

SUPERIOR METROPOLITAN DISTRICT NO. 1  
RESOLUTION NO. SMD#1 - 9  
SERIES 2020

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1 APPROVING THE ALLOTMENT CONTRACT WITH THE WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE, MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR CAPACITY IN THE WINDY GAP FIRING PROJECT

WHEREAS, the Superior Metropolitan District No. 1 ("District") has been participating in the Windy Gap Firing Project ("Project") with eleven (11) other participants since 2003, and

WHEREAS, the District has entered into numerous agreements with the Municipal Subdistrict, Northern Colorado Water Conservancy District acting by and through its Windy Gap Firing Project Water Activity Enterprise ("WGFP Enterprise") for participation in the Project since that time; and

WHEREAS, 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 Project; and

WHEREAS, the Project is an important water project for the District to provide a reliable source of potable and non-potable water; and

WHEREAS, the Allotment Contract attached hereto defines the rights, obligations, financing and relationships of the twelve (12) participants and the WGFP Enterprise ("Parties") in the Project; and

WHEREAS, said Allotment Contract must be executed by all Parties before the Project can be financed and constructed.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1; AS FOLLOWS:

Section 1. The Board hereby approves the Allotment Contract for participation in the Windy Gap Firing Project in substantially the form attached hereto, subject to final approval by the District's water counsel.

ADOPTED this 26<sup>th</sup> day of October, 2020.



Clint Folsom, President

ATTEST



**ALLOTMENT CONTRACT BETWEEN THE WINDY GAP FIRING PROJECT  
WATER ACTIVITY ENTERPRISE, MUNICIPAL SUBDISTRICT, NORTHERN  
COLORADO WATER CONSERVANCY DISTRICT, AND SUPERIOR  
METROPOLITAN DISTRICT NO. 1, A QUASI-MUNICIPAL CORPORATION AND  
POLITICAL SUBDIVISION OF THE STATE OF COLORADO, FOR CAPACITY IN  
THE WINDY GAP FIRING PROJECT**

This Allotment Contract (“Contract”) for an allotment of capacity in the hereinafter defined and described Windy Gap Firing Project is entered into this 12 day of November 2020, by and between the Windy Gap Firing Project Water Activity Enterprise (“WGFP Enterprise”) and Superior Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 124 East Coal Creek Drive, Superior, Colorado 80027 (“Superior”), 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. Superior is a quasi-municipal corporation and political subdivision of the State of Colorado and is operated as an enterprise.

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 Superior 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 Superior 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 Superior 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 Superior's obligations to pay for the WGFP.

- **PART III**, "Provisions Applicable to Cash Allottees," consists of **Section 7**, which includes provisions that apply to Superior 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 Superior 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 Superior participates. The terms of Section 8 are not in effect at such times as there is no outstanding WGFP Financing in which Superior 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 Superior of any Capital C&E Funding Obligations in cash to the WGFP Enterprise.
  - 1.3. "Capital C&E Funding Obligations" means Superior'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 Superior'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. Superior 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 Superior and the WGFP Enterprise under which Superior 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 Superior 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 Superior. **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 Superior a WGFP Allotment of 4,726 WGFP Units commencing as of the date of execution of this Contract and for so long thereafter as Superior 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 Superior of rights in the WGFP in any prior or current Interim Agreements between the WGFP Enterprise and Superior. 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 Superior, 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 Fifth Amendment to the Fifth Interim Agreement, dated January 13, 2020, 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 Superior 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 Superior 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 both (1) cash to the WGFP Allottees that satisfied their Capital C&E Funding Obligations through Capital C&E Funding Cash Payments and (2) 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. Superior 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 Superior, 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.** Superior agrees that its WGFP Allotment shall only be used for the storage and delivery of Windy Gap Project Water to which Superior 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. Superior's receipt and use of Windy Gap Project Water also is subject to the Carriage Contract and Superior's Windy Gap Project allotment contract(s). Superior shall have the right to assign or otherwise agree to the use of Superior'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 Superior for the storage of water in Superior'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 Superior 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 Superior for budgeting purposes.
- 4.4. **Estimated Demand and Delivery Schedule.** On or before the last business day in September of each year, Superior 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 Superior 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 Superior 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, Superior 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 Superior 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 Superior. Any overpayment shall be refunded to Superior within sixty (60) days. If the WGFP Enterprise and Superior fail to agree on the correctness of a bill within one hundred twenty (120) days after Superior 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.** Superior 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. Superior'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 Superior'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 Superior 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 Superior in the coordination and accomplishment of conveyance and delivery of water from that point to Superior 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 Superior 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 Superior'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.** Superior 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 Superior, with approval of the Enterprise Board as required by this Section 5.2, transfers a part of its WGFP Allotment to another entity, then Superior shall be relieved of its obligations hereunder to the extent of said transfer, except as otherwise provided herein, specifically including in Section 8. If Superior, with approval of the Enterprise Board as required by this Section 5.2, transfers all of its WGFP Allotment to another entity, then Superior shall no longer participate in the WGFP and Superior 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 Superior 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 Superior 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 Superior 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 Superior 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 Superior 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 Superior, or Superior 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 Superior is in Default under this Section 5.3, Superior 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 Superior 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. Superior 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 Superior'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 Superior 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 Superior under this Section 5.3.3 for the term of the Default. Upon Superior's cure of its Default under Section 5.3.4, Superior'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), Superior 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 Superior, 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. Superior'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 Superior 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 Superior 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 Superior'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 Superior'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 Superior'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 Superior'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 Superior'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 Superior 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, Superior 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 Superior, 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 Superior 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 Superior is in Default under Section 5.4.1 and fully pays its defaulted payments within 30 days after such payments are due, then Superior 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.** Superior 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 Superior timely cures a Default under this Section 5.4.5, then no part of Superior WGFP Allotment shall be forfeited and reallocated under Section 5.4.6.
- 5.4.6. **Final Default; Penalties and Reallocation of WGFP Allotment.** If Superior 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 Superior'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 Superior 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 Superior'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 Superior immediately prior to the date of the Default under Section 5.4.1 divided by the total amount of Superior'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 Superior's WGFP Allotment attributable to Superior'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 Superior is a Cash Allottee for Initial C&E and in default under Section 5.3.1.1, "**Vested Allotment**" shall mean that proportion of Superior'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 Superior 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 Superior's WGFP Allotment attributable to Superior's satisfaction of such Capital

C&E Funding Obligations through Capital C&E Funding Cash Payments.

- 5.4.6.3. Upon Superior'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, Superior's "Vested Allotment" shall be considered to be all (100%) of Superior'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 Superior'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. Superior, by executing this Agreement, certifies that it has fully disclosed to the governing body of Superior 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. Superior 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 Superior. 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 that is subject to this Section 5.4.6.6, 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.** Superior'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 Superior 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 Superior'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 Superior to make a payment required under Section 6.3.

5.5.3. **Grace Period.** If Superior 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 Superior 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 Superior 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.** Superior 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, Superior 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 Superior 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 Superior has committed a Final Default under this Section 5.5.6, then Superior 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. Superior, by executing this Contract, certifies that it has fully disclosed to the governing body of Superior 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, Superior 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 Superior. Irrespective of such termination, Superior 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 Superior, 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 Superior, 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, Superior 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 Superior.**

- 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 Superior that may arise under this Contract whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by Superior from the operation of its enterprise. Nothing herein shall be deemed to prevent Superior from making any payments from any other legally available source. In no event shall Superior 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 Superior to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, Superior 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 Superior 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 Superior or of its parent entity.

- 5.6.3. Superior 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 Superior 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.** Except as otherwise provided by this Section 5.7, 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 Superior's written consent in a manner that results in a material adverse impact on the rights of Superior 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. As provided in Section 6.2.1.1, an amendment under the terms of this Section 5.7 is not required for certain modifications to the means of payment of Superior's Capital C&E Funding Obligations for Initial C&E, the proportional amounts of its Capital C&E Funding Obligations for Initial C&E to be paid through Capital C&E Funding Cash Payments and/or participation in a WGFP Financing, or its election under Section 8.18, which modifications shall instead be governed by Section 6.2.1.1.
- 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 Superior 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 Superior to use or reuse its full allotment of Windy Gap Project Water, the approval of such amendment shall first be obtained from Superior;
- 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 Superior 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 Superior 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.** Superior attaches hereto a true and correct copy of Superior'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 Superior 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 Superior with written monthly reports, together with financial reports regarding payment of charges and costs and expenditures during construction of Chimney Hollow Reservoir, on the progress of construction and the expenditure of funds. Among other items, the monthly written reports will include a breakdown and sum total of all known increases to the Chimney Hollow Reservoir construction contract amount due to projected, pending, or executed changes in work, including change orders, change directives, or field orders. 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. Notwithstanding the foregoing, if any single Chimney Hollow Reservoir construction contract cost change will exceed two and a half percent (2.5%) of the initial Chimney Hollow Reservoir construction contract amount, the WGFP Enterprise will provide Superior with written notice of such anticipated cost changes before the cost change is executed and will hold a meeting of all WGFP Allottees as soon as practicable to discuss the drivers for such cost change, possible remedies, and budget impacts. In addition, the WGFP Enterprise will provide monthly updates regarding costs and potential changes for construction management, mitigation, enhancement, and other WGFP costs not included in the Chimney Hollow Reservoir construction contract.
- 5.18. **Financial Reporting Requirements; Audits.** The WGFP Enterprise shall furnish to Superior, 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. Superior 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 Superior, 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 Superior 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.** Superior 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 \$600,000,000.00. Superior agrees to pay its Capital C&E Funding Obligations for Initial C&E under this Section 6.2.1 through 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.

6.2.1.1. Until the date noticed by the WGFP Enterprise under this Section 6.2.1.1, Superior may, with the WGFP Enterprise's written consent and without the need to amend this Contract under the terms of Section 5.7, modify its chosen means of payment of its Capital C&E Funding Obligations for Initial C&E, including its proportional amounts between a Capital C&E Funding Cash Payment and participation in a WGFP Financing and its election under Section 8.18 (if participating in WGFP Financing), and upon such modification the WGFP Enterprise shall update **Exhibit A** to the WGFP Allotment Contracts. Before the date of sale of a WGFP Financing for Initial C&E other than the CWCB Loan, the WGFP Enterprise will provide written notice to Superior setting forth the date by which Superior must finalize its payment method and election under Section 8.18 (if participating in WGFP Financing) for Initial C&E, which date shall be no less than 3 months after the date of notice unless Superior otherwise agrees. Any modification of payment method or election under Section 8.18 (if participating in WGFP Financing) for Initial C&E after the

date provided in the notice shall require a contract amendment under the terms of Section 5.7.

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 Superior 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, Superior 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 Superior 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 Superior to such terms. If Superior fails to timely make its Capital C&E Funding Cash Payment for such Completion C&E after so electing, then Superior 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 Superior 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 Superior 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 Superior 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, Superior 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 Superior 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 Superior 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 Superior 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 Superior 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 Superior, the WGFP Enterprise may require that Superior 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 Superior.

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



- 6.3.1. To the extent that Superior meets its Capital C&E Funding Obligations under Section 6.2 through participation in WGFP Financing, Superior 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 Superior participates in accordance with Section 8 hereof. When Superior is not participating in any WGFP Financing or no debt is outstanding on WGFP Financing in which Superior participates, Superior 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 Superior'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 Superior'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 Superior'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 Superior'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 Superior'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 Superior'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 Superior's obligations under this Contract to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, Superior agrees as follows:
- 6.4.1. Superior shall to the fullest extent permitted by law fix rates, charges, or assessments so that Superior 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 Superior,

payable solely from the revenues and other moneys derived by Superior from its enterprise, and (ii) shall be treated as expenses of operating such enterprise; and (2) that there are either (i) no liens, charges or encumbrances on the revenues and other moneys derived by Superior from its enterprise, or (ii) no liens, charges or encumbrances on the revenues and other moneys derived by Superior from its enterprise that include priority of payments with respect thereto that are prior to the payment of the expenses of operating such enterprise, including amounts hereunder. Superior represents and warrants 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. Superior'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 Superior 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 Superior.

- 6.4.2. Nothing herein shall be construed as prohibiting Superior 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 Superior'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 Superior, payable solely from the revenues and other moneys derived by Superior from its enterprise, and are treated as expenses of operating such enterprise.
  - 6.4.3. Superior 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.
  - 6.4.4. Superior shall take all reasonable steps to maintain its status as an enterprise as defined in Section 20 of Article X of the Colorado Constitution.
  - 6.4.5. Superior 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.** Superior hereby represents and warrants that the revenues of its enterprise are pledged to pay the operation and maintenance expenses of such

enterprise along with any indebtedness incurred by Superior for the purpose of financing or refinancing improvements to its enterprise. Furthermore, Superior hereby represents and warrants that, in accordance with C.R.S. § 31-35-402(1)(h), Superior'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 Superior, payable solely from the revenues and other moneys derived by Superior from its enterprise, and shall be treated as expenses of operating such enterprise. Superior hereby covenants that it will not issue or otherwise incur any indebtedness or other obligation that has a lien on the revenues of its enterprise prior or superior to its obligation to pay the operating expenses of its enterprise.

- 6.6. **Cooperation, Disclosure and Documents.** Superior 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 Superior 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 Superior'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 Superior to the extent that it meets its Capital C&E Funding Obligations under Section 6.2 through Capital C&E Funding Cash Payments. Superior 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 Superior meets its Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 through Capital C&E Funding Cash Payments, Superior 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 Superior meets its Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 through Capital C&E Funding Cash Payments, Superior 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 Superior’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 Superior 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 Superior, through Capital C&E Funding Cash Payments, Superior 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 Superior.

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 Superior meets any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, Superior 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 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 Superior satisfies any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, if the WGFP Enterprise holds any proceeds from Superior'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 Superior's option, either reimburse such proceeds to Superior or transfer and credit such proceeds to Superior'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 Superior to the extent that it participates in

a WGFP Financing and for the term of repayment of any such WGFP Financing in which Superior participates. Superior 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 WGFP Financing Obligations.
- 8.2.3. **“Debt Service Reserve Fund”** means a reserve fund established under any Financing Document to provide for the payment of WGFP 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 Superior participates in any WGFP Financing, Superior 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, defined in Exhibit A, and in accordance with Section 8.18; 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 Superior 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% 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 Superior 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. Subject to Section 8.18 hereof, 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 Superior 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 Superior participates in any future borrowing or refinancing authorized by this Contract, Superior 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.
- 8.18. **Loan Allottees' Elections of Amortization Schedules.** All WGFP Allottees have been directly and substantially involved with the WGFP Enterprise in creating the form of this Contract. The WGFP Enterprise has advised all WGFP Allottees, among other things, that: (a) the WGFP is not a project amenable to being down-scaled in the event less than all currently anticipated WGFP Allottees participate; (b) the WGFP Enterprise intends to obtain for Initial C&E (i) a WGFP Financing in the form of a \$90 million, 30-year, low interest rate, subordinate lien, level debt service CWCB Loan, and (ii) a WGFP Financing in the form of a publicly-offered issue of revenue bonds for the balance of the WGFP Financing Obligation for Initial C&E with a 30-year, market-based interest rate, level debt service loan (the "Revenue Bond Financing"). Some Loan Allottees have informed the WGFP Enterprise that they prefer to participate in the Revenue Bond Financing to fund their individual Capital C&E Funding Obligation for Initial C&E if their payments are substantially based on an amortization schedule of 20 years, and other Loan Allottees have informed the WGFP Enterprise that their ability to participate in the Revenue Bond Financing to fund their individual Capital C&E Funding Obligation for Initial C&E requires a 30-year amortization. The WGFP Enterprise has determined that separate 20-year and 30-year bond issues are not a viable option. The WGFP Enterprise and WGFP Allottees are willing to accommodate a mixture of 20-year and 30-year amortization schedules if the accommodation does not adversely affect any WGFP Allottees or alter the obligations of all Loan Allottees under their WGFP Allotment Contracts (other than establishment of different amortization schedules for Loan Allottees according to their preferences for 20-year or 30-year amortization schedules). The WGFP Enterprise has advised all WGFP Allottees, among other things, that: (a) the WGFP Enterprise must make determinations as to what is in the best interests of building the WGFP and in the best interests of all WGFP Allottees; and (b) it has sought, received and is relying on the advice of its financial advisor and its investment banker as to this Contract, including as to alternative financing structures, as well the advice of its bond counsel and general counsel on related legal matters. The WGFP Enterprise has determined its only currently viable financing course of action for Initial C&E is that: (A) if available, the CWCB Loan will have a 30-year level debt service amortization and all Loan Allottees shall participate in funding repayment of the CWCB Loan; and (B) the Revenue Bond Financing will have a 30-year amortization and will be structured in such a manner that (i) the Capital C&E Funding Obligations of those Loan Allottees who affirmatively elect to participate in the Revenue Bond Financing based on a 20-year amortization schedule will have 90% of their individual Capital C&E Funding Obligations amortized on a level debt service basis over the period of years 1 to 20 of the 30-year amortization of the Revenue Bond Financing, with the remaining 10% of their individual Capital C&E Funding Obligations amortized on a level debt service basis in years 21 to 30 of the 30-year amortization of the Revenue Bond Financing (the "90-10 arrangement"), and (ii) the Capital C&E Obligations of all Loan Allottees who do not affirmatively elect either amortization schedule will have 100% of their individual Capital C&E Funding Obligations amortized on a 30-year level debt service basis. If Superior chooses the 90-10 arrangement, it means that Superior: (A) has determined this

arrangement is in its best interests; (B) agrees that the accommodation to allow Loan Allottees to elect between 20- and 30-year amortization schedules for the Revenue Bond Financing of their individual Capital C&E Funding Obligations and the other rights and interests created by this Contract are legally sufficient consideration for all obligations of Superior under this Allotment Contract, including, without limitation, all step-up obligations of Superior pursuant to Section 5.4.6.6.; (C) acknowledges that the 10% of Superior's individual Capital C&E Funding Obligations which does not begin to amortize until year 21 will bear current interest in years 1 to 20 and that Superior is obligated to pay such interest on a current basis; (D) acknowledges that this arrangement does not change Superior's WGFP Financing Participation Percentage under this Allotment Contract in any way except in respect of the amount payable under Section 8.5.2; and (E) acknowledges that the step-up amounts, if any, payable in years 21 to 30, will not be adjusted for the 90-10 arrangement. Subject to all of the terms and conditions recited above in this Section 8.18, a Loan Allottee may choose the 90-10 arrangement by giving written notice to the WGFP Enterprise pursuant to Section 6.2.1.1.

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DATED: October 26, 2020

**SUPERIOR METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado**

By: Clint Folsom

Name: Clint Folsom

Title: District President

ATTEST:

By: Phyllis Claforn

Name: Phyllis Claforn

Title: Secretary for the District



DATED: November 12, 2020

**WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT**

By: Dennis Yanchunas

Name: Dennis Yanchunas

Title: President

ATTEST:

By: Bradley D. Wind

Name: Bradley D. Wind

Title: Secretary

**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%	\$176,400,000	\$22,000,000	3,300	\$154,400,000	23,164	32.26%
Platte River Power Authority	16,000	17.78%	\$106,680,000	\$27,000,000	4,049	\$79,680,000	11,951	16.64%
Loveland	10,000	11.11%	66,660,000	\$20,000,000	3,000	\$46,660,000	7,000	9.75%
Greeley	9,189	10.21%	61,260,000	0	0	\$61,260,000	9,189	12.80%
Longmont	7,500	8.33%	49,980,000	\$49,980,000	7,500	0.00	6,000	0.00%
Erie	6,000	6.67%	40,020,000	0	0	\$40,020,000	4,850	8.36%
Little Thompson Water District	4,850	5.40%	32,400,000	0	0	\$32,340,000	4,726	6.75%
Superior	4,726	5.25%	31,500,000	0	0	\$31,500,000	2,835	6.58%
Louisville	2,835	3.15%	18,900,000	0	0	\$18,900,000	1,190	3.95%
Fort Lupton	1,190	1.32%	7,920,000	0	0	\$7,920,000	900	1.66%
Lafayette	900	1.00%	6,000,000	0	0	\$6,000,000	0	1.25%
Central Weld County Water District	346	0.38%	2,280,000	\$2,280,000	346	0.00	0	0.00%
<b>Totals</b>	<b>90,000</b>	<b>100%</b>	<b>\$600,000,000</b>	<b>\$121,260,000</b>	<b>18,195</b>	<b>\$478,680,000</b>	<b>71,805</b>	<b>100.00%</b>

**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%
<b>Totals</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>0</b>	<b>\$ 0.00</b>	<b>0</b>	<b>100.00%</b>



**EXHIBIT C**

<b>IF TO:</b>	<b>MAILING ADDRESS</b>
Windy Gap Firming Project Water Activity Enterprise	c/o WGFP Project Manager 220 Water Avenue Berthoud, CO 80513
Broomfield	c/o David F. Allen Director of Public Works 1 DesCombes Drive Broomfield, CO 80020-2495
Central Weld County Water District	c/o Stan Linker District Manager 2235 2 <sup>nd</sup> Avenue Greeley, CO 80631-7203
Greeley	c/o Sean Chambers Director of Water & Sewer 1100 10 <sup>th</sup> Street, Ste 300 Greeley, CO 80631-3863
Erie	c/o Todd Fessenden Deputy Public Works Director PO Box 750 Erie, CO 80516-0750
Fort Lupton	City of Fort Lupton Attn: City Administrator 130 South McKinley Avenue Fort Lupton, CO 80621
Lafayette	c/o Jeff Arthur Public Works Director 1290 S Public Road Lafayette, CO 80026-2706
Little Thompson Water District	c/o Amber Kauffman District Manager 835 E State Hwy 56 Berthoud, CO 80513-9237
Longmont	c/o Ken Huson Water Resources Engineer 1100 S. Sherman Street Longmont, CO 80501-6550
Louisville	c/o Cory Peterson Water Resources Engineer 749 Main Street Louisville, CO 80027-1136

<b>IF TO:</b>	<b>MAILING ADDRESS</b>
Loveland	c/o Larry D. Howard Senior Civil Engineer – Water Resources 200 N. Wilson Avenue Loveland, CO 80537-6017
Platte River Power Authority	c/o Heather Banks Fuels & Water Manager 2000 E Horsetooth Road Fort Collins, CO 80525-5721
Superior	c/o Jim Widner Utilities Superintendent 124 E Coal Creek Drive Superior, CO 80027-9626

**EXHIBIT D TO WGFP ALLOTMENT CONTRACT**

**ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** is made effective as of \_\_\_\_\_, by and between the Windy Gap Firming Project Water Activity Enterprise (the “**WGFP Enterprise**”), and [Name of Cash Allottee] (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 [add description\*].

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 [a portion of] Cash Allottee’s pro rata obligation, based on the WGFP Participation Percentages, to fund [Initial C&E] (“Capital C&E Funding Obligations”). Specifically, Cash Allottee has elected to make a Capital C&E Funding Cash Payment of \$[XXXXXXXXXX], which is equal to [X%] of its Capital Funding Obligations for [Initial C&E].

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 [Name of Cash Allottee] Proceeds Fund.** Within the Escrow Fund, there is hereby created and established a special fund designated “[Name of Cash Allottee] – Capital C&E Funding Cash Payment Proceeds Fund” (the “[Name of Cash Allottee] Proceeds Fund”), which shall be held in trust by the WGFP Enterprise separate and apart from all other

## EXHIBIT D TO WGFP ALLOTMENT CONTRACT

funds of the WGFP Enterprise. The [Name of Cash Allottee] 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 [Name of Cash Allottee] Proceeds Fund and applied to the Cash Allottee's Capital Funding Obligations set forth under the WGFP Allotment Contract.

**4. Disbursements From [Name of Cash Allottee] Proceeds Fund.** The WGFP Enterprise shall disburse amounts from the [Name of Cash Allottee] 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 [Name of Cash Allottee] 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 [Name of Cash Allottee] Proceeds Fund shall be in an amount where the ratio of such amount to the total disbursement for [Initial C&E] 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 [Name of Cash Allottee] 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 [Name of Cash Allottee] 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 [Name of Cash Allottee] 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 [Name of Cash Allottee] 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 (no less than quarterly) reports regarding the disbursement of funds from the [Name of Cash Allottee] Proceeds Fund under the terms of this Escrow Agreement.

**7. Reimbursement or Transfer After [Initial C&E] Paid in Full.** If the WGFP Enterprise holds any moneys in the [Name of Cash Allottee] Proceeds Fund after the WGFP Enterprise determines that all [Initial C&E] 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

**EXHIBIT D TO WGFP ALLOTMENT CONTRACT**

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.

**[ALLOTTEE]**

By: \_\_\_\_\_  
[NAME]  
[TITLE]

ATTEST:

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

**WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE**

By: \_\_\_\_\_  
[NAME]  
[TITLE]