

Phase 7 involves the following 2021 activities:

- Project financial planning
- Allotment contract development
- Legal defense of the Army Corps of Engineers 404 permit, the State of Colorado 401 Water Quality Certification, and the Larimer County 1041 Permit.

EXHIBIT B
PARTICIPANT YIELD AND COSTS
PHASE 3A, PHASE 5, PHASE 6, and PHASE 7

<i>Northern Integrated Supply Project</i> <i>Rev. 2.1</i>		<i>11/18/2020</i>		
<i>Year 2021-2023 Preliminary Preconstruction Budget</i>				
<i>Assumes Construction Starting in Oct. 2023</i>				
Item		2021	2022	2023
Glade Design Activities	\$ 3,600,000	\$ 6,100,000	\$ 4,700,000	
Glade CMGC Design Support	\$ 1,400,000	\$ 4,900,000	\$ 300,000	
HW 287 Design Activities	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	
NISP Delivery Refinement	\$ 1,000,000	\$ 1,700,000	\$ 1,800,000	
River Intake Predesign and Design	\$ 300,000	\$ 300,000	\$ 400,000	
Program Management	\$ 300,000	\$ 600,000	\$ 600,000	
Environment&Mitigation	\$ 2,500,000	\$ 2,800,000	\$ 2,000,000	
Financing Consultant	\$ -	\$ 100,000	\$ 100,000	
WQ Sample Testing	\$ 200,000	\$ 200,000	\$ 200,000	
Northern Water	\$ 1,600,000	\$ 1,700,000	\$ 1,800,000	
Legal	\$ 400,000	\$ 400,000	\$ 400,000	
Communications	\$ 100,000	\$ 100,000	\$ 100,000	
ROW-Land Appraisal/Title/Survey	\$ 200,000	\$ 200,000	\$ 200,000	
Pipeline Easements	\$ 500,000	\$ 500,000	\$ 500,000	
SPWCP Negotiations	\$ 200,000	\$ 200,000	\$ 200,000	
Contingency/Other (10%)	\$ 1,300,000	\$ 2,100,000	\$ 1,400,000	
Total	\$ 14,600,000	\$ 22,900,000	\$ 15,700,000	

Participant	Project Yield (Acre-ft)	Percent of Project	2021 Budget	2022 Budget	2023 Budget
Central Weld Co. W.D.	3,500	8.75%	\$ 1,277,500	\$ 2,003,750	\$ 1,373,750
Dacono	1,250	3.13%	\$ 456,250	\$ 715,625	\$ 490,625
Firestone	1,300	3.25%	\$ 474,500	\$ 744,250	\$ 510,250
Frederick	2,600	6.50%	\$ 949,000	\$ 1,488,500	\$ 1,020,500
Eaton	1,300	3.25%	\$ 474,500	\$ 744,250	\$ 510,250
Erie	6,500	16.25%	\$ 2,372,500	\$ 3,721,250	\$ 2,551,250
Evans	1,200	3.00%	\$ 438,000	\$ 687,000	\$ 471,000
Fort Collins-Loveland. W.D.	3,400	8.50%	\$ 1,241,000	\$ 1,946,500	\$ 1,334,500
Fort Lupton	2,050	5.13%	\$ 748,250	\$ 1,173,625	\$ 804,625
Fort Morgan	3,600	9.00%	\$ 1,314,000	\$ 2,061,000	\$ 1,413,000
Lafayette	1,800	4.50%	\$ 657,000	\$ 1,030,500	\$ 706,500
Lefthand W.D.	4,900	12.25%	\$ 1,788,500	\$ 2,805,250	\$ 1,923,250
Morgan County Q.W.D.	1,300	3.25%	\$ 474,500	\$ 744,250	\$ 510,250
Severance	2,000	5.00%	\$ 730,000	\$ 1,145,000	\$ 785,000
Windsor	3,300	8.25%	\$ 1,204,500	\$ 1,889,250	\$ 1,295,250
Total	40,000	100.00%	\$ 14,600,000	\$ 22,900,000	\$ 15,700,000