

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”) is entered into on _____, 2026, by and between the following parties: the City of Fort Collins, Colorado; the City of Fort Collins Water Utility Enterprise; and the Northern Integrated Supply Project Water Activity Enterprise.

RECITALS

- A. Fort Collins is becoming a participant in the Northern Integrated Supply Project (“NISP”) by executing the Twenty-Second Interim Participation Agreement. Fort Collins intends to subsequently become a NISP Allottee by executing a NISP Allotment Contract at the same time as all other NISP Allottees, which is anticipated to occur in 2027.
- B. This Agreement establishes the current mutual understanding between the Parties hereto under which Fort Collins SSD Water, as defined herein, will be diverted to, stored in, and released from Glade Reservoir by the NISP Enterprise.
- C. The Parties agree that this Agreement reflects the current mutual understanding and intent of the Parties but will be replaced by a final agreement at the time Fort Collins signs a NISP Allotment Contract. At that time, this Agreement will automatically terminate and be superseded by the NISP Allotment Contract and final agreement negotiated among the Parties for the diversion into, storage in, and release from Glade Reservoir of Fort Collins SSD Water.
- D. If Fort Collins determines to not sign a NISP Allotment Contract at such time as the other NISP Participants, then this Agreement will be automatically void and of no force and effect.
- E. Fort Collins created the City of Fort Collins Water Utility Enterprise to comply with the provisions of Section 20, Article X of the Colorado Constitution and Article 45.1 of Title 37 of the Colorado Revised Statutes to permit Fort Collins, acting through its water utility enterprise, to issue revenue bonds and enter into multi-year fiscal obligations in connection with operating its water utility. The Fort Collins Water Utility Enterprise is made a party to this Agreement for the purpose of entering into any multi-year fiscal obligation required under this Agreement.

AGREEMENT

1. **INCORPORATION OF RECITALS.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.
2. **DEFINED TERMS.**
 - 2.1. “Fort Collins” is the City of Fort Collins, Colorado, a municipal corporation and its City of Fort Collins Water Utility Enterprise.
 - 2.2. “Fort Collins NISP Water” is NISP Water that is allocated to Fort Collins pursuant to Fort Collins’ NISP Allotment Contract.

- 2.3. “Fort Collins SSD Water” is water attributable to the water rights represented by certain shares in the Arthur Irrigation Company, Larimer County Canal No. 2 Irrigating Company, New Mercer Ditch Company, and Warren Lake Reservoir Company (commonly known collectively as the South Side Ditches (“SSD”) that were changed in the decrees entered by the Water Court for Water Division 1 in Case No. 1992CW129 and Case No. 2005CW323.
- 2.4. “Glade Reservoir” is the planned water storage reservoir known by that name and described in the U.S. Army Corps of Engineers Record of Decision for NISP, dated December 9, 2022.
- 2.5. “Glade Inlet Facilities” are the various facilities that will be used to divert water from the Cache la Poudre River for delivery into Glade Reservoir, including: facilities to divert water from the river; canals, pipelines, pumps, and tunnels to convey the water to Glade Reservoir; and any forebays.
- 2.6. “Glade Outlet Facilities” are the various facilities that will be used to deliver water from Glade Reservoir to NISP Participants, through conveyance facilities and the Cache la Poudre River. For the purposes of this Agreement, the Glade Outlet Facilities do not include any additional outlet facilities that may need to be constructed specifically for delivery to Fort Collins.
- 2.7. “Glade Facilities” are Glade Reservoir, Glade Inlet Facilities, and Glade Outlet Facilities, as those terms are defined in this Agreement.
- 2.8. “NISP” is the Northern Integrated Supply Project, a water storage and distribution project owned and operated by Northern Water acting through the NISP Enterprise.
- 2.9. “NISP Allottees” are entities that have executed NISP Allotment Contracts with the NISP Enterprise.
- 2.10. “NISP Enterprise” is the Northern Integrated Supply Project Water Activity Enterprise, a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution, organized pursuant to C.R.S. §§ 37-45.1-101 et seq., owned by Northern Water.
- 2.11. “NISP Water” is water attributable to the NISP Water Rights.
- 2.12. “NISP Water Rights” are:
 - 2.12.1 The Glade Water Rights, meaning the divided seven eighths (7/8) interest in the Grey Mountain Dam and Reservoir water right and the Cache la Poudre Forebay Dam and Reservoir water right decreed in and, as of the date of this Agreement, subject to the following decrees entered by the Colorado District Court, Water Division No. 1: 80CW355 (Aug. 20, 1985),

89CW122 (Aug. 9, 1995), 01CW197 (Nov. 8, 2005), 03CW405 (Jul. 21, 2006), 11CW242 (Aug. 7, 2013), 18CW3216 (Aug. 10, 2022), and 19CW3165 (Sept. 21, 2020). For purposes of this Agreement, the Glade Water Rights do not include the divided one eighths (1/8) interest in the Grey Mountain Dam and Reservoir and Cache la Poudre Forebay Dam and Reservoir water rights owned by the Cache la Poudre Water Users Association; and

2.12.2 The Galeton Water Rights, meaning the surface water rights, water storage rights, and appropriative rights of exchange that comprise the South Platte Water Conservation Project (SPWCP) and that were decreed in and, as of the date of this Agreement, are subject to the following decrees entered by the Colorado District Court, Water Division No. 1: 92CW130 (consolidated) (Nov. 28, 2005), 11CW241 (Oct. 17, 2013), 16CW3194 (Jun. 5, 2018), 18CW3216 (Aug. 10, 2022), and 19CW3199 (Aug. 3, 2021).

2.13. “Northern Water” is the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado.

2.14. “Other Water” is water diverted at the Glade Inlet Facilities and stored in Glade Reservoir but not yielded from the Glade Water Right, the diversion and storage into Glade Reservoir of which is subject to approval by the NISP Enterprise Board.

3. **CONDITIONS PRECEDENT.**

3.1. **Confirmation of Existing Authorizations.** The NISP Enterprise and Fort Collins agree to jointly seek confirmation from all local, state, and federal agencies that have approved, authorized, permitted, certified, or consulted on the construction and/or operation of NISP that the diversion, storage, and release of Fort Collins SSD Water as described herein is allowable under such approvals, authorizations, permits, certifications, or consultations. Unless otherwise agreed by the Parties in writing, the NISP Enterprise shall invoice Fort Collins, and Fort Collins shall reimburse the NISP Enterprise, for the consultant costs and expenses the NISP Enterprise incurs to obtain such confirmations, including costs incurred before execution of this Agreement. If any local, state, or federal agency determines that alteration, modification, amendment, reopening, or reconsideration of an approval, authorization, permit, certification, consultation, or other clearance is required to cover the diversion, storage, and release of Fort Collins SSD Water (“Additional Approvals”), then the NISP Enterprise may terminate this Agreement upon its sole judgment that such Additional Approvals could adversely impact or delay the NISP Enterprise’s ability to construct or operate NISP. In such event, the NISP Enterprise shall give written notice of such termination to Fort Collins.

3.2. **Need for Additional Authorizations.** If any local, state, or federal agency determines that Additional Approvals are needed to divert, store, or release Fort Collins SSD Water as described herein, then the NISP Enterprise may determine in

its sole discretion whether to either terminate this Agreement as described in Paragraph 3.1 or to proceed with obtaining the Additional Approvals required. If the NISP Enterprise chooses to proceed, then the Parties will jointly seek such Additional Approvals and agree to confer regarding how to do so, including with respect to each Party's role in the required Additional Approvals process, with the understanding that, to the extent practicable, the NISP Enterprise will be the lead applicant or requesting party. Fort Collins acknowledges and agrees that diversion, storage, and release of Fort Collins SSD Water under the terms of this MOA shall be subject to any terms, conditions, or limitations included with any Additional Approvals obtained. Fort Collins may terminate this Agreement if, in its sole judgment, Fort Collins determines that such terms, conditions, or limitations are unacceptable, and/or if such Additional Approvals are challenged in a judicial action; provided, however, that Fort Collins will remain responsible for costs incurred up to the date of such termination to seek or obtain Additional Approvals. Unless otherwise agreed by the Parties in writing, the NISP Enterprise shall invoice Fort Collins, and Fort Collins shall reimburse the NISP Enterprise, for the costs the NISP Enterprise incurs to obtain Additional Approvals required to cover the diversion, storage, and release of Fort Collins SSD Water. In no event may Fort Collins proceed in seeking such Additional Approvals without the involvement of the NISP Enterprise, absent the NISP Enterprise's explicit consent otherwise.

- 3.3. **Documentation of Termination.** Upon termination of this Agreement by the NISP Enterprise or Fort Collins, the Parties shall coordinate and document termination .
- 3.4. **Current Mutual Understanding of the Parties.** This Agreement reflects the current mutual understanding and intent of the Parties. At such time as Fort Collins executes a NISP Allotment Contract, the Parties agree that this Agreement will automatically terminate and be superseded and replaced by a final agreement for the diversion, storage, and release of Fort Collins SSD Water to be executed at the same time as the execution of Fort Collins' NISP Allotment Contract. If Fort Collins does not execute a NISP Allotment Contract, then the Parties agree that this Agreement shall be automatically void and of no force and effect.

4. **DIVERSION OF FORT COLLINS SSD WATER INTO GLADE RESERVOIR.**

- 4.1. **Diversion of Fort Collins SSD Water Through Glade Inlet Facilities.** Fort Collins shall be entitled to the diversion and conveyance of Fort Collins SSD Water into and through the Glade Inlet Facilities by the NISP Enterprise for delivery into and storage in Glade Reservoir, subject to the terms and conditions of this Paragraph 4.
- 4.2. **Priority of NISP Water.** At times when the NISP Enterprise is using the full capacity of the Glade Inlet Facilities to divert NISP Water, Fort Collins will be entitled to the diversion of its pro rata share of NISP Water and shall not be entitled

to any diversion of the Fort Collins SSD Water into and through the Glade Inlet Facilities.

- 4.3. **Use of Excess Diversion Capacity.** At times when the NISP Enterprise is not using the full capacity of the Glade Inlet Facilities to divert NISP Water, Fort Collins may request that the NISP Enterprise divert Fort Collins SSD Water using such excess diversion capacity. The Parties agree that the right of NISP Allottees to divert Other Water using excess capacity in the Glade Inlet Facilities must be obtained by express authorization from the NISP Enterprise Board of Directors, and that the authorization included in this Agreement allows Fort Collins to do so only with respect to its Fort Collins SSD Water, subject to all of the terms herein. Fort Collins, and other NISP Allottees that have received express authorization to store Other Water in Glade Reservoir (if any), will have rights to such excess diversion capacity on a pro rata basis that corresponds to their pro rata allocation in NISP, provided that the subject water rights for such Other Water are in priority and Fort Collins, or the other authorized Allottees, have available storage capacity in Glade Reservoir. By way of illustration only, if there are 100 cfs of such excess diversion capacity and only Fort Collins (a 5% NISP participant for purposes of this illustration) requests that the NISP Enterprise use such excess diversion capacity to divert Fort Collins SSD Water, then the NISP Enterprise will use such 100 cfs of excess diversion capacity for Fort Collins, but if both Fort Collins (a 5% NISP participant for purposes of this illustration) and another authorized NISP Allottee (a hypothetical 15% NISP Allottee) request that it be used for their Other Water, then the NISP Enterprise will split such 100 cfs excess diversion capacity between them based on their pro rata allocation in NISP, with Fort Collins receiving 25 cfs and the other authorized NISP Allottee receiving 75 cfs. To the extent Fort Collins SSD Water is diverted using excess diversion capacity, Fort Collins shall pay the costs associated with such diversions as part of its obligations described in Paragraph 7.4.

5. **STORAGE OF FORT COLLINS SSD WATER IN GLADE RESERVOIR.**

- 5.1. **Storage of Fort Collins SSD Water.** Fort Collins shall be entitled to the percentage of the available storage capacity in Glade Reservoir that is equal to its pro rata allocation of storage pursuant to its NISP Allotment Contract. Fort Collins may, in its discretion and consistent with the terms of Paragraph 4 above, request that the NISP Enterprise divert Fort Collins SSD Water and/or Fort Collins NISP Water for storage in Fort Collins' pro rata allocation of storage in Glade Reservoir, which request shall not be unreasonably denied.
- 5.2. **NISP Water in Excess of Available Pro Rata Storage Capacity.** If the addition of Fort Collins NISP Water to Fort Collins' pro rata allocation of storage would cause the amount of water stored for Fort Collins to exceed its pro rata share of storage capacity in Glade Reservoir, then the excess NISP Water will instead be allocated under the terms of the NISP Allotment Contracts to other NISP Allottees with capacity to store NISP Water in Glade Reservoir.

- 5.3. **Fort Collins SSD Water in Excess of Available Pro Rata Storage Capacity.** If Fort Collins requests that the NISP Enterprise divert Fort Collins SSD Water for storage in Fort Collins' pro rata allocation of storage in Glade Reservoir and the addition of such Fort Collins SSD Water to Fort Collins' pro rata allocation of storage would cause the amount of water stored for Fort Collins to exceed its pro rata share of storage capacity in Glade Reservoir, then Fort Collins SSD Water will be accounted for as stored in Fort Collins' pro rata allocation of storage, and a like amount of Fort Collins NISP Water will be removed from Fort Collins' allocation and allocated under the terms of the NISP Allotment Contracts to other NISP Allottees with available capacity to store NISP Water in Glade Reservoir. Fort Collins may not store Fort Collins SSD Water in Glade Reservoir in an amount that exceeds its pro rata allocation of storage capacity therein. The right of Fort Collins or any other NISP Allottee to store water in Glade Reservoir in excess of its pro rata allocation of storage in Glade Reservoir must be obtained by express authorization from the NISP Enterprise Board of Directors.

6. **DELIVERY OF FORT COLLINS SSD WATER FROM GLADE RESERVOIR.**

- 6.1. **Delivery of Fort Collins SSD Water From Glade Outlet Facilities.** Fort Collins shall be entitled to the release of Fort Collins SSD Water out of the Glade Outlet Facilities. In the event orders of water by NISP Allottees exceed available delivery capacity at any point within the Glade Outlet Facilities, the available capacity at such point will be allocated among the NISP Allottees based on their respective pro rata allocations of capacity. Fort Collins can elect to use its pro rata allocation to deliver its SSD and/or NISP water during this event. The Parties agree to work together to investigate, plan, design, and implement the connection of the Glade Outlet Facilities to Fort Collins' own water conveyance and delivery infrastructure to meet Fort Collins' delivery requirements/needs. Construction of this infrastructure that connects to the Glade Outlet Facilities, and the costs therefor, will be borne by Fort Collins.

7. **OPERATIONS.**

- 7.1. **NISP Enterprise's Right to Operate.** The NISP Enterprise retains all rights to operate NISP and all associated responsibilities and obligations. Though Fort Collins shall be entitled to have its Fort Collins SSD Water diverted, stored, and released pursuant to this Agreement, nothing in this Agreement shall be interpreted as requiring or permitting Fort Collins or any other entity to operate or control NISP facilities.
- 7.2. **Standard Operating Procedures.** The Parties agree to develop Standard Operating Procedures ("SOPs") to further effectuate the use of the Glade Facilities to divert, store, and release the Fort Collins SSD Water. The SOPs shall include provisions ensuring that the diversion, storage, and release of Fort Collins SSD Water will not endanger public health and safety or compromise the NISP

Enterprise's ability to comply with and satisfy applicable law, regulation, or mitigation requirements. The Parties will, as necessary, cooperate in good faith to update the SOPs over time.

- 7.3. **Losses.** To the extent there are any losses in water volume from the Glade Facilities, the Fort Collins SSD Water shall bear a pro rata share of such losses based on the proportion of water in the Glade Facilities that is Fort Collins SSD Water.
- 7.4. **Costs.** Fort Collins shall pay the NISP Enterprise for all costs the NISP Enterprise incurs from use of the Glade Facilities to divert, store, and release Fort Collins SSD Water. Fort Collins acknowledges that costs are expected to be paid in advance based on the NISP Enterprise's annual estimates of anticipated expenses, to be drawn upon as costs are incurred. Details on the cost estimation, invoicing, and billing process will be the subject of future agreements or SOPs between the Parties. Fort Collins' obligation herein to pay costs associated with the use of the Glade Facilities to divert, store, and release Fort Collins SSD Water does not alter or eliminate any obligations of Fort Collins under the terms of the Twenty-Second Interim Participation Agreement.
- 7.5. **NISP Mitigation Requirements.** Fort Collins acknowledges and agrees that (1) it will bear a proportional share, based on its pro rata allocation in NISP, of NISP's responsibility to implement required mitigation measures, including the Conveyance Refinement (FW-04) described in the approved Fish and Wildlife Mitigation and Enhancement Plan (FWMEP) for NISP, and (2) the diversion, storage, and release of Fort Collins SSD Water using Glade Facilities shall not alter or diminish that proportional responsibility. The details regarding how Fort Collins will satisfy its proportional responsibility for NISP's required mitigation measures will, as appropriate, be defined in a final agreement for the diversion, storage, and release of Fort Collins SSD Water to be executed at the same time as execution of Fort Collins' NISP Allotment Contract.

8. **ADDITIONAL TERMS.**

- 8.1. **Effective Date.** This Agreement is effective as of the date stated above on the initial page.
- 8.2. **Term.** This Agreement is based on the Parties' mutual agreement at this time, but will terminate when Fort Collins signs its NISP Allotment Contract and will be replaced by the NISP Allotment Contract and a separate final agreement that addresses the diversion, storage, and release of Fort Collins SSD Water. The Parties also may agree to terminate this Agreement by mutual written agreement.
- 8.3. **Cooperation.** The Parties acknowledge that it is difficult to anticipate all of the activities, situations, regulatory and operational constraints, and other factors which may be relevant to each Party until a final NISP Allotment Contract is signed by all NISP Participants. Accordingly, the Parties agree that they will continue to work

together in good faith to reach a final agreement related to the diversion, storage, and release of Fort Collins SSD Water.

- 8.4. **Reallocation of Loans and Grants.** The Parties agree to take reasonable efforts to cooperatively explore the potential reallocation to NISP of grants or loans held or obtained by Fort Collins and previously contemplated for other water storage projects.
- 8.5. **Relationship of the Parties.** The Parties enter this Agreement as separate and independent entities and shall maintain such status at all times.
- 8.6. **No Third-Party Beneficiaries.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and the Parties are only benefitted to the extent provided under the express terms and conditions of this Agreement.
- 8.7. **Assignment.** No Party may assign any rights or delegate any duties under this Agreement without the written consent of all other Parties.

**THE CITY OF FORT COLLINS,
COLORADO, a Colorado municipal
corporation**

Dated: _____

By: _____
Kelly DiMartino, City Manager

ATTEST:

City Clerk's Office
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Eric Potyondy, Senior Assistant City Attorney

**CITY OF FORT COLLINS WATER
UTILITY ENTERPRISE,**

Dated: _____

By: _____
Emily Francis, Mayor
Ex-Officio President

ATTEST:

City Clerk's Office
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Eric Potyondy, Senior Assistant City Attorney

**NORTHERN INTEGRATED SUPPLY
PROJECT WATER ACTIVITY
ENTERPRISE**

Date: _____

By: _____
Brad Wind, General Manager