

**INTERGOVERNMENTAL AGREEMENT
FOR
REGIONAL WATER EFFICIENCY INCENTIVES PORTAL**

This Intergovernmental Agreement for Regional Water Efficiency Incentives Portal (“Agreement”) is made this ____ day of _____, by and between Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado (“Northern Water”), and _____, which are hereinafter referred to collectively as the “Parties” or individually as a “Party,” for the operation and administration of the Regional Water Efficiency Incentives Portal (“Portal”).

RECITALS

WHEREAS, all Parties benefit from water conservation efforts and reducing their respective demand for limited water resources in the region; and

WHEREAS, the Parties wish to collaborate to develop and manage a Regional Water Efficiency Incentives Portal (“Portal”) that will allow residents and businesses that receive water service from the Parties to access a central website that will allow them to apply for and receive reimbursements for purchases made on select water efficiency products and services; and

WHEREAS, Northern Water has agreed to contract with a qualified contractor (“Portal Contractor”) to host and operate the Portal as well as process the incentive applications on behalf of all Parties, and

WHEREAS, the use of a single, centralized platform for the Parties’ water customers reduces collective costs and administrative burdens, promotes regional consistency in rebate program delivery through uniform eligibility criteria and application procedures, provides customers with a single source of information regarding available incentives, and facilitates the sharing of information and best practices concerning water-efficiency measures among the Parties; and

WHEREAS, other Parties may wish to utilize the Portal and share in the costs of its operation and maintenance, and the Parties intend to allow such additional Parties join the Portal on terms equivalent to the Parties; and

WHEREAS, the Parties wish to establish their relative rights and responsibilities regarding development and operation of the Portal and related operational costs; and

WHEREAS, Section 29-1-203, C.R.S. authorizes entities such as the Parties to enter into agreements to provide services, each are independently authorized to provide.

NOW THEREFORE, the Parties agree as follows:

AGREEMENTS AND COMMITMENTS

1. **Northern Water Responsibilities.** Northern Water shall be considered a Convening Partner. The Convening Partner is the contract administrator for this program and shall be responsible for performing all responsibilities provided herein as defined in Paragraphs 3 and 4, below.
2. _____' **Responsibilities.** _____ shall be considered a Municipal Partner and shall be responsible for performing all responsibilities of a Municipal Partner as provided herein as defined in Paragraphs 3 and 4 below. A Municipal Partner refers to any water utility, municipality or special district that is participating in the Portal.
3. **Governance and Steering Committee.** The Parties shall participate in a Steering Committee ("SC") consisting of no more than two (2) representatives from each Convening and Municipal Partner. The SC shall meet monthly to oversee strategic planning, review annual budget, select incentive offerings, approve marketing materials, review program requirements, and make operational decisions related to the Portal. Consensus shall be the preferred decision-making method. To this end, Parties in the SC shall make a good faith effort to reach consensus, propose alternative solutions, and otherwise work to resolve any issues that prevent consensus. If consensus cannot be reached, any matter requiring a decision by the SC may be decided by a majority vote of 75% and above. Each Partner shall receive one vote. Given Northern Water is the contract holder and assumes the associated contractual risk, no proposed change, action, or decision shall be deemed approved if Northern Water casts a dissenting vote. For any decision that results in a financial obligation or expenditure for the group, only those Steering Committee members voting in favor of the approved change or measure shall be responsible for funding the associated cost. Partners voting against the motion or abstaining shall not be obligated to contribute financially toward that expenditure unless they voluntarily choose to do so.
 - a. SC Responsibilities: Each Party shall have the following responsibilities on the SC, subject to staffing and budget availability.

i. Convening Partner:

1. Serve as the meeting facilitator, including hosting meetings virtually or in person and ensuring the SC receives an agenda before each meeting.
2. Host a shared SharePoint or similar technology to ensure all Partners have access to materials, resources, contracts, guiding documents, and other items as needed.
3. Add and remove resources as needed and ensure the SharePoint remains organized.
4. Furnish a report of incentive participation to the Municipal Partners monthly, as well as an aggregated report annually.

ii. Municipal Partners:

1. Assign at least one staff liaison to participate in SC meetings and identify who that person is via email to Northern Water. As roles change, Municipal Partners shall provide Northern Water with updated contact information.
2. Participate in mandatory biannual meetings held each April and September.
3. Take turns recording meeting minutes.
4. Participate in regional marketing efforts, including:
 - a. Guiding the creation of a set of standard marketing design specifications for all Parties to use, including a standard color scheme, naming convention, and branding for the Portal and Partner materials.
 - b. Collaborating on the creation of regional marketing and outreach efforts. This may be performed by SC members or contracted out to the Portal Contractor or other third-party contractor should budget allow.
 - c. Promoting and marketing incentives to its water customers.
 - d. Sharing and displaying co-branded promotional materials at events at which the Partner is tabling.
5. Manually review escalated applications from customers within the Municipal Partner's service area that exceed the defined dollar cap (to be set annually by the Municipal Partner or SC). The defined dollar cap is the maximum amount that may be paid per rebate or application. Municipal Partners shall, in good faith and with

guidance from Northern Water, attempt to keep the defined dollar cap consistent among all entities.

6. Ensure public communications regarding the Portal are consistent with its own policies, branding, and communication standards.

b. Incentive Selection and Program Requirements:

- i. Each year, the SC shall review and determine the incentives to be offered through the Portal, including application criteria, eligibility requirements, documentation standards, and applicable incentive amounts.
- ii. The annual review shall include:
 1. Changes to available incentives.
 2. Adjustments to incentive amounts. Incentive amounts may also be modified during the year, as determined by the SC and agreed upon by the Portal Contractor, to allow for greater flexibility.
 3. Changes to incentive eligibility requirements, documentation requirements, fraud prevention procedures, accessibility standards, application review processes, and other program standards.
- iii. Proposed changes shall be presented at the first June meeting each year, with final decisions made no later than the September meeting.
- iv. At the beginning of each contract year, the SC shall provide the Portal Contractor with a final list of incentives approved for reimbursement.
- v. Municipal Partners agree to contribute to determining and comply with all incentive eligibility standards, documentation requirements, fraud prevention procedures, accessibility standards, and application review processes approved by the SC and administered through the Portal Contractor.

4. **Resource Commitments.**

a. Convening Partner: As a Convening Partner, Northern Water shall:

- i. Procure a contractor to develop and administer the Portal (“Portal Contractor”), including drafting and publishing a request for proposals, managing contract negotiations, and signing a contract with the Portal Contractor; and the costs of developing the procurement documents, conducting the procurement process,

- identifying the Portal Contractor, and managing communications with Municipal Partners shall be borne solely by Northern Water.
- ii. Oversee, with support and input from all Municipal Partners, the Portal Contractor, and ensure the terms of the contract are met.
 - iii. Invoice _____ and other Municipal Partners for their respective shares of monthly costs of administering and operating the Portal (“Operational Costs”), including but not limited to Portal and website creation and maintenance, compliance with applicable laws and regulations, including the Americans with Disabilities Act (ADA), branding, marketing, reporting. Invoices will cover amounts necessary to pay the Portal Contractor for Operational Costs, on or before _____ each month. Operational Costs do not include any costs associated with incentive payments to customers and the processing of incentive applications (“Incentives and Processing Fees”) as described in Paragraph 3, Section b.
 - iv. Northern Water’s share of Operational Costs shall be 50% of the Operational Costs.
- b. Municipal Partners: As a Municipal Partner, _____ shall:
- i. Pay _____’s pro rata share of Operational Costs on a monthly basis within thirty (30) days of receipt of the invoice for same. Each Municipal Partner’s pro rata share of the 50% of the Operational Costs shall be based on the percentage of “active taps” served by such Municipal Partner at the beginning of the calendar year compared to the total “active taps” served by all Municipal Partners at the beginning of that calendar year. “Active Taps” shall mean the connection between a water utility main and the water services that provide water to a residence or business. Active taps are a proxy for the number of people and business served by a utility or municipality. The Municipal Partner’s annual monetary obligation for operational costs under this Agreement shall not exceed \$21,000.
 - ii. Provide, on an annual basis, a budget for Incentives and Processing fees. Such amounts shall either (a) be paid to the Portal Contractor at the beginning of each calendar year, to be drawn upon by the Portal Contractor as rebate applications are approved and paid, or (b) be invoiced by the Portal Contractor and paid by the Municipal Partner on a monthly basis as rebate applications are approved for payment.

If the budgeted amounts are exhausted during the calendar year, the Municipal Partner may, in its sole discretion, (a) provide additional funds to the Portal Contractor for continued drawdown

and payment of approved incentives and related fees, or (b) direct the Portal Contractor to suspend the approval and payment of incentives funded by the Municipal Partner for the remainder of the calendar year, or until such time as additional funds are provided.

5. **Default.** If _____ fails to pay its share of Operational Costs within thirty (30) days of receiving an invoice for same, Northern Water will provide written notice of nonpayment to _____. If full payment from _____ is not received by Northern Water within thirty (30) days of such notice, _____'s access to the Portal will be suspended, _____ will no longer be entitled to use the Portal or to process rebate requests for its customers through the Portal, and this Agreement will terminate.
6. **Grant Funds.** Northern Water has applied for grant funding for the initial stages of Portal development, and the Parties anticipate that said grant funding will cover initial Operational Costs. The Parties will also cooperate to identify and apply for grant funding to cover future operational costs. Northern Water will not invoice _____ for any Operational Costs hereunder until all grant funds have been expended. If grant funding is not received in amounts sufficient to cover Portal development, the Parties will confer regarding the financial feasibility of developing the Portal. If one or both Parties determines it lacks sufficient funds to pay for development of the Portal, the Parties may terminate this Agreement pursuant to the provisions of Paragraph 8.
7. **Data Security and Cyber Incident Response.** The SC and the Portal Contractor shall collaboratively develop, maintain, and annually review a Cybersecurity Incident Response Plan for the Portal. This plan shall clearly define roles, responsibilities, communication protocols, and procedures for identifying and responding to actual or suspected cybersecurity incidents affecting the Portal or related data. The Portal Contractor shall notify affected Municipal Partners within forty-eight (48) hours of discovering a breach or suspected cyber incident. Customer data shall remain the property of the originating Municipal Partner and shall not be sold or shared without authorization. The Cybersecurity Incident Response Plan shall be completed before the launch of the Portal.
8. **Accessibility.** The Convening Partner shall ensure that the Portal Contractor commits to compliance with C.R.S. §24-85-101, et seq. and will be in substantial compliance with the following requirements ("Accessibility Requirements"): (i) all requirements related to the applicable provisions of C.R.S. §24-85-101, et seq. and the Accessibility Standards for Individuals with a Disability, as established

by the State of Colorado's Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103(2.5), C.R.S; (ii) all State of Colorado technology standards related to technology accessibility; (iii) the Web Content Accessibility Guidelines (WCAG) level and version currently established in 8 CCR 1501-11 Technology Accessibility Rules, as incorporated and as defined in the State of Colorado technology standards; (iv) in the event Contractor cannot comply with the Accessibility Requirements, Contractor must work with the Convening Partner to establish a plan for Contractor to comply with these Accessibility Requirements.

9. **Third-Party Rights for Municipal Partners.** The Convening Partner shall include provisions in its contract with the Portal Contractor whereby: (a) the Portal Contractor agrees to indemnify and hold harmless the Municipal Partners, their officers, employees, and agents from and against all liability, claims, and demands on account of any injury, loss, or damage arising out of or connected with the services the Portal Contractor provides, if such injury, loss, or damage, or any portion thereof, is caused by the act, omission, or other fault of the Portal Contractor or any subcontractor of the Portal Contractor, or any officer, employee, or agent of the Portal Contractor or any subcontractor, or any other person for whom the Contractor is responsible; (b) the Municipal Partners are empowered to enforce any rights protecting their monetary expenditures in relation to the Portal—for incentives or otherwise; and (c) the Municipal Partners shall be permitted to audit any of the Portal Contractor's records relating to the Portal.
10. **Use of Contract Services.** The Parties acknowledge that Northern Water has entered into a contract for services with the Project Contractor. In accordance with applicable cooperative procurement authority, any entity that has executed an agreement with Northern Water authorizing participation in the Portal may access and utilize services provided under that contract. Each Project Partner shall be responsible for its proportionate share of project costs and may be invoiced directly by the Project Contractor at the direction of Northern Water. This right is affirmed in Section 6 of the contract between Northern Water and the Portal Contractor.
11. **Audit.** The Municipal Partners shall be permitted to audit any records held by Northern Water relating to the Portal and administration thereof.
12. **Term.** This Agreement shall have an initial term of five (5) years. After the expiration of the initial term, the Agreement shall renew automatically for

successive one-year terms unless either party provides notice of nonrenewal at least ninety (90) days before the expiration of the then-current term.

13. **Termination.** Either Party may terminate this Agreement by providing thirty (30) days written notice of termination to the other Party. If _____ terminates the Agreement and termination is not for cause, _____ shall not be entitled to a refund of any funds previously paid pursuant to Paragraph 3 of this Agreement. If Northern Water terminates, _____ shall be entitled to a refund of amounts paid by _____ for the current fiscal year. If Northern Water terminates, the Parties will confer to determine whether Northern Water will assign the agreement with the Portal Contractor to _____ or another Municipal Partner so that Portal operation can continue. Unless the Portal Contractor agreement is assigned to a non-Northern Water partner, then upon termination, _____'s access to the Portal will be suspended. Following termination, neither Party will have any further rights or obligations with regard to this Agreement.
14. **Other Partners.** _____ acknowledges that Northern Water expects to sign agreements with Other Partners that contain substantially identical terms to this Agreement. As of the signing of this Agreement, the Other Partners are _____. If, at a later date, additional water providers not listed here wish to become Other Partners and join in the operation and management of the Portal, Northern Water will notify _____ and all existing Other Partners and obtain their written consent, which shall not be unreasonably withheld, prior to executing an agreement with the prospective new Other Partner. Agreements with future Other Partners shall contain substantially the same terms as this Agreement.

GENERAL CONDITIONS

15. **Effective Date.** This Agreement shall become effective upon signature of this document by both Parties.
16. **Annual Appropriation.** The respective financial obligations of both Northern Water and _____ are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available by their respective governing body. Nothing herein shall be construed to require the expenditure of any funds by either party that would violate the provisions of Article X, § 20 of the Colorado Constitution.
17. **Merger.** This Agreement represents the complete understanding between the Parties, and all prior representations and understandings, oral and written, are

merged herein. Prior or contemporaneous additions, deletions, or other amendments hereto shall not have any force or effect whatsoever, unless embodied herein.

18. Amendment by Written Agreement. This Agreement may be modified by the Parties only by an executed written instrument.

19. Controlling Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Colorado. Venue for any dispute resulting in litigation shall be in the District Court in and for Larimer County.

20. Notice. All notices required to be given hereunder shall be sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to hardcopy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt. The individuals listed below are the principal representatives of the respective Parties. For the purposes of this Agreement, the official representative(s) and addresses of the Parties are:

For Northern Water:
Northern Colorado Water Conservancy District
220 Water Ave.
Berthoud, CO 80513
Attention: _____

For _____:

Attention: _____

The Parties' rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the other Party. Any attempt at assignment, transfer, or subcontracting without such consent shall be void.

21. Unless otherwise provided herein, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective legal representatives, successors, and assigns.

22. The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit the provisions of this Agreement.
23. **Counterparts.** This Agreement may be executed in two or more counterparts, including by facsimile or electronic mail, each of which shall be deemed an original and all of which shall constitute one and the same Agreement. By affixing an image of one's own signature to this Agreement in an electronic format, the person is signing the Agreement as if it were an original, wet ink signature.
24. A Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, provided that such nonperformance is beyond the reasonable control of and is not due to the fault or negligence of the Party not performing.
25. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.
26. Waiver of any breach of a term, provision, or requirement of this Agreement or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement.
27. No term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, of any of the immunities, rights, benefits, or protections afforded the Parties under applicable law, including TABOR, Colorado Constitution, Article X, § 20; the Governmental Immunity Act, C.R.S. § 24-10-101 et seq.; or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., as applicable now and hereafter amended.
28. **Authority.** The persons executing this Agreement on behalf of the Parties hereto, covenant and warrant that they are fully authorized to execute this Agreement on behalf of the Party they represent. The Parties further agree that they each have sought the advice of independent legal counsel prior to entering into this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

NORTHERN COLORADO WATER CONSERVANCY
DISTRICT

By: _____
Bradley D. Wind, General Manager

Date: _____

By: _____

Date: _____