FIRESTONE
COLORADO

# BOARD OF TRUSTEES

# REGULAR MEETING AGENDA

January 8, 2020
7:00 PM
151 Grant Avenue
Firestone, CO 80520

1. **Call to Order & Roll Call**

2. **Pledge of Allegiance**

3. **Approval of Agenda**

4. **Public Comment** *(maximum time permitted for all Public Comment is 30 minutes)

5. **Consent Agenda**

   **5.a.** Approval of December 11, 2019 BOT Regular Meeting Minutes

   **5.b.** **Resolution 20-01:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, DESIGNATING THE POSTING LOCATION FOR NOTICE OF MEETINGS OF THE BOARD OF TRUSTEES AND ALL OTHER LOCAL PUBLIC BODIES OF THE TOWN

   **5.c.** **Resolution 20-02:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ADOPTING THE THREE MILE PLAN FOR THE TOWN OF FIRESTONE, COLORADO

   **5.d.** **Resolution 20-06:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE PAYMENT OF THE TOWN'S 2020 INSURANCE PREMIUMS

   **5.e.** **Resolution 20-07:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE SIXTEENTH INTERIM AGREEMENT BETWEEN THE NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE AND THE TOWN OF FIRESTONE FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT

* Individuals that desire to address the Board of Trustees are requested to sign up at the table at the entrance to the meeting room. Each individual will be provided an opportunity to speak (limited to three minutes) during Public Comment. Maximum time permitted for all Public Comment is 30 minutes.

If you need special assistance in order to participate in a Board of Trustees meeting, please contact the Town Clerk's Office at 303-833-3291 in advance of the meeting to make arrangements. A forty-eight-hour notice is requested.

**5.f.** **Resolution 20-10:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE APPLICATION TO THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR CANCELLATION OF TEMPORARY USE PERMITS

**5.g.** **Resolution 20-11:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN APPLICATION TO THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR AN ANNUALLY RENEWABLE PERPETUAL WATER CONTRACT FOR THE RIGHT TO USE COLORADO-BIG THOMPSON PROJECT WATER UNDER C.R.S. § 37-45-131

## 6. Presentation

## 7. Public Hearing

## 8. Discussion/Action

**8.a.** **Resolution 20-03**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT WITH THE NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT

**8.b.** **Resolution 20-04**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A FUNDING AGREEMENT BETWEEN THE TOWN OF FIRESTONE, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, AND THE ST. VRAIN WATER AUTHORITY

**8.c.** **Resolution 20-05**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND McGRANE WATER ENGINEERING, LLC, FOR FINAL DESIGN AND CONSTRUCTION ENGINEERING SERVICES

**8.d.** 2020 Ballot Question

**8.e.** **<u>Resolution 20-08:</u>** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DESIGN SERVICES AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND HALCYON DESIGN, LLC, FOR THE TOWN HALL PROJECT

**8.f.** **<u>Resolution 20-09:</u>** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DESIGN SERVICES AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND HALCYON DESIGN, LLC, FOR THE PUBLIC WORKS FACILITY EXPANSION AND REMODEL PROJECT

**9. Public Comment** *(maximum time permitted for all Public Comment is 30 minutes)

**10. Reports**

**10.a.** Staff

**10.b.** Mayor

**10.c.** Trustees

**11. Executive Session**

**12. Adjournment**

* Individuals that desire to address the Board of Trustees are requested to sign up at the table at the entrance to the meeting room. Each individual will be provided an opportunity to speak (limited to three minutes) during Public Comment. Maximum time permitted for all Public Comment is 30 minutes.

If you need special assistance in order to participate in a Board of Trustees meeting, please contact the Town Clerk's Office at 303-833-3291 in advance of the meeting to make arrangements. A forty-eight-hour notice is requested.

TOWN OF FIRESTONE, COLORADO
Board of Trustees Regular Meeting
MINUTES
December 11, 2019



## 1. Call to Order & Roll Call

The  of the Town of Firestone met for a Regular Meeting on December 11, 2019, at the Town Hall, 151 Grant Avenue, Firestone, Colorado. Mayor Sindelar called the meeting to order at 7 :01 p.m.

The following were present upon the call of the roll:

| | |
|---|---|
| **Mayor:** | Bobbi Sindelar |
| **Mayor Pro-tem:** | Drew Peterson |
| **Trustees:** | Don Conyac |
| | George Heath - excused absent |
| | Samantha Meiring - arrived at 7:09 |
| | Frank A. Jimenez |
| | Doug Sharp |
| **Staff:** | **Present:** Jan Sloat, Director of Human Resources; Paula Mehle, Director of FURA & Economic Development; Raelynn Ferrera, Special Projects & Facilities Division Manager; Jessica Clanton, Director of Finance; Julie Pasillas, Director of Community Resources; Todd Bjerkaas, Director of Planning; Marty Ostholhoff, Planning Manager; Matt Thompson, Sr. Planner; Millissa Berry, Sr. Planner; David Montgomery, Chief of Police; Lisa Bartley, Acting Town Clerk; AJ Krieger, Town Manager; & William Hayashi, Town Attorney |

## 2. Pledge of Allegiance

Pledge was led by Mayor Sindelar

## 3. Approval of Agenda

**Motion** by Mayor Pro-Tem Peterson, **second** by Trustee Jimenez, to  Approval of Agenda
All in Favor, **Motion carried**.

## 4. Public Comment *(maximum time permitted for all Public Comment is 30 minutes)

1. Dan Woog - Town of Erie runnin for State Representative
2. Cody Childers/Dean Rummel - CVPRD

## 5. Consent Agenda

**Motion** by Mayor Pro-Tem Peterson, **second** by Trustee Conyac, to approve the Consent Agenda
**Roll Call Vote:**

**Yes:** Mayor Pro-Tem Peterson, Trustee Jimenez, Trustee Conyac, Trustee Meiring, Trustee Sharp
**No:** None
**Abstain:** None
**Motion carried.**

**5.a.** Approval of November 20, 2019 BOT Special Meeting Minutes

**5.b.** Approval of December 4, 2019 BOT Special Meeting Minutes

**5.c.** **Resolution 19-102**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, PRESCRIBING WATER RATES, FEES, TOLLS AND CHARGES FOR THE TOWN OF FIRESTONE, COLORADO.

**5.d.** **Resolution 19-105**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A PROFESSIONAL SERVICES CONTRACT MASTER SERVICES AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND LEONARD RICE CONSULTING WATER ENGINEERS, INC.

**5.e.** **Resolution 19-106**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN ENGINEERING SERVICES AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND PLUMMER ASSOCIATES, INC., REGARDING THE WATER TREATMENT PLANT PROJECT

**5.f.** **Resolution 19-109:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, AUTHORIZING AND APPROVING A MASTER USE AGREEMENT AND SUPPLEMENTAL SITE LICENSE AGREEMENT WITH UNITE PRIVATE NETWORKS REGARDING THE INSTALLATION AND OPERATION OF A FIBER OPTIC NETWORK AND RELATED EQUIPMENT IN TOWN CONTROLLED RIGHTS OF WAY.

**5.g.** **Resolution 19-112** - A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPOINTING JESSICA KOENIG AS TOWN CLERK

## 6. Presentation

**6.a.** Town Clerk Swearing In - Judge Basso

**6.b.** Frederick Firestone Fire Protection District 3rd Quarter Service Report

**6.c.** Broadband RFP

## 7. Public Hearing

**7.a. Resolution 19-104**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AMENDMENT TO AN EXISTING FINAL DEVELOPMENT PLAN FOR CERTAIN REAL PROPERTY LOCATED AT LOT 3, DEL CAMINO JUNCTION BUSINESS PARK FIFTH MINOR PLAT

Open: 7:33 pm Closed: 7:42 pm
Matt Thompson, Sr. Planner

**Motion** by Trustee Conyac, **second** by Trustee Sharp, to approve**Resolution 19-104**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AMENDMENT TO AN EXISTING FINAL DEVELOPMENT PLAN FOR CERTAIN REAL PROPERTY LOCATED AT LOT 3, DEL CAMINO JUNCTION BUSINESS PARK FIFTH MINOR PLAT
**Roll Call Vote:**

**Yes:** Mayor Pro-Tem Peterson, Trustee Jimenez, Trustee Conyac, Trustee Meiring, Trustee Sharp
**No:** None
**Abstain:** None **Motion carried.**

**7.b. Ordinance 961**: AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, AMENDING SECTION 16-12-8.C OF THE TOWN OF FIRESTONE DEVELOPMENT REGULATIONS PERTAINING TO ARTIFICIAL TURF LANDSCAPING OF SINGLE-FAMILY RESIDENTIAL LOTS

Open: 7:43 pm Closed: 7:47 pm
Millissa Berry, Sr. Planner

**Motion** by Trustee Jimenez, **second** by Trustee Sharp, to approve **Ordinance 961**: AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, AMENDING SECTION 16-12-8.C OF THE TOWN OF FIRESTONE DEVELOPMENT REGULATIONS PERTAINING TO ARTIFICIAL TURF LANDSCAPING OF SINGLE-FAMILY RESIDENTIAL LOTS
**Roll Call Vote:**

**Yes:**Mayor Pro-Tem Peterson, Trustee Jimenez, Trustee Conyac, Trustee Meiring, Trustee Sharp
**No:** None
**Abstain:** None **Motion carried.**

## 8. Discussion/Action

**8.a.** **<u>Resolution 19-107</u>**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, FOR SUPPLEMENTAL BUDGET AND APPROPRIATIONS FOR THE 2019 BUDGET YEAR.

**Motion** by Trustee Meiring, **second** by Trustee Conyac, to approve **<u>Resolution 19-107</u>**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, FOR SUPPLEMENTAL BUDGET AND APPROPRIATIONS FOR THE 2019 BUDGET YEAR.
**Roll Call Vote:**

**Yes:**Mayor Pro-Tem Peterson, Trustee Jimenez, Trustee Conyac, Trustee Meiring, Trustee Sharp
**No:**None
**Abstain:** None
**Motion carried.**

**8.b.** **<u>Resolution 19-103</u>**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, LEVYING GENERAL PROPERTY TAXES FOR THE 2019 TAX YEAR, TO HELP DEFRAY THE COSTS OF GOVERNMENT FOR THE TOWN OF FIRESTONE, COLORADO FOR THE 2020 BUDGET YEAR.

**Motion** by Trustee Conyac, **second** by Trustee Sharp, to approve

**<u>Resolution 19-103</u>**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, LEVYING GENERAL PROPERTY TAXES FOR THE 2019 TAX YEAR, TO HELP DEFRAY THE COSTS OF GOVERNMENT FOR THE TOWN OF FIRESTONE, COLORADO FOR THE 2020 BUDGET YEAR.

**Roll Call Vote:**

**Yes:**Mayor Pro-Tem Peterson, Trustee Jimenez, Trustee Conyac, Trustee Meiring, Trustee Sharp
**No:** None
**Abstain:** None
**Motion carried.**

8.c. **Resolution 19-110:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND SEACHANGE FOR PRINTING & MAILING SERVICES FOR THE APRIL 2020 MUNICIPAL ELECTION

**Motion** by Trustee Meiring, **second** by Mayor Pro-Tem Peterson, to approve **Resolution 19-110:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND SEACHANGE FOR PRINTING & MAILING SERVICES FOR THE APRIL 2020 MUNICIPAL ELECTION
**Roll Call Vote:**

**Yes:**Mayor Pro-Tem Peterson, Trustee Jimenez, Trustee Conyac, Trustee Meiring, Trustee Sharp
**No:** None
**Abstain:** None
**Motion carried.**

8.d. **Resolution 19-111:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND ES&S FOR ELECTION SYSTEMS & SOFTWARE SUPPORT THE APRIL 2020 MUNICIPAL ELECTION

**Motion** by Mayor Pro-Tem Peterson , **second** by Trustee Jimenez, to approve **Resolution 19-111:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND ES&S FOR ELECTION SYSTEMS & SOFTWARE SUPPORT THE APRIL 2020 MUNICIPAL ELECTION
**Roll Call Vote:**

**Yes:**Mayor Pro-Tem Peterson, Trustee Jimenez, Trustee Conyac, Trustee Meiring, Trustee Sharp
**No:** None
**Abstain:** None
**Motion carried.**

8.e. Quasi-Judicial/Legislative List - Accepted Development Review Applications

9. **Public Comment** *(maximum time permitted for all Public Comment is 30 minutes)
None

10. **Reports**

10.a. Staff

10.b. Mayor

10.c. Trustees

11. **Executive Session - None**

## 12. Adjournment

**Motion made and seconded** to Adjourn at 8:35 p.m. Voice Vote, All in Favor, **Motion carried**.

Introduced and Approved the DAY of MONTH YEAR

TOWN OF FIRESTONE, COLORADO

ATTEST

Bobbi Sindelar, Mayor

Town Clerk

**RESOLUTION NO. 20-01**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, DESIGNATING THE POSTING LOCATION FOR NOTICE OF MEETINGS OF THE BOARD OF TRUSTEES AND ALL OTHER LOCAL PUBLIC BODIES OF THE TOWN**

WHEREAS, C.R.S. § 24-6-402 (2)(c) requires that the Board of Trustees annually designate at the Board's first regular meeting of each calendar year the public place for posting of notice for the meetings of the Board of Trustees and other local public bodies of the Town; and

WHEREAS, local public body means any municipality, board, committee, commission, authority, or other advisory, policy-making or formally constituted body of the Town; and

WHEREAS, with the goal of having local governments transition from the posting of notices at a fixed physical location the legislature amended the Open Meetings Law last year to permit the posting of meetings of local public bodies upon a public website no less than twenty-four hours before the meeting; and

WHEREAS, the legislature further declared that such posting on a public website would constitute full and timely notice of a public meeting and that it would monitor the transition over the next two years with the goal of having notice of all public meetings posted online.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

1. Pursuant to C.R.S. § 24-6-402 (2)(c), notice of meetings of the Board of Trustees and other local bodies of the Town shall be posted at the front entrance window of the Firestone Town Hall, 151 Grant Ave., Firestone, CO, 80520.

2. Pursuant to C.R.S. § 24-6-402 (2)(c) (III) notices of such meetings may also be published no less than twenty-four hours prior to the holding of such meetings on the Town's website (www.firestoneco.gov) which serves all local public bodies of the Town.

**INTRODUCED, READ AND ADOPTED** this __ day of ____________, 2020.

TOWN OF FIRESTONE, COLORADO

______________________________
Bobbi Sindelar, Mayor

ATTEST:

________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

___________________________________
William P. Hayashi, Town Attorney

| AGENDA INFORMATION MEMORANDUM<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 5.c.<br><br>**Consent Agenda**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:** Marty Ostholthoff<br><br>**Dept:** Planning & Development |
|---|---|

**AGENDA TITLE**

**Resolution 20-02:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ADOPTING THE THREE MILE PLAN FOR THE TOWN OF FIRESTONE, COLORADO

**SUMMARY**

Staff has prepared a resolution for consideration by the Board to adopt the Three Mile Plan for the Town of Firestone.

Section 31-12-105(1)(e) C.R.S. requires the Town to adopt and update a plan at least annually, which generally describes the location, character and extent of various public facilities in an area extending three miles beyond the municipal boundaries, prior to completing annexations of land within the three mile area. The practice of most municipalities in Colorado have relied upon a compilation of various land use plans, procedures, and other documents that were previously adopted and utilized by the municipality as the “Three Mile Plan.” Therefore, a resolution formally designating the compilation of land use plans, procedures and documents as the “Three Mile Plan” for the Town of Firestone is proposed.

**HISTORY AND PREVIOUS BOARD ACTION**

**RECOMMENDATION**

Staff recommends that the Board approve the attached resolution adopting the Three Mile Plan for the Town of Firestone.

**ALTERNATIVES**

**ATTACHMENTS**

1. 5.c - Reso 20-02

**FINANCIAL CONSIDERATIONS**

# RESOLUTION NO. 20-02

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ADOPTING THE THREE MILE PLAN FOR THE TOWN OF FIRESTONE, COLORADO**

**WHEREAS**, pursuant to Section 31-12-105(1)(e), C.R.S. prior to the completion of any annexation within a three-mile area outside of the municipal boundaries of a municipality ("Three Mile Area"), a municipality is required to have in place a plan ("Three Mile Plan") which generally describes the proposed location, character and extent of certain public facilities, located within the Three Mile Area; and;

**WHEREAS**, the Town of Firestone has enacted, adopted and approved the various plans, documents, ordinances and resolutions (collectively "Plans") listed on "Exhibit A," attached hereto and incorporated herein; and

**WHEREAS**, the Town Board has determined that the Plans, when considered together as a whole, adequately comply with the requirements of state law for the Three Mile Plan for the Town of Firestone;

**WHEREAS**, to ensure that future annexations by the Town of Firestone are completed in compliance with the provisions of state law, the Town Board, by this Resolution, desires to formalize its understanding and intention that the Plans serve as the Three Mile Plan for the Town of Firestone;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:**

**Section 1.** The Plans, as described in "Exhibit A," attached hereto and made a part of this resolution, when considered together as a whole, shall constitute the Three Mile Plan for the Town of Firestone required pursuant to Section 31-12-105(1)(e)(I), C.R.S. (the "Three Mile Plan").

**Section 2.** The Three Mile Plan is hereby adopted.

**Section 3.** The Three Mile Plan shall be reviewed and revised as may be necessary or advisable, and shall be updated annually, and additional plans may be added to the Three Mile Plan from time to time, as they are developed and adopted.

**[SIGNATURES ON FOLLOWING PAGE]**

**INTRODUCED, READ AND ADOPTED** this 8th day of January, 2020.

TOWN OF FIRESTONE, COLORADO

__________________________________
Bobbi Sindelar, Mayor

ATTEST:

___________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

__________________________________
William P. Hayashi, Town Attorney

## EXHIBIT A

## TOWN OF FIRESTONE
## THREE MILE AREA PLAN
## ELEMENTS

**Documents as may be amended from time to time:**

- **Town of Firestone Municipal Code**
- **Town of Firestone 2013 Master Plan**
- **Town of Firestone Development Regulations**
- **Sump Basin Master Drainage Plan**
- **South Weld I-25 Corridor Master Drainage Plan**
- **Town of Firestone Design Criteria & Construction Regulations**
- **Town of Firestone Parks Design Criteria Manual**
- **Town of Firestone Raw Water Irrigation System Master Plan**
- **Town of Firestone Potable Master Plan**
- **Ordinance 916 – Residential Development Impact Fees & Funds**

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**AGENDA INFORMATION MEMORANDUM**

FIRESTONE
TOWN BOARD OF TRUSTEES

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**AIM#:** 5.d.

**Consent Agenda**

**Meeting Date:** January 8, 2020

**Initiated By:** Jan Sloat

**Dept:** Human Resources

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**AGENDA TITLE**
**Resolution 20-06:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE PAYMENT OF THE TOWN'S 2020 INSURANCE PREMIUMS

**SUMMARY**
This resolution will authorize Town staff to make payments to insurance carriers for premiums as indicated and appropriated in the 2020 annual budget.

**HISTORY AND PREVIOUS BOARD ACTION**

**RECOMMENDATION**
Staff recommends approval of this resolution authorizing payment to the identified insurance carriers for employee benefits and property & casualty insurance premiums.

**ALTERNATIVES**

**ATTACHMENTS**
1. 2020.Town Insurance Premiums Reso

**FINANCIAL CONSIDERATIONS**

**RESOLUTION NO. 20-06**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE PAYMENT OF THE TOWN′S 2020 INSURANCE PREMIUMS**

WHEREAS, the Town of Firestone's 2020 budget adopted by the Board of Trustees appropriates funds for the Town's insurance premiums; and

WHEREAS, the Board of Trustees desires to specifically authorize such payments.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Board of Trustees of the Town of Firestone authorizes payment of the Town's insurance premiums in the amounts set forth hereinbelow.

| | |
|---|---|
| Anthem - Medical | $900,000.00 |
| Delta - Dental | $ 66,000.00 |
| VSP - Vision | $ 14,400.00 |
| Mutual of Omaha (includes Group Life and AD&D (voluntary coverages paid by employees w/o voluntary elections 12 x 5200) | $ 78,000.00 |
| Pinnacol – Worker's Compensation | $100,000.00 |
| CIRSA – Property & Casualty Insurance | $192,000.00 |

**INTRODUCED, READ AND ADOPTED** this __ day of ____________, 2020.

TOWN OF FIRESTONE, COLORADO

______________________________
Bobbi Sindelar, Mayor

ATTEST:

________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

_____________________________
William P. Hayashi, Town Attorney

| | |
|---|---|
| **AGENDA INFORMATION MEMORANDUM**<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES | **AIM#:** 5.e.<br><br>**Consent Agenda**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:** Julie Pasillas<br><br>**Dept:** Public Works |

**AGENDA TITLE**

**Resolution 20-07:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE SIXTEENTH INTERIM AGREEMENT BETWEEN THE NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE AND THE TOWN OF FIRESTONE FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT

**SUMMARY**

The Sixteenth Interim Agreement is to be executed with all NISP participants. The costs associated with the agreement will cover 3 phases explained below. The 2020 cost for the Town of Firestone participation is $325,000.00.

Phase 3A consists of a continuation of the permitting work associated with NISP. The work in 2020 will largely be efforts in support of the final 404 permit and Record of Decision, response to comments on the Final EIS, mitigation development, and continuation of the Larimer County IGA process. Additionally, there will be work in support of the public information effort for NISP as well as overall Northern Water administration and legal support.

Phase 5 will consist of the Glade geotechnical investigation and embankment design advancement and Highway 287 relocation thirty percent design.

Phase 6 involves the following additional 2020 activities:

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

**HISTORY AND PREVIOUS BOARD ACTION**

In January 2019, the Fifteenth Interim Agreement between Northern Colorado Water Conservancy District and the Town of Firestone was approved by the Board of Trustees.

Until fiscal year 2009, the Town of Firestone had been participating in the NISP project under the umbrella of the Central Weld County Water District (CWCWD). At the regular Board meeting on October 22, 2009, the Town of Firestone Board of Trustees approved a NISP Assignment Agreement negotiated with CWCWD. In general, the agreement allowed for the transfer of 1,300 acre-feet (3.25% of the total project) of CWCWD's interest to the Town of Firestone. Once executed the Town of Firestone became a direct participant of the project and as a result will be required to fulfill contractual agreements previously handled on the Town's behalf by CWCWD.

**RECOMMENDATION**

Staff recommends that the Board of Trustees make a motion to approve the NISP Sixteenth Interim Agreement with NCWCD and to fund the payment as requested in the agreement for the Town participation in NISP.

**ALTERNATIVES**

The Board may decide to not approve the Agreement, and provide staff with additional direction.

**ATTACHMENTS**

1. Res No 20-07 NISP Agrmt (16th) Approval
2. NISP Sixteenth Interim Participation Agreement

**FINANCIAL CONSIDERATIONS**

The Town has budgeted for NISP participation costs of $325,000.00 for 2020, to be paid by the Water Fund.

**RESOLUTION NO. 20-07**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE SIXTEENTH INTERIM AGREEMENT BETWEEN THE NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE AND THE TOWN OF FIRESTONE FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT**

WHEREAS, the Northern Integrated Supply Project Water Activity Enterprise ("NISP Enterprise") is developing a water project ("Project") for the purpose of developing a new reliable water supply for the beneficial use of the Participant ("Town of Firestone"), and other entities; and

WHEREAS, overall Project costs are divided among the entities that participate in the Project; and

WHEREAS, Phases 1, 2 and 4 of the Project have been completed; and

WHEREAS, though the activities for the first two portions of Phase 3 have been timely commenced, the third portion of Phase 3A must be completed; and

WHEREAS, it is necessary that the NISP Enterprise pursue Phases 3A, 5 and 6 of the Project at this time in order to be able to complete the Project on the time schedule desired by the participants; and

WHEREAS, pursuing Phases 3A, 5 and 6 of the Project on behalf of the Participants will require funding from the Participants.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Sixteenth Interim Agreement between the Northern Integrated Supply Project Water Activity Enterprise and the Town of Firestone for Participation in the Northern Integrated Supply Project is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this 8th day of January, 2020.

TOWN OF FIRESTONE, COLORADO

________________________________
Bobbi Sindelar, Mayor

ATTEST:

____________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

___________________________________
William P. Hayashi, Town Attorney

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

This Agreement is made and entered into as of ____________, 2020, by and between the Northern Integrated Supply Project Water Activity Enterprise, a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution, organized pursuant to C.R.S. §§ 37-45.1-101 et seq., owned by the Northern Colorado Water Conservancy District, and whose address is 220 Water Avenue, Berthoud, Colorado 80513 (the "NISP Enterprise"), and the Town of Firestone, whose address is P.O. Box 100, Firestone, CO 80520-0100 (“Participant”).

Recitals

A. The NISP Enterprise is developing a water project (the "Project") for the purpose of developing a new reliable water supply for the beneficial use of the Participant and other entities.

B. Overall Project costs will be divided among the entities that participate in the Project.

C. The First Phase of the Project consisted of preliminary studies to evaluate potential Poudre reservoir sites and the South Platte Water Conservation Project. The First Phase has been accomplished and there appear to be potential project configurations that may serve the needs of the Project.

D. The Second Phase of the Project consisted of additional reservoir site evaluations, alternatives analysis, environmental studies, financial analyses, and related work. The Second Phase has been completed and the participants have selected alternatives that may serve the needs of the Project.

E. The NISP Enterprise has commenced the Third Phase of the Project. The Third Phase, Years 1 and 2 (2004 and 2005), consisted of agency consultation, commencement of permitting with the U.S. Army Corps of Engineers and other agencies, commencement of compliance with the National Environmental Policy Act and other requirements for federal permitting, commencement of field work and analysis for permitting, modeling, and other activities related to designing and permitting the Project.

F. The Third Phase, Year 3 through Year 6 (2006, 2007, 2008, and 2009), consisted of continuation of agency consultation, permitting with the U.S. Army Corps of Engineers and other agencies, compliance with the National Environmental Policy Act and other requirements for federal permitting, field work and analysis for permitting, modeling, and other activities related to designing and permitting the Project.

G. The Third Phase, Years 7 through 17 (hereinafter referred to as “Phase 3A”), will consist of further agency consultation, permitting with the U.S. Army Corps of Engineers and other agencies, compliance with the National Environmental Policy Act and other requirements for federal permitting, field work and analysis for permitting, modeling, and other activities related to designing and permitting the Project.

H. The Fourth Phase consisted of the Glade Preliminary Design and phase I Geotechnical Investigation for Glade Reservoir. This phase is now complete.

I. The Fifth Phase of the Project consists of the Glade geotechnical investigation and embankment design advancement, Highway 287 relocation thirty percent design, and completion of the Galeton Dam preliminary design.

J. The Sixth Phase involves continued NISP conveyance delivery refinement, South Platte Water Conservation Project negotiations, land and easement definition and potential purchase, and potential advancement of time-sensitive mitigation activities.

K. It is necessary that the NISP Enterprise pursue Phases 3A, 5 and 6 of the Project at this time in order to be able to complete the Project on the time schedule desired by the participants.

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

<u>Agreement</u>

1. The Participant agrees to participate in Phase 3A, Phase 5, and Phase 6 of the Project, under and pursuant to the terms and conditions of this Agreement. The Participant acknowledges that it shares a common interest in development of the Project and that privileged material may be shared with the Participant from time to time. A description of Phase 3A, Phase 5 and Phase 6 is included in Exhibit A. Participation in these phases of the Project in no way obligates the Participant to participate in subsequent phases of the Project or to continue involvement in the Project in any manner.

2. For the purposes of cost allocation in Phase 3A, Phase 5, and Phase 6, the cost is based upon the Participant's base requested capacity divided by the total requested base Project yield ("Participant's Cost Share"). The Participant's initial base requested capacity in the Project is 1,300 acre-feet of water yield. Attached hereto as Exhibit B is a table showing the currently anticipated permitted capacity in the Project and the pro rata share of the costs of the Project for 2020 for each Participant. The Participant may request a reduction, but not an increase, in base requested capacity, which will be implemented by the NISP Enterprise so long as any increased costs of design, environmental studies, permitting or other matters are paid by the Participant. If a reduction in the Participant's base requested capacity is made, the formula for allocation of costs among the participants shall be changed accordingly so that all participants bear a pro rata share of Phase 3A, Phase 5 and Phase 6 costs of the Project after the change based on their final base requested capacity. For purposes of the environmental analysis for the Project, the Participant's permitted capacity in the Project is 1,300 acre-feet of water yield. In the

event that the Participant's base requested capacity is increased or decreased, the Participant's permitted capacity shall be increased or decreased in the same percentage as the percentage increase or decrease of the base requested capacity.

3. The Participant agrees to provide to the NISP Enterprise funds for its pro rata share of the anticipated 2020 costs necessary for Phase 3A, Phase 5 and Phase 6 of the Project. The NISP Enterprise estimates that the Participant's pro rata share of the costs of the Project is $325,00 for 2020. The Participant will pay the NISP Enterprise its pro rata share of these 2020 costs on or before January 15, 2020. The NISP Enterprise will invoice the Participants for this payment. These estimated costs will not be increased or exceeded without the prior written approval of the Participant. Participant funds that are not expended during Phase 3A, Phase 5 and Phase 6 will be rebated back to each participant pro rata based on each participant's contribution of funds to the Project in Phase 3A, Phase 5 and Phase 6.

4. In the event that the Participant fails to make the payment set forth above at the specified time, the NISP Enterprise shall have the right to terminate this Agreement and cease all work on the Project for the benefit of the Participant. The NISP Enterprise shall give the Participant thirty (30) days' advance written notice of its intention to terminate this Agreement and cease work on the Project for the Participant's benefit under this paragraph. The Participant shall have until the end of said 30-day period in which to make all past due payments in full in order to cure its default hereunder. The Participant shall in any event be responsible for its pro rata share of the 2020 costs of Phase 3A, Phase 5 and Phase 6 of the Project actually incurred by the NISP Enterprise up to the date of termination of this Agreement.

5. The NISP Enterprise agrees to diligently pursue Phase 3A, Phase 5 and Phase 6 of the Project in good faith to the extent that funds therefor are provided by the Participant under this Agreement and by other participants under similar agreements. By entering into this Agreement and accepting payments from the Participant, the NISP Enterprise does not obligate itself to, nor does the NISP Enterprise warrant that it will, proceed with the Project beyond Phase 6 or that it will construct or operate the Project. At the end of the Sixth Phase, the NISP Enterprise will determine after consultation with the participants whether to proceed with the Project. The NISP Enterprise agrees that, if the participants provide all required funding, if the NISP Enterprise has the ability, and if the Project is feasible and practical, it will pursue the construction and operation of the Project if requested to do so by sufficient participants to fully fund the Project. In the event that the NISP Enterprise decides not to proceed with the Project, it will so notify the Participant and this Agreement will immediately and automatically terminate upon the giving of such notice.

6. In the event of termination of the Project, the Participant shall not be entitled to any return of funds paid to the NISP Enterprise for the Project, unless payments by participants exceed the NISP Enterprise's costs, in which case a pro rata refund will be made. In the event of such termination, the Participant shall be entitled to receive copies of any work products developed by the NISP Enterprise or its consultants on behalf of the

Participant, and NISP Enterprise Board shall, in its sole discretion: i) convey to the Participant, as a tenant in common with all other participants who have not been terminated under paragraph 4 above, a pro rata interest in all real and personal property acquired by the NISP Enterprise for the Project with funds provided under this Agreement or similar agreements with other participants; or ii) disburse to the Participants the proceeds of any sale of assets in proportion to each Participant's Cost Share.

7. The Participant shall have the right to assign this Agreement and the Participant's rights hereunder, with the written consent of the NISP Enterprise, which consent shall not be unreasonably withheld, to any person or entity that is eligible to receive water deliverable through the Project and that is financially able to perform this Agreement.

8. In the event that this Agreement is terminated for any reason, the Participant shall not be entitled to any return of any funds paid to the NISP Enterprise for the Project, and the NISP Enterprise shall have no further obligations to the Participant, except as provided in Paragraphs 3 and 6 above for those participants who have not been terminated under paragraph 4 above.

9. Notwithstanding any other provision of this Agreement to the contrary, the Participant's maximum financial obligation under this Agreement shall be the payment of $325,000 set forth in paragraph 3 above. The Participant shall have the right to terminate this Agreement at any time. In the event of such termination, each of the parties hereto shall be immediately released from all obligations recited herein as if this Agreement had not been entered into, except that the Participant shall be entitled to a return of funds paid to the NISP Enterprise as provided in paragraph 8 above.

10. In the event that additional costs must be incurred for Phase 3A, Phase 5 and Phase 6 in 2020, the parties may amend this Agreement in writing to provide for further payment by the Participant of the costs for 2020. However, the Participant is not obligated under this Agreement to pay any costs for Phase 3A, Phase 5 and Phase 6 beyond the costs stated in paragraph 3 above.

11. This Agreement is the entire agreement between the NISP Enterprise and the Participant regarding participation in Phase 3A, Phase 5 and Phase 6 of the Project and shall be modified by the parties only by a duly executed written instrument approved by the Participant and the NISP Enterprise's Board of Directors.

12. This Agreement is subject to approval by the NISP Enterprise's Board of Directors and shall become binding on the NISP Enterprise only upon such approval.

TOWN OF FIRESTONE

By:__________________________

Name:________________________

Title:_________________________

THE NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE

By:_____________________________

Name: Bradley D. Wind

Title: General Manager

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

Phase 3A consists of a continuation of the permitting work associated with NISP. The work in 2020 will largely be efforts in support of the final 404 permit and Record of Decision, response to comments on the Final EIS, mitigation development, and continuation of the Larimer County IGA process. Additionally, there will be work in support of the public information effort for NISP as well as overall Northern Water administration and legal support.

Phase 5 will consist of the Glade geotechnical investigation and embankment design advancement and Highway 287 relocation thirty percent design.

Phase 6 involves the following additional 2020 activities:

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

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

| Item | Amount | | |
|---|---|---|---|
| ERO Record Completion and Environ Assistance | $ 200,000 | | |
| Additional Glade Design Activities | $ 4,000,000 | | |
| HW 287 Design Activities | $ 1,000,000 | | |
| River Intake Preliminary Design Activities | $ 200,000 | | |
| Environment&Mitigation | $ 1,000,000 | | |
| Financing Consultant | $ 100,000 | | |
| WQ Sampling | $ 200,000 | | |
| Northern Water | $ 1,600,000 | | |
| Legal | $ 400,000 | | |
| PI | $ 100,000 | | |
| ROW-Land Appraisal/Title/Survey | $ 200,000 | | |
| SPWCP Negotiations | $ 200,000 | | |
| NISP Delivery Refinement | $ 1,000,000 | | |
| Other | $ 500,000 | | |
| Grand Total | $ 10,700,000 | | |
| Anticipated Carryover from 2019 | $ 700,000 | | |
| Participant Contribution | $ 10,000,000 | | |
| | | | |
| | | | |
| Participant | Project Yield (Acre-ft) | Percent of Project | $ 10,000,000 Budget |
| Central Weld Co. W.D. | 3,500 | 8.75% | $ 875,000 |
| Dacono | 1,250 | 3.13% | $ 312,500 |
| Firestone | 1,300 | 3.25% | $ 325,000 |
| Frederick | 2,600 | 6.50% | $ 650,000 |
| Eaton | 1,300 | 3.25% | $ 325,000 |
| Erie | 6,500 | 16.25% | $ 1,625,000 |
| Evans | 1,600 | 4.00% | $ 400,000 |
| Fort Collins-Loveland. W.D. | 3,000 | 7.50% | $ 750,000 |
| Fort Lupton | 2,050 | 5.13% | $ 512,500 |
| Fort Morgan | 3,600 | 9.00% | $ 900,000 |
| Lafayette | 1,800 | 4.50% | $ 450,000 |
| Lefthand W.D. | 4,900 | 12.25% | $ 1,225,000 |
| Morgan County Q.W.D. | 1,300 | 3.25% | $ 325,000 |
| Severance | 2,000 | 5.00% | $ 500,000 |
| Windsor | 3,300 | 8.25% | $ 825,000 |
| Total | 40,000 | 100.00% | $ 10,000,000 |

| **AGENDA INFORMATION MEMORANDUM**<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 5.f.<br><br>**Consent Agenda**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:** Julie Pasillas<br><br>**Dept:** Public Works |
|---|---|

**AGENDA TITLE**

**Resolution 20-10**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE APPLICATION TO THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR CANCELLATION OF TEMPORARY USE PERMITS

**SUMMARY**

Each year, Northern Water requires the Town to cancel all temporary use permits for water transfers that took place in the prior water year. By cancelling the temporary use permits and completing the Section 131 Annual Renewable Water Contract, the water will be converted from temporary water rights to annually renewable perpetual water rights in the Colorado-Big Thompson ("C-BT") system. At present, the Town has 7 temporary use permits for 87 acre-feet/shares, transferred by developers complying with water dedication requirements during 2019. This is an annual process, and all forms must be returned to Northern Water.

**HISTORY AND PREVIOUS BOARD ACTION**

This procedural matter is required for all temporary use permits for water shares accepted by the Town during the previous year. The Town had to complete this procedure in 2019, as 43 acre-feet/shares had been transferred in 2018.

**RECOMMENDATION**

Staff recommends the Board of Trustees adopt a motion to approve the attached resolution to apply for the beneficial use of 87 acre-feet/shares of C-BT water and authorize the Mayor to complete and sign the applications for cancellation of the temporary use permits and annually renewable perpetual water contract.

**ALTERNATIVES**

None at this time.

**ATTACHMENTS**

1. Res No 20-10 NCWCD Cancellation Temp Use Permit
2. Firestone Cancellation of TU Permit-2019

**FINANCIAL CONSIDERATIONS**

There is no cost to convert the temporary use permit for 87 acre-feet/shares to an annual renewable water contract. The Town pays annual water assessment fees to Northern Water for use of the C-BT system.

**RESOLUTION NO. 20-10**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING THE APPLICATION TO THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR CANCELLATION OF TEMPORARY USE PERMITS**

WHEREAS, the Town of Firestone desires to submit its application to the Northern Colorado Water Conservancy District for cancellation of temporary use permits.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Board of Trustees of the Town of Firestone ("Town") approves the Town's Application to Northern Colorado Water Conservancy District for Cancellation of Temporary Use Permits, as set forth in the copy attached hereto and made a part of this resolution. The Mayor is authorized to execute the Application for cancellation on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this 8th day of January, 2020.

TOWN OF FIRESTONE, COLORADO

______________________________
Bobbi Sindelar, Mayor

ATTEST:

_________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

______________________________
William P. Hayashi, Town Attorney

**APPLICATION TO**
**NORTHERN COLORADO WATER CONSERVANCY DISTRICT**
**FOR CANCELLATION OF TEMPORARY USE PERMITS**

The Town of Firestone hereby applies for the cancellation of the following Temporary Use Permits:

| Permits Dated | Acre-Feet |
|---|---|
| February 14, 2019 | 07 |
| March 18, 2019 | 41 |
| March 18, 2019 | 09 |
| March 18, 2019 | 09 |
| July 11, 2019 | 07 |
| August 8, 2019 | 05 |
| August 8, 2019 | 09 |
| **Total Quantity to be Released** | **87** |

Dated at Firestone, Colorado this ____________ day of _________________________, 2020.

TOWN OF FIRESTONE

ATTEST:

By______________________________

_________________________________
(SEAL)

**ORDER ON APPLICATION**

Application having been made by the Town of Firestone for the cancellation of the above Temporary Use Permits, and Hearing having been held by the Board of Directors of Northern Colorado Water Conservancy District, it is hereby ORDERED that the above Temporary Use Permits be canceled.

Dated the _____________ day of __________________________, 2020.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

ATTEST:

_________________________________
President

_________________________________
Secretary

| AGENDA INFORMATION MEMORANDUM<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 5.g.<br><br>**Consent Agenda**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:** Julie Pasillas<br><br>**Dept:** Public Works |
|---|---|

**AGENDA TITLE**

**Resolution 20-11:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN APPLICATION TO THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR AN ANNUALLY RENEWABLE PERPETUAL WATER CONTRACT FOR THE RIGHT TO USE COLORADO-BIG THOMPSON PROJECT WATER UNDER C.R.S. § 37-45-131

**SUMMARY**

Each year, Northern Water requires the Town to cancel all temporary use permits for water transfers that took place in the prior water year. By cancelling the temporary use permits and completing the Section 131 Annual Renewable Water Contract, the water will be converted from temporary water rights to annually renewable perpetual water rights in the Colorado-Big Thompson ("C-BT") system. At present, the Town has 7 temporary use permits for 87 acre-feet/shares, transferred by developers complying with water dedication requirements during 2019. This is an annual process, and all forms must be returned to Northern Water.

**HISTORY AND PREVIOUS BOARD ACTION**

This procedural matter is required for all temporary use permits for water shares accepted by the Town during the previous year. The Town had to complete this procedure in 2019, as 43 acre-feet/shares had been transferred in 2018.

**RECOMMENDATION**

Staff recommends the Board of Trustees adopt a motion to approve the attached resolution to apply for the beneficial use of 87 acre-feet/shares of C-BT water and authorize the Mayor to complete and sign the applications for cancellation of the temporary use permits and annually renewable perpetual water contract.

**ALTERNATIVES**

None at this time.

**ATTACHMENTS**

1. Res No 20-11 NCWCD Annual Renewable Right to Use Water
2. Application for Town of Firestone - Section 131 Contract-2019

**FINANCIAL CONSIDERATIONS**

There is no cost to convert the temporary use permit for 87 acre-feet/shares to an annual renewable water contract. The Town pays annual water assessment fees to Northern Water for use of the C-BT system.

**RESOLUTION NO. 20-11**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN APPLICATION TO THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR AN ANNUALLY RENEWABLE PERPETUAL WATER CONTRACT FOR THE RIGHT TO USE COLORADO-BIG THOMPSON PROJECT WATER UNDER C.R.S. § 37-45-131**

WHEREAS, the Town of Firestone ("Town") must, in accordance with state law, annually apply to the Northern Colorado Water Conservancy District for its beneficial use of 87 acre feet of Colorado-Big Thompson Project Water; and

WHEREAS, such water must be used in accordance with the terms and conditions set forth in the application.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Board of Trustees of the Town of Firestone ("Town") approves the Town's Application to the Northern Colorado Water Conservancy District for Annually Renewable Perpetual Water Contract for Right to Use Colorado-Big Thompson Project Water under C.R.S. § 37-45-131, as set forth in the copy attached hereto and made a part of this resolution. The Mayor is authorized to execute the Application on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this 8th day of January, 2020.

TOWN OF FIRESTONE, COLORADO

______________________________
Bobbi Sindelar, Mayor

ATTEST:

________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

_____________________________
William P. Hayashi, Town Attorney

APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR ANNUALLY RENEWABLE
PERPETUAL WATER CONTRACT FOR RIGHT TO USE
COLORADO-BIG THOMPSON PROJECT WATER
UNDER C.R.S. 37-45-131

Applicant, Town of Firestone, a Colorado municipal corporation acting in its governmental capacity or a water activity enterprise (circle capacity in which applicant is acting), hereby applies to Northern Water, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is 87 acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.

2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of Northern Water shall be primarily for municipal, domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Water.

3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth (1/310,000) of the quantity of water annually declared by the Board of Directors of Northern Water to be available for delivery from the water supplies of Northern Water. Applicant agrees that such water shall be delivered from the works of Northern Water at such existing Northern Water delivery point or points as may be specified by the Applicant and that the water delivery obligation of Northern Water shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of Northern Water.

4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of Northern Water at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from Northern Water that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the rate per acre-foot

established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment as herein provided is not made by due date, written notice thereof, by certified mail, will be given by Northern Water to the Applicant at the following address: P.O. Box 100, Firestone, Colorado 80520.

Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water as herein made, shall be disposed of at the discretion of the Board of Directors of Northern Water. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above Northern Water's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed another water year without any further notice of Northern Water; if the annual payment is not timely made, as provided above, the right of use shall terminate.

6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of Northern Water.

7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between Northern Water and the United States and all amendments thereof and supplements thereto.

8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with Northern Water if and when the Board of Northern Water finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by Northern Water. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard contracts of Northern Water; additional annual monetary consideration for extension of Northern Water delivery services and for additional administration, operation and maintenance costs; or for other costs to Northern Water which may arise through provision of services to the Applicant.

9. Acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial use of water thereunder by the Applicant is necessary; the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and the adequate protection of the health of the inhabitants of the community.

10. The governing body of Applicant has duly approved this Application in accordance with all legally required procedures.

Signed this _________ day of ___________________, A.D.,_____.

TOWN OF FIRESTONE

By___________________________________

ATTEST:

_____________________________________
(SEAL)

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for 87 acre-feet of water is hereby made to the Town of Firestone, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

By____________________________________
President

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the _______ day of _________________________, A.D., ______.

ATTEST:______________________________
Secretary

| | |
|---|---|
| **AGENDA INFORMATION MEMORANDUM**<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 8.a.<br><br>**Discussion/Action**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:** Dave Lindsay<br><br>**Dept:** Public Works |

**AGENDA TITLE**

**Resolution 20-03**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT WITH THE NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT

**SUMMARY**

The environmental permitting process for the Northern Integrated Supply Project (NISP) will be completed in early 2020. While there will still be administrative and design costs, the Town will participate in for the next several years, the project has reached a point where it is necessary to make some real property acquisitions such as land and water rights. Northern Water staff has worked collaboratively with the NISP Participants group to develop a strategy to acquire the remaining property rights needed for the two project reservoirs, some associated property rights, and some water rights and/or land with water rights benefiting the project. These acquisitions would best occur ahead of the start of construction of the NISP project, and it was the preference of the Participants that this be undertaken as soon as possible to facilitate expeditious delivery of the project.

To accomplish this it was determined that a Phase 1 funding agreement should be entered into between the NISP Enterprise and each Participant for their proportionate share of a planned $20,000,000 in expenditures. The agreement describes how funds will be used, establishes an Allotment of the NISP project to the Participant (1,300 NISP Units for Firestone), and describes how assets will be liquidated and the funds reimbursed to Participants in the event the project is terminated. The agreement requires a cash contribution for the full amount of the Participants' proportionate share ($650,000 in the case of Firestone) to be made by January 22, 2020.

Accompanying this AIM is Resolution 20-03 approving the NISP Phase 1 Agreement for consideration and action by the Board of Trustees.

**HISTORY AND PREVIOUS BOARD ACTION**

In October 2009 the Board of Trustees entered into an agreement with Central Weld County Water District to purchase 1,300 of their NISP Units for $154,848.25, giving Firestone a 3.25% stake in the project.

The Town has entered into annual interim funding agreement with Northern Colorado Water Conservancy District to pay its proportionate share (3.25%) of the coming years expected costs related to the environmental permitting phase of the project totaling $1,157,000.00 (thru 2019).

**RECOMMENDATION**

Staff recommends the Board of Trustees approve Resolution 20-03, approving and authorizing the Mayor to execute the NISP Phase 1 Agreement and authorizing staff to make payment on the NISP Phase 1 Agreement invoice.

**ALTERNATIVES**

There are no other source water projects of this scale available to the Town to participate in to meet long term growth objectives.

**ATTACHMENTS**

1. Resolution 20-03 (revised)
2. EXHIBIT A - Firestone NISP Phase 1 Agreement

**FINANCIAL CONSIDERATIONS**

The agreement requires Firestone to make a $650,000 payment to the NISP Enterprise by January 22, 2020. This expense will be paid from Water Fund.

The current project is estimated to cost $1,200,000,000, and Firestones participation is 3.25%. It is expected that a single debt financed plan will be developed for the remaining costs of the project in the next few years.

## RESOLUTION NO. 20-03

## A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT WITH THE NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, FOR PARTICIPATION IN THE NORTHERN INTEGRATED SUPPLY PROJECT

WHEREAS, the Northern Integrated Supply Project Water Activity Enterprise (the "NISP Enterprise" or "NISP") 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*., which is owned by the Northern Colorado Water Conservancy District; and

WHEREAS, NISP is a complex regional water supply and storage project that will be developed over time by the NISP Enterprise for the purpose of providing water supply, water storage, and related benefits to the participants that elect to participate in NISP; and

WHEREAS, NISP has been and will be developed in multiple phases over a period of time; and

WHEREAS, NISP Phase 1 includes the pre-construction elements and actions for NISP, including but not limited to acquisition of certain assets, such as (i) real property and other assets for NISP reservoir sites and associated facilities, (ii) stock in or other agreements with mutual ditch companies, irrigation companies, water companies and water users' associations, and (iii) real property or interests in real property associated with the use of such stock or other agreements ("NISP Phase 1 Assets"), and operation, maintenance, and improvement costs for the NISP Phase 1 Assets; and

WHEREAS, the Town of Firestone (the "Town") has a substantial investment in NISP to date; and

WHEREAS, the Town and the NISP Enterprise desire to enter into a NISP Phase 1 Agreement to provide funding for NISP Phase 1 activities and to define the Town's current rights and obligations in NISP; and

WHEREAS, approval of this NISP Phase 1 Agreement assures the Town of its ability to participate in NISP Phase 1 activities.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The NISP Phase 1 Agreement between the Town of Firestone, acting with and on behalf of the Firestone 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*., and owned by the Town, and the Northern Integrated Supply Project Water Activity Enterprise is approved in a form substantially similar to the one attached hereto and made a part of this resolution as Exhibit A. The Mayor is hereby authorized to execute the NISP Phase 1 Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this __ day of ____________, 2020.

TOWN OF FIRESTONE, COLORADO

______________________________
Bobbi Sindelar, Mayor

ATTEST:

________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

______________________________
William P. Hayashi, Town Attorney

**NISP PHASE 1 AGREEMENT**

**DATED AS OF JANUARY _____, 2019**

**BY AND AMONG**

**NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE**

**AND**

**THE NISP PHASE 1 PARTICIPANTS LISTED HEREIN**

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**THIS NISP PHASE 1 AGREEMENT** (this "**Agreement**") dated as of January _____, 2020, is made effective as provided in Section 7.1 hereof by and between (a) the Northern Integrated Supply Project Water Activity Enterprise (the "**Enterprise**"), and (b) The Town of Firestone, a municipal corporation, acting with and on behalf of the Firestone 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.*, and owned by the Town of Firestone (the "**Participant**"), and is made with reference to the following facts:

## RECITALS

A. The 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 Northern Colorado Water Conservancy District ("**District**"), and whose address is 220 Water Avenue, Berthoud, Colorado 80513. The 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 and operation of the Northern Integrated Supply Project ("**NISP**").

B. NISP is a complex regional water supply and storage project that will be developed over time by the Enterprise for the purpose of providing water supply, water storage, and related benefits to the Participant and all other participants that elect to participate in NISP (collectively, the "**NISP Phase 1 Participants**"), and that, from time to time, execute an agreement in a form substantially similar to this Agreement (a "**NISP Phase 1 Agreement**") for the purpose of receiving a NISP Allotment, as is further defined in Section 1 below and in **Exhibit A** attached hereto.

C. NISP is described in general in the Summary section of the U.S. Army Corps of Engineers Final Environmental Impact Statement for the Northern Integrated Supply Project.

D. NISP has been and will be developed in multiple phases over a period of time. "**NISP Phase 1**" includes the pre-construction elements and actions for NISP more generally described in **Exhibit B** attached hereto, which may be modified from time to time by the Enterprise.

E. The Enterprise is entering into a NISP Phase 1 Agreement with each NISP Phase 1 Participant to provide funding for NISP Phase 1 activities and to define the NISP Phase 1 Participants' current rights and obligations in NISP.

## AGREEMENT

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

**Section 1. Definitions**

"**Agreement**" has the meaning assigned to the term in the introductory paragraph to this Agreement.

**"Annual Interim Agreement"** means the annual funding agreements entered into between the Enterprise and the NISP Participants under which the NISP Participants agree to pay, on a pro rata basis, for the operation, maintenance, legal, administrative, improvement, and other costs of developing NISP. The most recent Annual Interim Agreement was the Fifteenth Interim Agreement, executed in 2019. The Annual Interim Agreements do not and will not provide funds to pay for NISP Phase 1 Project Costs, which instead are subject to this Agreement.

"**District**" has the meaning assigned to the term in the recitals to this Agreement.

"**Enterprise**" has the meaning assigned to the term in the introductory paragraph to this Agreement.

"**Enterprise Board**" means the Board of Directors of the Enterprise.

"**Event of Default**" means an event described in Section 6.1 or Section 6.4 hereof as an Event of Default.

"**Fiscal Year**" means the fiscal year of the Enterprise, which currently begins on October 1 of each calendar year and ends on September 30 of the following calendar year, or such other twelve-month period which may be designated by the Enterprise as its Fiscal Year.

"**NISP**" has the meaning assigned to the term in the recitals to this Agreement.

"**NISP Allotment**" means the number of NISP Units allotted by the Enterprise to a NISP Phase 1 Participant pursuant to a NISP Phase 1 Agreement, including the allotment of NISP Units to the undersigned Participant pursuant to Section 2.2 of this NISP Phase 1 Agreement. **Exhibit A** shows the current NISP Allotment of NISP Units to each NISP Phase 1 Participant.

"**NISP Assets**" means, and may include, without limitation, water, waterworks, water rights, rights to water, or contractual or other interests in water, sources of water supply, works, improvements, water projects, water facilities, stock in or other agreements with canal companies, water companies, and water users' associations, and real and personal property or interests therein that are necessary or convenient to or for the diversion, storage, collection, and distribution of water yielded by NISP to and for the use of NISP Phase 1 Participants. NISP Phase I Assets, as defined below, are a subset of NISP Assets.

"**NISP Participant**" means an entity that holds a NISP Allotment.

"**NISP Participation Percentage**" means the quotient of a NISP Phase 1 Participant's NISP Allotment divided by the sum of all NISP Phase 1 Participants' NISP Allotments, as such NISP Participation Percentages may be modified in accordance herewith. The NISP Participation Percentages are further described in Section 4 hereof and are set forth in **Exhibit A** hereto opposite each NISP Phase 1 Participant's name.

"**NISP Phase 1 Agreement**" has the meaning assigned to the term in the recitals to this Agreement.

"**NISP Phase 1 Asset Disposition**" means any sale, lease, transfer, or other conveyance of NISP Phase 1 Assets by the Enterprise occurring before adoption of a resolution of project termination under Section 10.1.

"**NISP Phase 1 Assets**" are NISP Assets that the Enterprise has determined should be acquired at this point in the development of NISP in order to assure that these assets will be available for integration into NISP. NISP Phase 1 Assets include real property and other assets purchased with funds made available as the result of this Agreement that are necessary or convenient to the construction and operation of NISP, including without limitation (i) real property and other assets for NISP reservoir sites and associated facilities, (ii) stock in or other agreements with mutual ditch companies, irrigation companies, water companies and water users' associations, and (iii) real property or interests in real property associated with the use of such stock or other agreements. Each of the District and the Enterprise own and/or control other assets that are or may in the future be a part of NISP that are not included within NISP Phase 1 Assets as defined for the purposes of this Agreement.

"**NISP Phase 1 Budget**" means the NISP Phase 1 Budget approved by the Enterprise Board on August 1, 2019, as such NISP Phase 1 Budget may be amended or supplemented from time to time in accordance with this Agreement.

"**NISP Phase 1 Capital Funding Obligations**" means the pro rata obligations of each NISP Phase 1 Participant to fund NISP Phase 1 Project Costs in the amounts set forth in **Exhibit A** attached hereto. The amount of NISP Phase 1 Capital Funding Obligations is the product of the NISP Participation Percentage multiplied by the NISP Phase 1 Project Costs.

"**NISP Phase 1 Participants**" means all NISP Participants which execute a NISP Phase 1 Agreement, including any additional parties who execute a NISP Phase 1 Agreement from time to time pursuant to Section 9 hereof.

"**NISP Phase 1 Project Costs**" means all costs associated with the purchase, acquisition, improvement, operation, and maintenance of NISP Phase 1 Assets. NISP Phase 1 Project Costs do not include and are separate from the annual NISP costs paid under Annual Interim Agreements.

"**NISP Unit**," for purposes of this Agreement, means the right to 1/40,000th of the benefits and yield of NISP, which may include water supply, delivery, and storage, subject to any terms and conditions included in subsequent agreements related to future phases of NISP or otherwise in the final allotment contract between the parties. There are 40,000 NISP Units. The Enterprise and the Participants agree that "NISP Unit" may be defined in greater detail in subsequent agreements related to future phases of NISP or otherwise in the final allotment contracts for NISP.

"**Upfront Payment**" means the cash payment made by a NISP Phase 1 Participant to the Enterprise for the purpose of paying its NISP Phase 1 Capital Funding Obligations.

**Section 2. <u>Purpose of Agreement and NISP Allotment</u>**

2.1 <u>Purpose of Agreement</u>. The purpose of this Agreement is to (i) confirm the Participant's NISP Allotment, which allotment may be further defined in one or more subsequent allotment contracts between the Enterprise and such Participant; (ii) provide for the acquisition and funding of NISP Phase 1 Assets; and (iii) define Participant's pro rata share of and obligation to pay for NISP Phase 1 Project Costs. Performance of the terms of this Agreement constitutes good and sufficient consideration for all parties to this Agreement.

2.2 NISP Allotment. The Enterprise hereby allots to the undersigned Participant 1,300 NISP Units. Unless this NISP Allotment is terminated or modified under the terms herein, the Participant shall have a right to its NISP Units under any subsequent allotment contracts on the same terms and conditions as other similarly situated NISP Participants.

2.3 NISP Allotment Termination. This NISP Allotment shall terminate in the event any of the following shall occur: (i) default and forfeiture pursuant to Section 6 of this Agreement, (ii) the undersigned Participant does not participate in future NISP funding or financing agreements on the same terms and conditions as other similarly situated NISP Phase 1 Participants, (iii) the undersigned Participant does not enter into, or provide funding required under, future Annual Interim Agreements on the same terms and conditions as other NISP Phase 1 Participants, (iv) the undersigned Participant and the Enterprise do not enter into a final NISP allotment contract on the same terms and conditions as other NISP Phase 1 Participants, (v) a withdrawal or reduction in further NISP participation pursuant to Section 8 of this Agreement (provided that, in the case of a reduction in further NISP participation, the NISP Allotment shall be terminated to the extent of the reduction), (vi) a Project Termination pursuant to Section 10 of this Agreement, or (vii) the undersigned Participant violates the rules and regulations of the Enterprise, as may be established or amended from time to time.

**Section 3. Funding**

3.1 NISP Phase 1 Budget and Annual Budgets. The Enterprise Board has previously approved the NISP Phase 1 Budget. The Enterprise Board also has previously approved the Fiscal Year 2020 Enterprise budget and shall provide and approve Enterprise operating budgets for future Fiscal Years annually or more frequently as needed, which budgets will be funded by the NISP Participants through Annual Interim Agreements.

3.2 NISP Phase 1 Capital Funding Obligations. Each NISP Phase 1 Participant hereby agrees to meet its NISP Phase 1 Capital Funding Obligations under its NISP Phase 1 Agreement and in the amount set forth in **Exhibit A** attached hereto by providing its Upfront Payment to the Enterprise on or before January 22, 2020. The Enterprise shall deposit the proceeds of each NISP Phase 1 Participant's Upfront Payment into segregated accounts as further described in Section 3.3.

3.3 Segregated Accounts. For the purpose of making NISP Phase 1 accounting specific to each NISP Phase 1 Participant, the Enterprise shall create interest-bearing segregated accounts within the Enterprise that are unique to each Participant. In addition to the NISP Phase 1 Participants' Upfront Payments, the Enterprise shall also deposit all revenue that may be generated from the lease or operation of NISP Phase 1 Assets pursuant to Section 5.3 into the segregated accounts in proportion to the NISP Phase 1 Participant's NISP Participation Percentages. All funds in the segregated accounts, including any interest that may accrue, shall be used by the Enterprise to pay for NISP Phase 1 Project Costs. Disbursements under the NISP Phase 1 Agreements from the segregated accounts shall be made in proportion to the NISP Phase 1 Participants' NISP

Participation Percentages as they exist at the time of such disbursements. The Enterprise shall provide Participant with annual reports of all deposits and disbursements from, and interest accrued on, the Participant's segregated account.

3.4 Participants' Claim on Segregated Account Funds. Each NISP Phase 1 Participant shall have a claim on the full balance of its respective segregated account regardless of the source of funds, except that the NISP Phase 1 Participants are entitled to payment of the balance only upon the conclusion of NISP Phase 1, which shall occur when the Enterprise and Participant enter into a subsequent agreement related to future phases of NISP or a final allotment contract for NISP that expressly supersedes this Agreement; replacement of the balance by another entity under Sections 8.1 and 9.2; or Project termination under Section 10.

## Section 4. NISP Participation Percentages

The initial NISP Participation Percentages are for the purpose of establishing the NISP Phase 1 Participants' respective responsibilities to pay their pro rata amounts contained in the approved NISP Phase 1 Budget. The NISP Participation Percentage of a NISP Phase 1 Participant may be modified by the Enterprise from time to time as the result of the execution by a new NISP Phase 1 Participant of a NISP Phase 1 Agreement pursuant to Section 9.1, the withdrawal or reduction of participation of a NISP Phase 1 Participant pursuant to Section 8, or the transfer or assignment of a NISP Allotment in whole or in part pursuant to Sections 8, 9, or 13 of this Agreement, and in each such case **Exhibit A** shall be amended to reflect all such changes. All amendments to **Exhibit A** shall, upon approval by the Enterprise, be attached hereto and upon attachment, shall supersede all prior versions of **Exhibit A** without the requirement of further amendment of this Agreement.

## Section 5. Future Development of NISP Phase 1

5.1 The NISP Phase 1 Participants acknowledge that NISP Phase 1 is still in the conceptual stage and there are no assurances that NISP or any water supplies will be developed as a result of the NISP Phase 1 Agreements. The NISP Phase 1 Participants therefore recognize that they are not acquiring any interest in NISP except as expressly provided in the NISP Phase 1 Agreements, and that the NISP Phase 1 Participants are not acquiring under the NISP Phase 1 Agreements any interest in any future water supply or access to any other services from NISP or the Enterprise except as expressly provided hereunder.

5.2 The Enterprise agrees to diligently pursue NISP and the acquisition of NISP Phase I Assets in good faith to the extent that funds therefor are provided by NISP Phase 1 Participants under the NISP Phase 1 Agreements and Annual Interim Agreements. By entering into this Agreement and accepting payments from the undersigned Participant, the Enterprise does not obligate itself to, nor does the Enterprise warrant that it will, proceed with NISP beyond NISP Phase 1 or that it will construct or operate NISP. By entering into their respective NISP Phase 1 Agreements and making payments hereunder, the NISP Phase 1 Participants do not obligate themselves to, nor do they warrant that they will, proceed with NISP beyond NISP Phase 1 or that they will maintain their NISP Allotments and NISP Participation Percentages at the same level in the future; the NISP Phase 1 Participants may withdraw from NISP Phase 1 or NISP, reduce their overall participation in NISP, or transfer or assign all or a portion of their NISP Allotment and

NISP Participation Percentage under the terms of their respective NISP Phase 1 Agreements. At the end of NISP Phase 1, the Enterprise Board will determine after consultation with the NISP Phase 1 Participants whether to proceed with NISP. The Enterprise agrees that, if the NISP Phase 1 Participants provide all required funding, if the Enterprise has the ability, and if the Enterprise Board determines that NISP is feasible and practical, it will pursue the construction and operation of NISP if requested to do so by sufficient NISP Phase 1 Participants to fully fund NISP. In the event that the Enterprise Board decides not to proceed with NISP, it will so notify the NISP Phase 1 Participants, and, upon the giving of such notice, NISP Phase 1 will be wound up in accordance with Section 10 hereof.

5.3 The Enterprise, acting by and through the Enterprise Board and with input from and consultation with the NISP Phase 1 Participants, will acquire, own, and control NISP Phase 1 Assets. Any such acquired NISP Phase I Assets shall be used solely for the purpose of NISP; provided, however, that any such NISP Phase I Assets may be used for another purpose on a temporary basis subject to payment of fair compensation to the Enterprise for such other use. The Enterprise shall use reasonable efforts to generate revenues from NISP Phase I Assets. Income from the temporary lease or use of NISP Phase 1 Assets shall only be used for NISP purposes.

5.4 Before termination of NISP and this Agreement and wind-up as provided in Section 10 of this Agreement, the Enterprise may in its discretion, with input from and consultation with the NISP Phase 1 Participants, make NISP Phase 1 Asset Dispositions. Proceeds from a NISP Phase 1 Asset Disposition shall, at the discretion of the Enterprise Board, be (i) used to further pursue NISP Phase 1, (ii) used for the purposes of the development and construction of NISP, or (iii) distributed to then-existing NISP Phase 1 Participants in proportion to their respective NISP Participation Percentages as they exist at the time of such distribution.

## Section 6. Default and Forfeiture

6.1 Default by NISP Phase 1 Participant. Upon (i) the termination of a NISP Allotment pursuant to Section 2.3 of this Agreement (except for clause (vi) thereof), (ii) the failure of a NISP Phase 1 Participant to make any payment in full when due under a NISP Phase 1 Agreement, or (iii) the failure of a NISP Phase 1 Participant to perform any other obligation hereunder, the Enterprise shall make written demand upon such NISP Phase 1 Participant. If a failure described in clause (ii) above is not remedied, with a late-fee penalty equal to 3% of the defaulted amount, within thirty (30) days from the date of such demand, such failure shall constitute an Event of Default at the expiration of such period. If a failure described in clause (iii) above cannot be remedied within thirty (30) days from the date of such demand but such NISP Phase 1 Participant commences remedial action within such thirty (30) day period in a form acceptable to the Enterprise, then such failure shall not constitute an Event of Default hereunder. Notice of any such demand shall be provided to each other NISP Phase 1 Participant by the Enterprise.

Additionally, if a NISP Phase 1 Participant shall file any petition or institute 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 a NISP Phase 1 Participant 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 if a NISP Phase 1 Participant shall make a general or any assignment for the benefit of its creditors then in each and every such case, such action by a NISP Phase 1 Participant shall be deemed to be an Event of Default hereunder.

6.2 Forfeiture. Upon an Event of Default by a NISP Phase 1 Participant under Section 6.1, the Enterprise may give notice of termination of the defaulting NISP Phase 1 Participant's NISP Allotment and NISP Participation Percentage under this Agreement, which termination shall be effective thirty (30) days following the sending of the notice unless such termination is delayed by judicial action. Upon such notice given, such termination shall result in the complete forfeiture of any and all right, title, claim, or interest, whether express or implied, of the NISP Phase 1 Participant in or to NISP, including without limitation any and all NISP Allotments or NISP Phase 1 Assets under this Agreement or any other Annual Interim Agreement related to NISP. The undersigned Participant, by executing this Agreement, certifies that it has fully disclosed to the governing body of such undersigned Participant the existence and consequence of this Agreement, and agrees that but for the Participant's acceptance of the termination of a NISP Allotment pursuant to Section 2.3 of this Agreement and the consequences of an Event of Default under Section 6.1, the Enterprise would not have entered into this Agreement or any other agreement related to NISP. Except for claims of breach against the Enterprise under the express terms of this Agreement, the undersigned Participant waives any and all legal or equitable claims, in any forum, to NISP, NISP Allotments, or NISP Phase 1 Assets, or against the Enterprise, arising out of an Event of Default under this Agreement by the undersigned Participant. Irrespective of such termination, a NISP Phase 1 Participant shall remain liable to the Enterprise to pay the full amount of its pro rata share of the NISP Phase 1 Project Costs under a NISP Phase 1 Agreement, except as such amounts are otherwise recovered by the Enterprise as provided by this Agreement.

6.3 Reallocation Upon Event of Default and Forfeiture. Upon an Event of Default and Forfeiture under Sections 6.1 and 6.2, the Enterprise shall use its best efforts to reallocate the defaulted NISP Phase 1 Participant's forfeited NISP Allotment and NISP Participation Percentage first to the remaining NISP Phase 1 Participants who elect to receive additional NISP Units by the Enterprise in proportion to the pro rata interest in NISP of each remaining NISP Phase 1 Participant who elected to receive additional NISP Units, and second to an entity or entities that the Enterprise Board determines may be a NISP Participant or NISP Participants pursuant to Section 9. Notwithstanding that all or any portion of a defaulting NISP Phase 1 Participant's NISP Allotment and NISP Participation Percentage is so transferred, such defaulting NISP Phase 1 Participant shall remain liable to the Enterprise to pay the full amount of its share of NISP Phase 1 Project Costs hereunder except to the extent that the Enterprise receives payment from the transferee thereof.

6.4 Default by Enterprise. Upon failure of the Enterprise to perform any obligation of the Enterprise under this Agreement, the Participant may make written demand upon the Enterprise, and if such failure is not remedied within thirty (30) from the date of such demand, or for such additional time as is reasonably required in the discretion of Participant to correct the same, such failure shall constitute an Event of Default at the expiration of such period. The Participant shall provide notice of such demand to each NISP Phase 1 Participant. Upon an Event of Default of the Enterprise under this Section 6.4, the Enterprise and the Participant agree that they shall confer in good faith to attempt to resolve the Event of Default, and if conferral fails to resolve the Event of Default, then to participate in non-binding mediation.

6.5 Enforcement of Remedies. In addition to the remedies set forth in this Section 6, upon the occurrence of an Event of Default as defined herein, the Enterprise or a NISP Phase 1 Participant, as the case may be, shall be entitled to proceed to protect and enforce the rights vested in such party by agreement by such appropriate judicial proceeding as such party shall deem most effectual, either by suit in equity or by action of law, 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 Agreement or by law. The provisions of a NISP Phase 1 Agreement and the duties of each party thereto, their respective boards, officers or employees shall be enforceable by the other party hereto by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, and the prevailing party shall be entitled to an award of its costs and attorney fees to the extent permitted by law.

**Section 7. Term**

7.1 No provision of this Agreement shall take effect until all NISP Phase 1 Participants listed on **Exhibit A** duly authorize, execute, and deliver to the Enterprise their respective NISP Phase 1 Agreements, and the Enterprise duly authorizes, executes, and delivers to the NISP Phase 1 Participants their respective NISP Phase 1 Agreements.

7.2 The NISP Allotment confirmed in Section 2.2 of this Agreement shall be perpetual unless terminated pursuant to this Agreement. The term of the remainder of this Agreement shall continue until the Enterprise and Participant enter into a subsequent agreement related to future phases of NISP or a final allotment contract for NISP that expressly supersedes this Agreement, unless otherwise terminated pursuant to this Agreement.

**Section 8. Withdrawal from Agreement or Withdrawal from or Reduction in Further NISP Participation**

NISP Phase 1 Participants may withdraw from a NISP Phase 1 Agreement and further participation in NISP, or may reduce further participation in NISP, as provided in this Section 8. NISP Phase 1 Participants also may transfer their NISP Units, in whole or in part, as provided in Section 9 below.

8.1 Except as otherwise provided in Section 8.2 below, a NISP Phase 1 Participant may withdraw from NISP Phase 1 and NISP, or reduce its overall participation in NISP, by giving the Enterprise and all other NISP Phase 1 Participants written notice of such withdrawal or reduction in overall NISP participation not less than 180 days prior to the withdrawal or reduction date. Notwithstanding the foregoing, a NISP Phase 1 Participant that withdraws or reduces NISP participation under this Section 8 shall not receive any balance in its respective segregated account unless an equal amount is provided to the Enterprise by another entity as replacement of the balance in the withdrawing or reducing NISP Phase 1 Participant's account.

8.2 Withdrawal from a NISP Phase 1 Agreement and NISP, or reduction in overall NISP participation, shall not excuse any withdrawing or reducing NISP Phase 1

Participant's performance of obligations imposed upon that party by any judgment which has been entered by a court of competent jurisdiction or regulation to which the Enterprise or the NISP Phase 1 Participants are subject and that arise from or are related to activities of the NISP Phase 1 Agreements conducted during the period when the withdrawing or reducing NISP Phase 1 Participant participated in the NISP Phase 1 Agreement.

**Section 9. Transfer of NISP Allotment; Admission of New NISP Phase 1 Participants**

9.1 Additional entities may become NISP Phase 1 Participants if the NISP Enterprise, in its discretion, approves transfer of existing or allotment of new NISP Units to such entity, provided, however, that the total number of NISP Units shall not be increased without the consent of each NISP Participant.

9.2 Transfer of NISP Allotment.

9.2.1 The Enterprise Board shall approve a requested transfer of NISP Units constituting all or a portion of a NISP Allotment from a NISP Phase 1 Participant to one or more other NISP Participants that have a NISP Allotment as of the time of the transfer if the Enterprise Board determines that (i) the NISP Participant receiving the additional NISP Units has an existing or future need for additional NISP Units for use within the District, (ii) the NISP Participant receiving the additional NISP Units has sufficient financial capacity, and (iii) the transfer will not create a material risk under applicable law; provided, however, that approval of a transfer is subject to delivery capacity limitations.

9.2.2 At any time after all final federal permitting approvals for NISP are issued and any litigation challenging such approvals is no longer pending or appealable, a NISP Participant may request a transfer of NISP Units constituting all or a portion of a NISP Allotment to a municipality or a district formed under Colorado law that is not an existing NISP Participant at the time of the proposed transfer. The NISP Enterprise shall approve such a requested transfer if the Enterprise Board determines that (i) the entity receiving the NISP Units has an existing or future need for said NISP Units for use within the District, (ii) the NISP Participant receiving the NISP Units has sufficient financial capacity, (iii) the transfer will not create a material risk under applicable law, and (iv) the entity has not transferred or entered into an agreement to transfer water out of the Northern Colorado Water Conservancy District. Any such transfer shall also be subject to delivery capacity limitations. The Enterprise Board may deny a proposed transfer under this Section 9.2.2 if it finds that, based on extraordinary circumstances, the proposed transfer would not be in the best interests of the Enterprise or the Northern Colorado Water Conservancy District.

9.2.3 A transfer of NISP Units under this Section 9 also shall result in the transfer of all rights and obligations under the relevant NISP Phase 1 Agreement that correspond to the transferred NISP Units. Notwithstanding the foregoing, a NISP Phase 1 Participant that transfers NISP Units under this Section 9 is not entitled to any balance in its respective segregated account that corresponds to the amount of NISP Units transferred unless an equal amount of money is provided to the Enterprise by the transferee as replacement of the balance in transferor NISP Phase 1 Participant's account. The transferring NISP Phase 1 Participant may also assign the corresponding portion of its segregated account to the transferee.

**Section 10. Project Termination**

10.1 Event Giving Rise to Project Termination. NISP shall terminate and the process of winding-up of NISP shall be initiated upon the Enterprise Board's adoption of a resolution of termination. Such resolution may be adopted after the Enterprise Board's receipt of a written request from all NISP Phase 1 Participants to terminate NISP Phase 1 or NISP, or for other financial, legal or practical reasons that would make completion of NISP Phase 1 or NISP impracticable as determined by the Enterprise Board. The decision to adopt a resolution of termination shall be in the Enterprise Board's discretion.

10.2 Winding Up Procedure. Upon the Enterprise Board's adoption of a resolution of termination under Section 10.1 above, NISP Phase 1 shall be wound up within a reasonable time pursuant to the procedures set forth in this Section 10.2.

(i) The Enterprise Board shall appoint a winding-up agent to carry out the procedures and responsibilities set forth in this Section 10.2 and to take any other actions as determined by the Enterprise Board to be necessary and convenient to the winding up of NISP Phase 1.

(ii) The winding-up agent shall obtain from the Financial Services Manager of the District an accounting of NISP Phase 1 Assets and NISP Phase 1 liabilities and operations through the last day of the month in which the Enterprise Board adopts a resolution of termination under Section 10.1 above. The winding-up agent may also cause a proper accounting to occur at other times, including before or after the distribution of NISP Phase 1 Assets pursuant to Section 10.3 below, if the Enterprise Board determines in its discretion that such an additional accounting is reasonably necessary for the orderly winding up of NISP.

(iii) Option of Northern Colorado Water Conservancy District to Purchase Certain NISP Phase 1 Assets. The District shall have an option to purchase, within 180 days of adoption of a resolution of termination by the Enterprise pursuant to this Section 10, the real property necessary or useful for Glade Reservoir, Galeton Reservoir, and any of the associated diversion structures, pipelines, ditches, forebays, or other property or assets then owned by the Enterprise and determined by the District to be necessary to place water into storage in either or in each. The purchase price to be paid by the District for any NISP Phase 1 Assets subject to this Section 10.2(iii) shall be the price paid by the Enterprise for such asset plus the cost of capital improvements thereon or, if such asset was acquired by the Enterprise other than by purchase, the actual cost to acquire such asset. The proceeds of any sale of NISP Phase 1 Assets to the District under this Section 10.2(iii) shall be transferred to the non-defaulting NISP Phase 1 Participants in accordance with Section 10.3 below.

(iv) After complying with Section 10.2(ii) and 10.2(iii), the winding-up agent shall offer, on an asset-by-asset basis, each non-cash NISP Phase 1 Asset to all of the NISP Phase 1 Participants for cash or cash equivalents for the price paid by the Enterprise for such NISP Phase 1 Assets plus the cost of capital improvements or, if such NISP Phase 1 Asset was acquired by the Enterprise other than by purchase, the actual cost to acquire such NISP Phase 1 Asset. If more than one NISP Phase 1 Participant desires to purchase any such NISP Phase 1 Asset, the winding-up agent shall sell the NISP Phase 1 Asset to the highest bid submitted by a NISP Phase 1 Participant in a closed-bid process.

(v) Subject to Section 10.2(vi) and (vii), and after complying with Section 10.2(ii) through (iv), the winding-up agent shall make commercially reasonable efforts to reduce to cash or cash equivalents the NISP Phase 1 Assets.

(vi) The winding-up agent shall exercise discretion in light of legal, tax, contractual, and other considerations as to whether to liquidate particular NISP Phase 1 Assets and to propose a sale to the Enterprise Board under Section 10.2(v). The winding-up agent may consult with legal counsel, tax consultants, or other experts.

(vii) Any sale or transfer of an NISP Phase 1 Asset by the winding-up agent shall require advance notice to all NISP Phase I Participants and approval by the Enterprise Board.

(viii) While conducting the winding-up procedures of this Section 10.2, the winding-up agent shall manage the Enterprise's NISP Phase 1 Assets with reasonable care and with the same powers as the Enterprise's managers exercised before the Enterprise Board adopted a resolution of termination under Section 10.1.

10.3 Distribution of NISP Phase 1 Assets.

(i) Subject to Section 10.3(ii) below, upon completion of the winding-up procedure set forth in Section 10.2 above, the Enterprise Board, with the assistance of the winding-up agent, shall distribute the cash or cash equivalents held by the Enterprise in the following manner and order:

(A) To cover any expenses incurred as a result of the winding-up procedures set forth in Section 10.2;

(B) To maintain a reserve fund as the Enterprise Board may deem necessary to cover any contingent liabilities or obligations of the Enterprise as identified with specificity by the Enterprise, provided that such reserves or any part thereof not required for payment of such contingent liabilities shall be distributed as hereinafter provided;

(C) To satisfy any loans or advances made to the Enterprise by the NISP Phase 1 Participants; and then

(D) To the non-defaulting NISP Phase 1 Participants in proportion to their NISP Participation Percentages after adjusting for any debts each NISP Phase 1 Participant may owe to the Enterprise.

(ii) Distribution of Enterprise assets under Section 10.3(i) is subject to the following terms and conditions:

(A) If any unliquidated non-cash NISP Phase 1 Assets remain after completion of the winding-up procedures set forth in Section 10.2, then the Enterprise Board shall exercise all reasonable efforts to determine whether the unliquidated non-cash NISP Phase 1 Assets are to be conveyed to and owned by the NISP Phase 1 Participants individually or jointly.

(B) Notwithstanding Section 10.3(ii)(A) above, a NISP Phase 1 Participant is not entitled to and does not have the right to demand distributions of non-cash NISP Phase 1 Assets in general or of any particular non-cash NISP Phase 1 Asset.

10.4 Completion of Winding-Up of NISP. After the distribution of all NISP Phase 1 Assets pursuant to Section 10.3, the winding-up agent shall give notice to the Enterprise Board that NISP has been terminated and the NISP Phase 1 Assets have been disposed of pursuant to the NISP Phase 1 Agreements.

## Section 11. Liability of Enterprise and NISP Phase 1 Participants

11.1 Enterprise and Undersigned NISP Phase 1 Participant Liability. Participant shall not be liable to another NISP Phase 1 Participant or to the Enterprise, and the Enterprise shall not be liable to the NISP Phase 1 Participants, for consequential, indirect, punitive, or special damages arising under this Agreement. Neither the Enterprise nor Participant shall be liable for the acts or omissions of the other NISP Phase 1 Participants.

11.2 Enterprise Liability. Any and all obligations of the Enterprise that may arise under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by the Enterprise. Nothing herein shall be deemed to prevent the Enterprise from making any payments from any other legally available source. In no event shall the 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 Agreement or which would cause the Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, neither the Enterprise nor the District shall be required to expend any funds or impair any assets of the District in the performance of any of the Enterprise's obligations under this Agreement. The obligations of the Enterprise under this Agreement do not constitute a debt or indebtedness of the Enterprise 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 Enterprise or the District.

11.3 Undersigned NISP Phase 1 Participant Liability. Any and all obligations of the undersigned Participant that may arise under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by such Participant from the operation of its water utility enterprise. Nothing herein shall be deemed to prevent the undersigned Participant from making any payments from any other legally available source. In no event shall undersigned Participant 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 Agreement or which would cause such Participant to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, the undersigned Participant shall not be required to expend any funds or impair any assets of its parent entity in the performance of its obligations under this Agreement. The obligations of the undersigned Participant under this Agreement 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 the Participant or of its parent entity.

11.4 Governmental Immunity. The Enterprise and the undersigned Participant are each relying on, and do not waive or intend to waive by any provision of this Agreement, 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.

**Section 12. Amendments**

This Agreement may be amended only by a writing executed by the Enterprise and each non-defaulting NISP Phase 1 Participant.

**Section 13. Assignment; Binding on Successors**

Except as otherwise provided in this Agreement, the rights and duties of the Participant may not be assigned or delegated without the written consent of the Enterprise. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Enterprise and the Participant.

**Section 14. Third Party Beneficiaries**

Any NISP Phase 1 Participant shall have the right as a third-party beneficiary to initiate and maintain suit to enforce the obligations of other NISP Phase 1 Participants hereunder. Except as provided in the preceding sentence, no other entities are conferred a benefit under this Agreement or may enforce this Agreement as third-party beneficiaries.

**Section 15. Counterparts**

This Agreement may be executed by the Enterprise and the Participant in separate counterparts that are identical except as to the number of NISP Units and the identity of the NISP Phase 1 Participant, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes.

**Section 16. Merger of Prior Agreements**

This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.

**Section 17. Severability**

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

**Section 18. Choice of Law; Venue**

This Agreement 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.

**Section 19. Notices**

Notices authorized or required to be given under this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the addresses set forth in **Exhibit C**, or to such other address as a party may provide to the other party and other NISP Phase 1 Participants from time to time. Any notice to the Participant shall be given to all NISP Phase 1 Participants. Notices authorized or required to be given under this Agreement may in the alternative be given by electronic mail (email) to the email addresses set forth in **Exhibit C**, or to such other email addresses as a party may provide to the other party and other NISP Phase 1 Participants from time to time, provided that the receiving party acknowledges and does not object to receipt of such notice by email.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Enterprise and NISP Phase 1 Participants hereto, 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.

**Northern Integrated Supply Project Water Activity Enterprise**

By: ________________________________
Bradley D. Wind
General Manager

**The Town of Firestone, a municipal corporation, acting with and on behalf of the Firestone 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.*, and owned by the Town of Firestone**

By: ______________________________________

Name: ____________________________________

Title: ____________________________________

# EXHIBIT A

## NISP PHASE 1 PARTICIPANTS

| Participant | NISP Allotment | NISP Participation Percentage | NISP Phase 1 Capital Funding Obligations |
|---|---|---|---|
| Erie | 6,500 | 16.25% | $3,250,000 |
| Left Hand Water District | 4,900 | 12.25% | 2,450,000 |
| Fort Morgan | 3,600 | 9.00% | 1,800,000 |
| Central Weld County Water District | 3,500 | 8.75% | 1,750,000 |
| Windsor | 3,300 | 8.25% | 1,650,000 |
| Fort Collins-Loveland Water District | 3,000 | 7.50% | 1,500,000 |
| Frederick | 2,600 | 6.50% | 1,300,000 |
| Fort Lupton | 2,050 | 5.13% | 1,025,000 |
| Severance | 2,000 | 5.00% | 1,000,000 |
| Lafayette | 1,800 | 4.50% | 900,000 |
| Evans | 1,600 | 4.00% | 800,000 |
| Morgan County Quality Water District | 1,300 | 3.25% | 650,000 |
| Firestone | 1,300 | 3.25% | 650,000 |
| Eaton | 1,300 | 3.25% | 650,000 |
| Dacono | 1,250 | 3.13% | 625,000 |
| **Totals** | **40,000** | **100.00%** | **$20,000,000** |

# EXHIBIT B

## NISP PHASE 1 PROJECT DESCRIPTION AND SUMMARY WORK PLAN

The work to be performed and costs to be included under the NISP Phase 1 Project include the following:

- Acquisition of property associated with the Galeton Reservoir site (approximately 3,700 acres).
- Acquisition of property associated with Glade Reservoir site (approximately 400 acres)
- Acquisition of property associated with Highway 287 relocation (acreage to be determined).
- Acquisition of easements for both the NISP delivery pipelines and the Galeton Unit pipelines.
- Water Secure properties served by and/or under the New Cache and Larimer and Weld Irrigation Companies' ditch systems (acreage to be determined based upon available funds after the above items have been purchased).
- Operation, maintenance, and improvement costs for the NISP Phase 1 Assets.

## EXHIBIT C

## NOTIFICATIONS

| IF TO: | MAILING ADDRESS | EMAIL |
|---|---|---|
| Northern Integrated Supply Project Water Activity Enterprise | c/o NISP Project Manager<br>220 Water Avenue<br>Berthoud, CO 80513 | cbrouwer@northernwater.org<br>braley@troutlaw.com |
| Central Weld County Water District | c/o Mr. Stan Linker<br>District Manager<br>2235 2nd Avenue<br>Greeley, CO 80631-7203 | stan@cwcwd.com |
| Dacono | c/o Mr. A.J. Euckert<br>City Manager<br>PO Box 186<br>Dacono, CO 80514-0186 | AEuckert@cityofdacono.com |
| Eaton | c/o Mr. Jeff Schreier<br>Town Administrator<br>223 1st Street<br>Eaton, CO 80615-3479 | jeff@eatonco.org |
| Erie | c/o Mr. Todd Fessenden<br>Deputy Public Works Director<br>PO Box 750<br>Erie, CO 80516-0750 | tfessenden@erieco.gov |
| Evans | c/o Mr. Randy Ready<br>Public Works Director<br>1100 37th Street<br>Evans, CO 80620-2036 | rready@evanscolorado.gov |
| Firestone | c/o Ms. Julie Pasillas<br>Public Utilities Director<br>PO Box 100<br>Firestone, CO 80520-0100 | jpasillas@firestoneco.gov |
| Fort Collins–Loveland Water District | c/o Mr. Chris Matkins<br>General Manager<br>5150 Snead Drive<br>Fort Collins, CO 80525-3764 | chrism@fclwd.com |
| Fort Lupton | c/o Mr. Chris Cross<br>Assistant City Administrator<br>130 S McKinley Ave<br>Fort Lupton, CO 80621-1343 | ccross@fortlupton.org |

| IF TO: | MAILING ADDRESS | EMAIL |
|---|---|---|
| Fort Morgan | c/o Mr. Jeffrey Wells<br>Acting City Manager<br>PO Box 100<br>Fort Morgan, CO 80701-0100 | jwells@cityoffortmorgan.com |
| Frederick | c/o Ms. Sarah Watson<br>Water Engineer<br>PO Box 435<br>Frederick, CO 80530-0435 | swatson@frederickco.gov |
| Lafayette | c/o Mr. Jeff Arthur<br>Public Works Director<br>1290 S Public Rd<br>Lafayette, CO 80026-2706 | Jeff.arthur@cityoflafayette.com |
| Left Hand Water District | c/o Mr. Chris Smith<br>General Manager<br>PO Box 210<br>Niwot, CO 80544-0210 | chrissmith@lefthandwater.org |
| Morgan County Quality Water District | c/o Mr. Kent Pflager<br>General Manager<br>PO Box 1218<br>Fort Morgan, CO 80701-1218 | kpflager@mcqwd.org |
| Severance | c/o Mr. Nicholas Wharton<br>Town Administrator<br>PO Box 339<br>Severance, CO 80546-0339 | nwharton@townofseverance.org |
| Windsor | c/o Mr. John Thornhill<br>Director of Community Development<br>301 Walnut Street<br>Windsor, CO 80550 | jthornhill@windsorgov.com |

| AGENDA INFORMATION MEMORANDUM<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 8.b.<br><br>**Discussion/Action**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:** Dave Lindsay<br><br>**Dept:** Public Works |
|---|---|

**AGENDA TITLE**

**Resolution 20-04**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A FUNDING AGREEMENT BETWEEN THE TOWN OF FIRESTONE, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, AND THE ST. VRAIN WATER AUTHORITY

**SUMMARY**

The St. Vrain Water Authority has hired an attorney to represent the Authority. Their services along with some other operational expenses will be incurred prior to the Authority having its own revenue stream. The Authority is requesting a contribution from both of the Members (Firestone and the Little Thompson Water District) totaling $50,000.00 to cover the expected operating expenses for the first several months of 2020 until the Authority has its own capital.

The $50,000.00 cash contribution will be used to pay for legal services, to purchase a licensed version of Quick Books, and to cover other miscellaneous operating expenses. The contribution by each Member is based on their initial subscription in the planned water treatment plant. Firestone's subscription is 83% of the 1.5 MGD treatment plant capacity so its contribution would be $41,500.00. Under the terms of the attached Funding Agreement, the Town will be reimbursed all of this as part if the Subscription Fee that will be due when the Town executes its IGA with the Authority later in 2020.

Accompanying this AIM for consideration and action by the Board of Trustees is Resolution 20-04 that would approve the interim funding agreement and provide for an advance of funds to be used by the St Vrain Water Authority.

**HISTORY AND PREVIOUS BOARD ACTION**

On April 24, 2019 the Board of Trustees approved Resolution No. 19-17, approving the St Vrain Water Authority Establishing Contract with the Little Thompson Water Authority.

**RECOMMENDATION**

Staff reommends the Board of Trustees approve Resolution No. 20-04, a resolution approving a funding agreement with with the St Vrain Water Authority, authorize the Mayor to execute the agreement on behalf of the Town, acting by and thorugh its Town of Firestone Water Activity Enterprise, and authorizing staff to remitt an Advance of Funds in the amount of $41,500.00.

**ALTERNATIVES**

The Board could direct staff to modify the terms of the agreement.

**ATTACHMENTS**

1. St Vrain Water Authority Res
2. Firestone DRAFT Funding Agreement (2019.12.11)

**FINANCIAL CONSIDERATIONS**

An advance of funds of $41,500.00 will be paid from the Water Fund.

## RESOLUTION NO. 20-04

## A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A FUNDING AGREEMENT BETWEEN THE TOWN OF FIRESTONE, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, AND THE ST. VRAIN WATER AUTHORITY

WHEREAS, the St. Vrain Water Authority ("Authority") is a separate and legal entity established by the St. Vrain Water Authority Establishing Contract ("Establishing Contract") by and between the Town of Firestone acting by and through its Town of Firestone Water Activity Enterprise ("Town") organized and existing as a Water Activity Enterprise under C.R.S. § 37-4.1-101 et seq., and the Little Thompson Water District ("Little Thompson"); and

WHEREAS, the Authority was established, in part, for the purpose of developing systems and facilities for furnishing a potable water supply for the benefit of the Town and Little Thompson, and their constituents and service users; and

WHEREAS, the Establishing Contract anticipates that the Authority will finance, design, construct, acquire, operate, maintain, and utilize water resources, facilities and services, and that the Town and Little Thompson, or other public entities may advance funds to the Authority for any purpose subject to repayment by the Authority; and

WHEREAS, the Authority does not currently have sufficient funds to pay its general operating expenses; and

WHEREAS, the Town is willing to advance certain funds to the Authority for payment of a portion of its general operating expenses with the expectation that such advances will be repaid to the Town if and when the Authority has sufficient revenues, and that Little Thompson, by separate agreement, will also advance funds to the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Funding Agreement between the Town of Firestone acting by and through its Town of Firestone Water Activity Enterprise and the St. Vrain Water Authority to fund costs related to the Authority's general operating expenses is approved in substantially the same form as the copy attached hereto and made a part of this resolution, and the Mayor is authorized to execute the Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this __ day of ____________, 2020.

TOWN OF FIRESTONE, COLORADO

______________________________
Bobbi Sindelar, Mayor

ATTEST:

________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

_____________________________
William P. Hayashi, Town Attorney

# FUNDING AGREEMENT

THIS FUNDING AGREEMENT ("Agreement") is entered into by and between the TOWN OF FIRESTONE, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise, organized and existing as a "Water Activity Enterprise" under CRS 37-4.1-101 et. seq. ("Firestone"), and ST. VRAIN WATER AUTHORITY, a political subdivision of the State of Colorado (the "Authority") acting as an Enterprise as that term is defined in the Colorado Constitution, Article 10, Section 20. Firestone and the Authority are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

## RECITALS

A. The Authority is a separate legal entity and political subdivision of the State of Colorado established by the St. Vrain Water Authority Establishing Contract dated as of April 24, 2019 (the "Establishing Contract") by and between Firestone and Little Thompson Water District, a quasi-municipal corporation and political subdivision of the State of Colorado ("Little Thompson"), pursuant to § 29-1-201, *et seq.*, C.R.S.; and

B. The Authority was established in part for the purpose of developing systems and facilities for a purpose of furnishing a potable water supply for the benefit of Firestone and Little Thompson, Firestone, and their constituents and service users; and

C. The Establishing Contract anticipates that the Authority will finance, design, construct, acquire, operate, maintain, and utilize water resources, facilities and services, and that Firestone and Little Thompson or other public entities may advance funds to the Authority for any purpose subject to repayment by the Authority; and

D. The Authority does not currently have sufficient funds to pay its general operating expenses; and

E. Firestone is willing to advance certain funds to the Authority for payment of a portion of its general operating expenses with the expectation that such advances will be repaid to Firestone if and when the Authority has sufficient revenue, and that Little Thompson, by separate agreement, will also advance certain funds to the Authority.

## AGREEMENT

NOW, THEREFORE, in consideration of the respective undertakings of the Parties as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Advance of Funds. In order to fund various costs related to the ongoing operations and administration of the Authority, Firestone agrees to advance the sum of

$41,500 (the "Current Advance"), which is 83% of the total amount currently needed by the Authority. Such percentage is equal to Firestone's current dedicated portion of the Defined System Capacity, as that percentage is further defined in a separate intergovernmental agreement that has been or will be entered into between the Authority and Firestone ("Firestone's IGA") pursuant to Article 5.2 of the Establishing Contract. Additionally, in Firestone's sole discretion, Firestone may elect to advance additional funds to the Authority to pay a Funding Shortfall as defined in, and in accordance with, Section 2 below (and if Firestone elects to make any such additional advances, such additional advances, together with the Current Advance, shall collectively be referred to herein as the "Advances").

2. Request for Additional Advances. If the Authority determines that it will not have sufficient funds available to pay the current operating and administration expenses of the Authority, it shall estimate the anticipated amount of such funding shortfall (the "Funding Shortfall") and submit a written request to Firestone to remit payment of that percentage of the Funding Shortfall equal to Firestone's then-current dedicated portion of the Defined System Capacity, as defined and described in Firestone's IGA. Firestone may, in its sole and absolute discretion, elect to advance and fund the Funding Shortfall or any lesser portion thereof within thirty (30) days after such notice from the Authority. Firestone shall have no obligation to fund any Funding Shortfall.

3. Accounting. Within forty-five (45) days after the end of each fiscal year during the term of this Agreement, the Authority shall complete an accounting of all Advances made pursuant to this Agreement and, upon request, shall provide a copy of the same to Firestone.

4. Subscription Fee. Any and all Advances made by Firestone under this Agreement shall be treated as payment of a portion of the Subscription Fee that Firestone is obligated to pay the Authority under paragraph 5.5.1 of the Establishing Contract. As will be more fully defined in the Firestone IGA, the ongoing operation and administrative costs of the Authority funded by such Advance(s) shall be treated as Non-Construction Costs under the Establishing Contract.

5. Warranties and Representations of Firestone. Firestone hereby represents, warrants and covenants to and for the benefit of the Authority as follows:

(a) Firestone has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement, nor compliance by Firestone with any of its terms, covenants or conditions, is or will become a default under any other agreement or contract to which Firestone is a party or by which Firestone is or may be bound. Firestone has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(b) Firestone has, or will have, sufficient available funds to fulfill its obligation to make the Current Advance under this Agreement.

6. Warranties and Representations of Authority. The Authority hereby represents, warrants and covenants to and for the benefit of Firestone as follows:

(a) The Authority has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement, nor compliance by the Authority with any of its terms, covenants or conditions, is or will become a default under any other agreement or contract to which the Authority is a party or by which the Authority is or may be bound. The Authority has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(b) The costs and expenses paid by or on behalf of the Authority with the funds received by the Authority from Firestone through the Advances pursuant to this Agreement are or will be costs and expenses that are permitted to be reimbursed by the Authority to Firestone under the Establishing Contract.

7. Term; Termination.

(a) The term of this Agreement shall commence upon mutual execution by the Parties and shall remain in effect until terminated as provided herein.

(b) Either Party may terminate this Agreement upon written notice to the other Party prior to July of any year, which termination shall be effective January 1 of the following year.

8. Notices. All notices, demands, requests or other communications to be sent by one Party to the other Party shall be in writing and shall be deemed to have been validly given or served if made by courier delivery of such notice in person, or to the addressee by nationally recognized overnight courier service, or by depositing such notice in the United States mail, postage prepaid, addressed as follows:

To Authority: St. Vrain Water Authority
Board of Directors
PO Box 464
Firestone, CO 80520

With a copy to: Timothy J. Flynn
Collins Cockrel & Cole
390 Union Blvd., Suite 400
Denver, CO 80228-1556

To Firestone: Town of Firestone
Attn: Director of Public Works
P.O. Box 100
Firestone, CO 80520

With a copy to: Williamson & Hayashi, LLC
Attn: William Hayashi
1650 38th Street, Suite 103 West
Boulder, CO 80301

Either Party by written notice so provided may change the address to which future notices shall be sent. All notices shall be considered effective when mailed.

9. Assignment. Neither Party shall assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other Party. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of each of the Parties and their respective successors and assigns.

10. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, including an action for specific performance and/or monetary damages; provided, however, that absent bad faith or fraud by the Authority, no punitive award or damages shall be imposed upon the Authority because of its inability to repay the Repayment Amount. The Parties each hereby waive and relinquish any right to seek or recover any consequential, specific or punitive damages from the other Party in connection with this Agreement or any claims arising from or in connection with this Agreement. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such litigation, arbitration

or other proceeding shall be entitled to obtain as part of its judgment an award of its reasonable attorneys' fees.

11. Governing Law. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any judicial action shall be in the State of Colorado District Court for Larimer or Weld County.

12. Time is of the Essence. All times stated herein are of the essence.

13. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions, negotiations and agreements regarding the subject matter hereof are merged herein.

14. Amendment. This Agreement may be amended from time to time by agreement between the Parties. No amendment, modification or alteration of the Agreement shall be binding upon either Party, unless the same is in writing and duly executed by each of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

ST. VRAIN WATER AUTHORITY, a
political subdivision of the State of Colorado

By: ______________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________

Attest:

______________________________
Secretary

TOWN OF FIRESTONE, acting by and through its Town of Firestone Water Activity Enterprise

By: ____________________________________

Name: ____________________________________

Title: ____________________________________

Date: ____________________________________

Attest:

____________________________________

Town Clerk

| AGENDA INFORMATION MEMORANDUM<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 8.c.<br><br>**Discussion/Action**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:** Dave Lindsay<br><br>**Dept:** Public Works |
|---|---|

**AGENDA TITLE**

**Resolution 20-05**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND McGRANE WATER ENGINEERING, LLC, FOR FINAL DESIGN AND CONSTRUCTION ENGINEERING SERVICES

**SUMMARY**

Staff has completed development of a scope and budget for the final design and construction of the Gould Horizontal Well. The project will be the first phase of a planned horizontal well system to be located on the Gould property and will involve a 500 foot long horizontal alluvial well. The purpose of the well will be to provide water to the planned St. Vrain Water Treatment Plant.

Attached for consideration and action by the Board of Trustees is Resolution No. 20-05 approving an engineering services contract with McGrane Water Engineering, LLC for the final design and construction engineering services.

**HISTORY AND PREVIOUS BOARD ACTION**

On June 13, 2018 the Board of Trustees approved an engineering services agreement with McGrane Water Engineering for the Gould Property Well Field Analysis, which agreement was amended three times.

**RECOMMENDATION**

Staff reccomendsa the Board of Trustees approve Resolution No. 20-05 approving an engineering services agreement with McGrane Water Engineering, LLC for an amount not to exceed $547,000.00 and authorize the Mayor to execute the agreement on behalf of the Town.

**ALTERNATIVES**

The Board could direct staff to modify the terms of the agreement.

**ATTACHMENTS**

1. McGrane Engineering Services Res
2. Gould Horizontal Well Final Design and CE Contract (2019.12.27)

**FINANCIAL CONSIDERATIONS**

The contract amount is not to exceed $547,000.00 and will be paid from the Water Fund.

**RESOLUTION NO. 20-05**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND McGRANE WATER ENGINEERING, LLC, FOR FINAL DESIGN AND CONSTRUCTION ENGINEERING SERVICES**

WHEREAS, McGrane Water Engineering LLC, which is currently under contract with the Town of Firestone ("Town") has completed the site assessment and preliminary design work for the Gould Horizontal Well Project ("Project") and

WHEREAS the Town is now in need of engineering services for the Project's final design and construction engineering duties; and

WHEREAS, McGrane Water Engineering LLC is best suited to perform the Project's final design and construction engineering services in a timely and cost effective manner.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Agreement for the Gould Horizontal Well Final Design and Construction Engineering Services between the Town of Firestone and McGrane Water Engineering, LLC, is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this __ day of ____________, 2020.

TOWN OF FIRESTONE, COLORADO

______________________________
Bobbi Sindelar, Mayor

ATTEST:

________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

_____________________________
William P. Hayashi, Town Attorney

# TOWN OF FIRESTONE

## AN AGREEMENT BY AND BETWEEN THE TOWN OF FIRESTONE AND MCGRANE WATER ENGINEERING, LLC FOR ENGINEERING SERVICES

**(Gould Horizontal Well Final Design and Construction Engineering)**

THIS AGREEMENT ("Agreement"), is made this ______th day of __________, 2020, between the Town of Firestone, a Colorado statutory municipality, hereinafter referred to as “FIRESTONE," and McGrane Water Engineering, LLC, as independent contractor, hereinafter referred to as "CONTRACTOR," and provides as follows:

**ARTICLE I**
**SCOPE OF SERVICES**

Section 1.1 Services: FIRESTONE retains CONTRACTOR, and CONTRACTOR agrees to provide the goods and to perform and complete the work, personal services and/or furnish the necessary equipment, supplies or materials in accordance with and/or as described in Schedule A, hereinafter referred to as the "Project." Schedule A is hereby incorporated by reference and made a part of this Agreement. To the extent that this Agreement and Schedule A conflict, the provisions of this Agreement shall prevail. Additional goods or services beyond those set out in Schedule A, if requested, shall be provided only when authorized in writing by FIRESTONE.

Section 1.2 Contract Time: CONTRACTOR shall commence work upon direction to proceed from FIRESTONE and complete the Project on or before December 31, 2021.

Section 1.3 Independent Contractor: CONTRACTOR shall at all times control the means and manner by which CONTRACTOR performs the work, subject to FIRESTONE’s right to monitor, evaluate and improve such work. CONTRACTOR shall at all times be and act as an independent contractor and not as an employee of FIRESTONE.

Section 1.4 Warranty of Contractor: CONTRACTOR warrants that title to all goods, materials and equipment covered and paid for under this Agreement will pass to FIRESTONE, either by incorporation in the Project or upon the receipt of payment by CONTRACTOR, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no services, goods, materials or equipment paid for under this Agreement will have been acquired by CONTRACTOR, or by any other person performing services at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by CONTRACTOR or such other person.

CONTRACTOR warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses required by law. All professional services shall be performed timely in accordance with generally accepted professional practices and the level of competency presently maintained by other professionals providing the same general type of work as set forth in the Scope of Services.

## ARTICLE II
## COMPENSATION FOR SERVICES

Section 2.1 Compensation: In consideration of completion of the Project specified herein by CONTRACTOR, FIRESTONE shall pay CONTRACTOR (check and initial below as applicable):

☐ ______ A fixed sum of $______________________.

☒ ______ Based upon a time, materials and expenses basis, pursuant to the rate schedule attached hereto as Schedule A, but in no event shall the total compensation exceed $ 547,000.00.

☐ ______ As described in Schedule A.

Section 2.2 Payment: FIRESTONE will make payment due to CONTRACTOR for compensation for completed work within thirty (30) days after invoices submitted by CONTRACTOR, which invoice(s) may not be submitted more frequently than monthly. Invoices shall indicate the basis upon which payment is requested, such as percentage of the Project completed, or actual time, materials and expenses. FIRESTONE shall submit invoice disputes, if any, to CONTRACTOR within thirty (30) days for resolution by mutual consent.

Section 2.3 Set Off: In addition to any other rights FIRESTONE has under this Agreement to indemnification or recoupment, CONTRACTOR agrees that FIRESTONE is entitled to set off any amounts it may owe CONTRACTOR under this Agreement against such claims for indemnity or recoupment.

Section 2.4 No Multi-Year Fiscal Obligation. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, FIRESTONE's obligations under this Agreement are subject to annual appropriation by the Town of FIRESTONE’s Board of Trustees. Any failure of the Town Board of Trustees annually to appropriate adequate monies to finance FIRESTONE's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to CONTRACTOR of any failure to appropriate such adequate monies.

Section 2.5 Appropriation: If this is a contract for the design or construction, or both the design and construction of a public works project, the FIRESTONE has appropriated funds equal to or in excess of the Contract Price.

## ARTICLE III
## ADMINISTRATION OF THIS AGREEMENT

Section 3.1 Project Performance: In consideration of the compensation provided for in this Agreement, CONTRACTOR agrees to perform or supply the Project, in accordance with generally accepted standards and practices of the industry and warrants that all materials incorporated in the Project be free from defect of material or workmanship and conform strictly to the specifications, drawings or samples specified or furnished. This Section 3.1 shall survive any inspection, delivery, acceptance or payment by FIRESTONE.

Section 3.2 Ownership and Use of Documents: (check and initial all that apply)

☒ _____ (a) The following Sections 3.2(a)(1) and (2) are applicable to design professionals (architects, engineers, etc.):

(1) The documents prepared by CONTRACTOR in connection with the Project and copies thereof furnished to other parties are for use solely with respect to the Project. Such documents are not to be used by any other contractor or subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of FIRESTONE and CONTRACTOR. Other contractors and subcontractors are authorized to use and reproduce applicable portions of the documents prepared by CONTRACTOR appropriate to and for use in the execution of their work under this Agreement. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the documents prepared by CONTRACTOR.

(2) Notwithstanding the provisions of Section 3.2(a)(1) above, FIRESTONE may utilize any such documents generated in connection with the Project by CONTRACTOR for other projects, provided that CONTRACTOR is not held liable for future project applications other than the Project described pursuant to this Agreement.

☐ ______ (b) The following Sections 3.2(b)(1) through (3) are applicable to nonprofessionals (contractors, suppliers, etc.):

(1) Any documents prepared by CONTRACTOR, and copies thereof furnished to other parties are for use solely with respect to this Project. They are not to be used by any other contractor or subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of FIRESTONE and CONTRACTOR. Other contractors and subcontractors are authorized to use and reproduce applicable portions of the documents prepared by the CONTRACTOR appropriate to and for use in the execution of their work

under this Agreement. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the documents prepared by CONTRACTOR.

(2) CONTRACTOR, and any subcontractor or supplier or other person or organization performing or furnishing any work for the Project under a direct or indirect contract with FIRESTONE (i) shall not have or acquire any title to or ownership rights in any of any documents (or copies of documents) prepared in connection with the Project by a design professional and (ii) shall not reuse any of such documents or copies for extensions of the Project or any other project without written consent of FIRESTONE and the design professional and specific written verification or adaption by the design professional.

(3) Notwithstanding the provisions of Sections 3.2(b)(1) and (2) above, FIRESTONE may utilize any documents generated in connection with the Project by a design professional or CONTRACTOR for other projects, provided that such design professional and CONTRACTOR are not held liable for future project applications other than the Project described pursuant to this Agreement. FIRESTONE shall not convey any such documents generated by CONTRACTOR to a third party or use any such documents in a manner adverse to the CONTRACTOR.

Section 3.3 Insurance: CONTRACTOR shall, at its own expense, keep in full force and effect during the term of this Agreement and during the term of any extension or amendment of this Agreement, insurance as stated below:

(a) Commercial General Liability Insurance with minimum combined single limits of One Million Dollars and No Cents ($1,000,000.00) for each occurrence and Two Million Dollars and No Cents ($2,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall endorse FIRESTONE and its employees and agents as additional insureds. Additionally, the policy shall provide that such insurance is primary coverage with respect to work contemplated under this Agreement by all insureds and additional insureds.

(b) If professional services are provided, Professional Liability Insurance with limits of One Million Dollars and No Cents ($1,000,000.00) per claim and Two Million Dollars and No Cents ($2,000,000.00) aggregate. This policy shall remain in force for the period of design and construction and shall include a discovery period of three years, to commence upon substantial completion of the Project.

(c) Workers' Compensation Insurance to cover all obligations imposed by applicable laws for all of CONTRACTOR's employees engaged in the performance of work under this Agreement, based on statutory limits prescribed by and in accordance with Colorado law. In the event any services are performed by a subcontractor, CONTRACTOR shall require such subcontractor to provide workers' compensation insurance for its employees.

(d) Comprehensive Automotive Liability Insurance for the duration of this Agreement covering all owned, non-owned, and hired vehicles used in connection with the work performed by or on behalf of CONTRACTOR under this Agreement in an amount not less than Five Hundred Thousand Dollars and No Cents ($500,000.00) combined single limit per occurrence for bodily injury and property damage.

(e) All of the insurance policies required above shall be written and issued by responsible companies authorized to do business under the laws of the State of Colorado. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of CONTRACTOR. A copy of each such policy or certificate shall be provided to FIRESTONE within five (5) business days of the complete execution of this Agreement and shall be attached to this Agreement. CONTRACTOR shall be responsible for notifying FIRESTONE within five (5) business days of any material modification to, or cancellation of, these policies during the term of this Agreement, including but not limited to, any pending or paid claims against the aggregate amount of the policy, and of any cancellation of coverage for non-payment.

Section 3.4 Colorado Governmental Immunity Act. The parties hereto understand and agree that FIRESTONE is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided it by the CGIA, C.R.S § 24-10-101 et seq., as from time to time amended, or otherwise available to FIRESTONE, its officers or its employees.

Section 3.5 Indemnification: CONTRACTOR shall defend, indemnify and hold harmless FIRESTONE and its officers, officials, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from this Agreement, to the extent that such claim, damage, loss or expense is caused, or alleged to be caused, in whole or in part, by any negligent, reckless or intentional act or omission of CONTRACTOR or anyone directly employed by CONTRACTOR or anyone for whose acts CONTRACTOR may be liable.

Section 3.6 Subcontractor: CONTRACTOR shall, as soon as practicable after executing this Agreement, notify FIRESTONE in writing for FIRESTONE's approval, of any subcontractors who may be involved in the Project and the general scope of work to be performed by each subcontractor. FIRESTONE may, in its reasonable discretion, reject any proposed subcontractor, in which case CONTRACTOR shall either perform such component or the work itself, or secure a subcontractor acceptable to FIRESTONE.

Section 3.7 Termination for Convenience:

This Agreement may be terminated by FIRESTONE without cause upon seven (7) days written notice to the CONTRACTOR. In the event of termination, FIRESTONE will pay CONTRACTOR for all services satisfactorily performed and for goods provided to date of termination. If payment is otherwise due in a fixed sum, FIRESTONE will pay CONTRACTOR for the pro rata value of the completed portion of the Project. If, however, CONTRACTOR has substantially or materially breached the standards or terms of this Agreement, FIRESTONE shall have any remedy or right to set off available at law and equity.

Section 3.8 Binding Effect/Non-Assignability: FIRESTONE and CONTRACTOR each binds itself, its successors and assigns to the other party to this Agreement with respect to all rights and obligations under this Agreement. Neither FIRESTONE nor CONTRACTOR shall assign or transfer its interest in, or obligations under, this Agreement without the written consent of the other.

Section 3.9 Compliance with Law: Contractor agrees to perform the work in compliance with all applicable federal, state, county and city laws, ordinances, rules and regulations, including without limitation, the preference for Colorado labor as set forth in Article 17 of Title 8 C.R.S.

Section 3.10 Immigration Status Obligations:

a) CONTRACTOR certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the CONTRACTOR will participate in the United States Government's E-Verify Program or the State of Colorado Department of Labor and Employment Program ("Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

b) CONTRACTOR shall not:

1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2) Enter into a contract with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

c) CONTRACTOR shall affirm as required by C.R.S. § 8-17.5-102 (c) (II) the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d) CONTRACTOR is prohibited from using the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

e) If CONTRACTOR obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, CONTRACTOR shall be required to:

1) Notify the subcontractor and FIRESTONE within three days that the CONTRACTOR has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

2) Terminate the subcontract with the subcontractor if within three days of receiving

the notice required pursuant to sub-subparagraph (B)(2) the subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f) CONTRACTOR shall comply with all rules and regulations and any reasonable request by the State Department of Labor and Employment made in the course of the Department's performance of its lawful duties pursuant to C.R.S. 8-17.5-101 et seq., as amended from time to time.

g) If CONTRACTOR violates any of the provisions set forth in this section, FIRESTONE may terminate the Agreement and CONTRACTOR shall be liable for all actual and consequential damages incurred by FIRESTONE.

Section 3.10 Notice and Communications: Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand delivery shall be utilized. Facsimile and e-mail addresses are provided for convenience only.

| FIRESTONE: | CONTRACTOR: |
| --- | --- |
| Town of Firestone<br>151 Grant Avenue.<br>Firestone, CO 80520<br>Attn: Julie Pasillas<br>Telephone: 303.531.6258<br>Facsimile:________________<br>E-mail: jpasillas@firestoneco.gov | McGrane Water Engineering, LLC<br>1669 Apple Valley Road<br>Lyons, CO 80540<br>Attn: Dennis McGrane, PE CPG<br>Telephone: 303.917.1247<br>Facsimile:________________<br>E-Mail:dennis@mcgranewater.com |

## ARTICLE IV
## RESPONSIBILITIES OF FIRESTONE

Section 4.1 Project Materials/Confidentiality: FIRESTONE shall provide CONTRACTOR with data, information, reports and other such documentation as may be reasonably available to FIRESTONE, and reasonably required by CONTRACTOR to perform services under this Agreement. No information shall, unless as required by law, be disclosed by CONTRACTOR to third parties without prior written consent of FIRESTONE. All documents provided by FIRESTONE to CONTRACTOR shall be returned to FIRESTONE. CONTRACTOR is authorized by FIRESTONE to retain copies of such data and materials at CONTRACTOR'S EXPENSE.

Section 4.2 Access to Property and Records: FIRESTONE shall provide CONTRACTOR with access to its property as required and necessary to complete the Agreement. To the extent required by law, FIRESTONE and CONTRACTOR agree to make this Agreement and any related records available for public disclosure pursuant to any open records law, including, without limitation, the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, *et seq*. CONTRACTOR agrees to hold FIRESTONE harmless from the disclosure of any records that FIRESTONE reasonably believes it is legally required to disclose.

Section 4.3 FIRESTONE's Representative: FIRESTONE shall designate, in writing, a representative who shall have authority to act for FIRESTONE with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define FIRESTONE's policies and decisions with respect to materials, equipment, elements and systems pertinent to CONTRACTOR's services.

Section 4.4 Verbal Agreement or Conversation: No verbal agreement or conversation with any officer, agent or employee of FIRESTONE, either before, during or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever under the terms of this Agreement.

## ARTICLE V
## MISCELLANEOUS

Section 5.1 Colorado Law: This Agreement is to be governed by the laws of the State of Colorado. Venue for any litigation shall be in Weld County.

Section 5.2 Amendments; Change Orders: This Agreement may only be amended, supplemented or modified in a written document signed by both parties (a "Change Order").

Section 5.3 Counterparts. This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

Section 5.4. Severability: If any term, covenant, or condition of this Agreement is deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be binding upon the parties.

Section 5.5. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all other prior and contemporaneous agreements, representations, and understandings of the parties regarding the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties. No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement or in any instrument delivered pursuant to this Agreement.

Section 5.6. Default/Attorney's Fees: In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses and costs incurred as a result of the default.

Section 5.7. No Waiver: Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by FIRESTONE shall not constitute a waiver of any of the other terms or obligations of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and executed this Agreement the day first written above.

TOWN OF FIRESTONE

By:__________________________________

Name:_______________________________

Title:________________________________

ATTEST:

__________________________
Jessica Koenig, Town Clerk

APPROVAL AS TO FORM:

_______________________________
William P. Hayashi, Town Attorney

CONTRACTOR

By:________________________________________

Name:______________________________________

Title:_______________________________________

Date: ______________________________________

# SCHEDULE A

(The following 11 pages are attached to and made a part of the Agreement between the Town of Firestone and McGrane Water Engineering, LLC )

McGrane Water Engineering, llc

1669 Apple Valley Rd. , Lyons, CO 80540 • Office: (303)823-5933, Cell: (303) 917-1247
E-Mail: dennis@mcgranewater.com. Website: www.mcgranewaterengineering.com

December 16, 2019

Mr. David Lindsay, President
Colorado Civil Group
5110 Granite St. Suite 200
Loveland, CO 80538

Via email at: dlindsay@ccginc.com

RE: Proposal – Town of Firestone – Horizontal Well Drilling and Testing

Dear Mr. Lindsay:

At your request, McGrane Water Engineering, LLC (MWE) is providing this proposal to design and provide construction observation and testing for a 500-ft long horizontal well (H-well) for the Town of Firestone to be located north of Weld County Rd 26 and east of Colorado Blvd near the Saint Vrain River. This proposal and opinions of probable costs are based on our current understanding of the project. Colorado Civil Group (CCG) with act as the Town representative and project manager. MWE will lead the project and design the horizontal well. MWE will subcontract:

- Groundwater modeling and general engineering support to Miller Groundwater Engineering, LLC (MGE);
- The vault, pump station and pipeline design to Acuity, Inc. (Acuity); and
- Geotechnical engineering to Cesare, Inc.

Assuming contracting will occur in January 2019, we anticipate the project lasting approximately 13 months and being completed by March 2021. Appendix A includes a Gantt chart that shows five project phases, anticipated date ranges and how tasks will likely overlap.

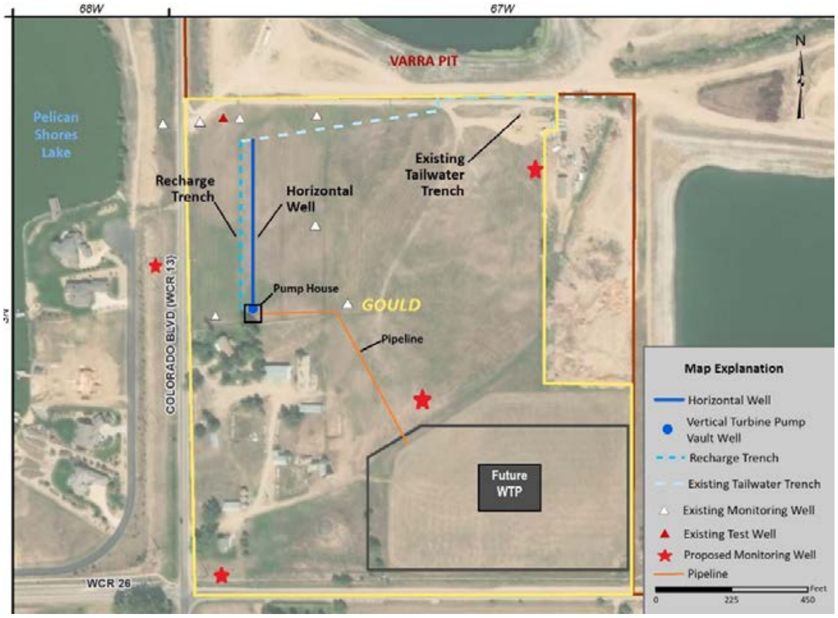
## I. Project Description

Figure 1 shows the existing site, preliminary horizontal well alignment and necessary infrastructure including:

- A 500 ft long H-well and 500 ft long recharge trench;
- An improved head gate diversion to a single 500 ft long recharge trench;
- A wet-well (vault) with two vertical turbine pumps;
- A simple wood-framed type pump house with power, valves, flow meter, and controls;
- Approximately 600 ft of pipeline to the future water treatment plant site boundary; and
- Approximately four additional monitoring wells around the site.

In addition, several geotechnical boreholes will be drilled along the horizontal well alignment.

**Figure 1 – Horizontal Well Site Plan**




For water discharges during construction dewatering and H-well testing, we propose installing a temporary, plastic-lined trench to a new 30-foot long 12-in culvert located under the Varra property entrance and allow the water to recharge on the east side of Colorado Blvd. A permanent drainage system will be installed during a later phase of the project.

## Goals and Objectives

According to Dave Lindsay (CCG), the immediate goal is to install an H-well that will provide the Town's planned water treatment plant (WTP) with 220 gallons per minute (gpm) on a year-round basis and provide a peak summer (June-August) rate of 520 gpm. In the future, when demand increases, the year-round production rate goal will be approximately 350 gpm with a peak summer rate of approximately 1,050 gpm. The design will also consider minimizing impacts to the Pelican Shores Subdivision and Lake located on the west side of Colorado Blvd, as discussed below. It may be necessary sometime in the future to add additional recharge trenches, or add an additional H-well to the south, depending on actual year-round operations, H-well performance and future demands.

Computer modeling is a critical component in the system's design, in the interpretation of the start-up test, and for planning future operations. The modeling will rely heavily on water level data documented at the site's existing and future monitoring wells. For example, prior groundwater modeling of the facility indicates that groundwater currently flows through Pelican Shores Lake at a substantial rate and that the H-well operations will increase that rate of groundwater flow through the lake. Ongoing data collection and modeling will be used to monitor and manage that effect. Similarly, Managed Aquifer Recharge (MAR) will be used to refill the aquifer beneath the site, which will also cause groundwater levels to rise around the east side of the lake and beneath the subdivision. Therefore, future site operations will need to include active monitoring and modeling (especially for the first few years) to guide management decisions such as recharge timing and recharge amounts.

## II. Background

The suitability of an H-well at the Gould site was initially described in MWE's and MGE's joint Phase II Groundwater Supply Study (MWE, June 2018). We concluded that a 1,000-ft-long horizontal well located there could sustain at least 180 gpm year-round without MAR and over 1,000 gpm when MAR is available.

To gain additional confidence in this prediction, we performed two large-scale pumping and recharge tests in the summer and fall of 2018. We installed additional monitoring wells and two 300-ft-long recharge trenches in existing agricultural ditches at the Gould site, and then conducted a 60-day pumping test and 10-day recharge test. We used a computer model of those tests to further evaluate aquifer conditions, project sustainable yields, and evaluate the relationships between recharge and various vertical and H-well wellfield configurations. We concluded that two 500-ft long horizontal wells located on the Gould property could produce approximately 220 gpm year-round and up to approximately 280 gpm during the summer months (Scenario D). If two 550-ft recharge trenches were installed and MAR were available between June and September, then the 3-month peak summer yield projection increased to approximately 1,000 gpm (See Table 2 of MWE draft memo to Dave Lindsay, December 9, 2018).

## III. Scope of Work

The scope of this initial phase of the project is to install a single 500-ft horizontal well and extend one of the existing recharge trenches to 500 ft. Based on ongoing modeling by MGE, we estimate that a single 500-ft long H-well can likely achieve the short-term goal of providing 220 gpm year-round without recharge, and with recharge can achieve the peak summer goal of 520 gpm.

Engineering tasks for each phase are listed below with a basic explanation. Deliverables are marked with an asterisk (*). Below each subtask, we provide an opinion of probable cost for the primary construction activities. These cost opinions are also included in the Table 2 cost summary.

### Phase 1 – Planning

Over the past seven months, we:

- Met with CCG and the Town on April 11, 2019, to discuss the design and construction of this project;
- Discussed trenching details several times with Saul Santiesteban (excavator);
- Met and corresponded with Ceasar Inc. (Craig Vaughn) to discuss geotechnical support;
- Met with a horizontal drilling contractor and obtained a well cost estimate;
- Corresponded numerous times with MGE and CCG concerning H-well design (gravel pack, materials, length, diameter);
- Prepared a preliminary proposal outline* for CCG to review in May 2019;
- Met with MGE and CCG again on October 11, 2019, to discuss project details;
- Prepared draft proposals* dated November 8, and December 2, 2019;
- Met with the Town (CCG), Acuity and MGE on November 11$^{th}$ ;
- Conducted a conference call on December 13, 2019; and
- Prepared this final proposal*.

## Task 2 – Predesign Research, Modeling and Geotechnical Tasks

Horizontal wells are unique. To our knowledge, there are less than five horizontal municipal water supply wells in Colorado. We have already conducted basic research into different types of horizontal wells and installation approaches. In the MWE memo to Dave Lindsey (Colorado Civil Group, Inc.) dated December 9, 2018, we concluded that a horizontal well installed by trenching will likely "provide the greatest reliability and operational flexibility" for the Town. In the same memo, we discussed how we developed and calibrated a groundwater model that we believe accurately predicts H-well production with and without MAR. Today, we still conclude that a horizontal well installed by open trenching (rather than directional drilling) will provide the greatest reliable yield for the town, but due to the aforementioned uniqueness of such wells, and in particular the unique situation of installing that well by open trenching, there are numerous design and logistical construction considerations to be evaluated.

Numerous details still to be evaluated, in part by modeling, include: (i) well construction materials such as wrapped-screen stainless steel vs. perforated PVC pipe, both of which have a range of open areas; (ii) whether using two smaller diameter perforated well pipes is better than using one larger well pipe; (iii) trench location relative to Pelican Shores; and (iv) ongoing consideration of MAR scheduling and recharge rates along with monthly extraction scenarios.

Geotechnical drilling and testing also needs to be done early in the design phase. Geotechnical drilling (sites not yet determined) and laboratory tests are important to developing a safe excavation program and evaluate foundation design options. Figure 1 shows the four proposed additional monitoring wells located around the site perimeter plus another one near Pelican Shores' homes to monitor sub-basement groundwater levels.

Therefore, under Task 2 of this project, we propose the following pre-design tasks:

- Task 2.1 – Researching and evaluating: horizontal well design options such as screen materials and open area, plus construction/trenching techniques and wet well options (precast and cast in place).
- Task 2.2 - Computer modeling various: screen materials and designs; horizontal well locations; recharge trench locations, depths and widths; delivery periods and rates; and potential impacts to Pelican Shores. We will prepare a memo* to the Town describing our "preferred design" recommendations.
- Task 2.3 – Researching and computer modeling of dewatering options (prior to and during construction) and documenting our conclusion summary in an internal memorandum*; and
- Task 2.4 – Geotechnical drilling, sampling and testing, and monitoring well installation at approximately 3 to 5 locations. In addition, a preconstruction site survey is necessary to prepare a site plan and identify existing utilities and easements.

*Contractor Cost Estimates:* $50,000 for geotechnical engineering, drilling, laboratory analysis, monitoring well installation and a site survey which will be subcontracted through MWE.

## Task 3– Design Tasks

We will design and prepare a single contractor bid package for six critical project components.

***Final Horizontal Well and Testing Design***

The design of both horizontal well segments (current segment and potential future expansion) and wet-well vault must comply with the Colorado Water Well Construction rules and meet the design review requirements of the Colorado Department of Health and Environment (CDPHE). We will prepare preliminary designs prior to finalizing the bid documents and meet with regulators to get them involved with this iterative process.

We will conduct extensive tests with a temporary pump after the H-well is installed. For budgeting purposes, we anticipate testing will include: 1) conducting a 5-day pumping test at 150 to 300 gpm to determine the minimum sustainable pumping rate; and 2) conducting a 5-day recharge pumping test at pumping rates up to 1,200 gpm to determine maximum sustainable recharge and pumping rates. This plan may be revised based on additional computer modeling or based on the partially dewatered condition of the aquifer at the end of well construction. MGE will interpret the pumping test with the computer model. The test results will be used to finalize the permanent pump design.

***Dewatering***

Although each bidder will be asked to provide a dewatering plan with their bid, we plan to also use our site groundwater model to evaluate the feasibility of their proposals. Our dewatering modeling objectives are to: (i) identify reasonable dewatering approaches (vertical wells, open sump excavations, or both); (ii) reduce construction time; and (iii) minimize impacts to the Pelican Shores Lake. MGE will conduct the modeling, document our results in a task memorandum* and use the results to evaluate the dewatering proposals provided by contractors.

*Wet Well (Vault)*

Acuity will evaluate the structural and hydraulic benefits of both precast or a cast-in-place design options and decide which is(are) acceptable. The design must also meet CDWR and CDPHE construction requirements discussed above. For budgeting purposes, we have assumed the “highest cost” option that involves installing a 10 foot square cast-in-place vault as the wet-well that could cost approximately $250,000.

*Pump House*

The pump house will be a basic wood-framed design on a foundational slab with footings. The building will be insulated and heated. The piping will likely be sized for two pumps, each capable of providing 200 to 550 gpm (maximum 20 horsepower).

*Electric Service*

We anticipate using 480v three-phase power. We will coordinate power to the site by contacting United Power and providing load demands for the pump and pump house. The cost will vary depending on whether power comes from south of the site (on CR 26), or from an existing transformer located across Colorado Blvd near the proposed well house. It will likely take 3 to 4 months for United Power to review our design and bring power to the site.

*Pumping System and Controls*

Our contractor cost estimate below is based on assuming two 20-horsepower vertical turbine pumps (one primary and one back-up) installed in the well house above the wet-well vault with Variable Speed Drives (VFD). MWE and Acuity will work together to size and design the system prior to construction, but may revise the final pump design after testing is complete.

At the request of CCG, we are not including System Control and Data Acquisition (SCADA) components in our scope of work. We request that the Town provide us necessary considerations for SCADA to be installed at a later date, which may include oversized control panels or specialized water level transducers or electronic flow meters.

Design Tasks include:

- Task 3.1 – Prepare final H-well design plans and specifications that considers Colorado Department of Water Resources (CDWR) and CDPHE design and permit requirements.
- Task 3.2 – Comply with CDWR rules and CDPHE design and permit requirements.
- Task 3.3 – Evaluate wet-well vault structural and hydraulic considerations and prepare design plans and specifications;

- Task 3.4 – Prepare pump house design plans and specifications;
- Task 3.5 – Obtain adequate power for the site through United Power;
- Task 3.6 – Prepare contractor bid package; and
- Task 3.7 – Project management activities.

Project management activities include managing engineers and contractors, attending bimonthly status meetings with CCG and the Town and various administrative tasks.

### Task 4 – Construction and Testing

Construction related tasks and budget assumptions in parentheses include:

- Task 4.1 - Evaluate bids; interview contractors and assist with contracting;
- Task 4.2 - Preconstruction dewatering administration (if required up to 10 man-days);
- Task 4.3 - H-well and wet-well vault construction administration (up to 60 man-days on site);
- Task 4.4 - Recovery and recharge pump test administration and interpretation (up to 12 man-days on site);
- Task 4.5 – Final pump design;
- Task 4.6 – Pipeline construction administration;
- Task 4.7 – Pump house construction administration; and
- Task 4.8– Project management activities

*Contractor Cost Estimates and Assumptions:* Construction dewatering = $155,000; H-well = $320,000 plus potentially $250,000 for a cast-in-place wet-well (vault); Pumps = $100,000; Pump house = $135,000; pipeline $150,000; and power to pump station = $150,000 for United Power. We assume that no 404 permit is required to recharge dewatering discharge water along on the west side of the Varra property.

### Task 5 – Pump Installation and Startup

Task 5 includes:

- Task 5.1 – Pump installation and start-up administration; and
- Task 5.2 – Prepare completion and testing report and submittal manual.

## IV. Opinion of Probable Cost

Table 1 summarizes our opinion of probable cost for the project.

**Table 1 – Opinion of Probable Cost for H-well, Pump, Pump House and Pipeline**

| Opinion of Probable Cost - Well, Pump Station & Pipeline Design and Installation (12/16/2019) | | | | | | |
|---|---|---|---|---|---|---|
| Task | Task Description | Weeks* | Engineering Team (1) | Contractor | | Task Total $ |
| | | | | Cost Estimate $ | Type | |
| **1.0 - Planning** | | | | | | |
| 1.1 | Preliminary Design (complete) | 8 | $20,000 | - | | $20,000 |
| 1.2 | Contracting | 1 | $3,000 | - | | $3,000 |
| **Task 1 Subtotal** | | **na** | **$23,000** | - | | **$23,000** |
| **2.0 - Research, Modeling and Geotech** | | | | | | |
| 2.1 | Research Design Options | 8 | $23,000 | - | | $23,000 |
| 2.2 | Computer Modeling Scenarios | 8 | $29,000 | - | | $29,000 |
| 2.3 | Evaluate Dewatering Options | 1 | $12,000 | - | | $12,000 |
| 2.4 | Geotech Drilling and Surveying | 2 | $67,000 | - | | $17,000 |
| **Task 2 Subtotal** | | **12** | **$131,000** | **$0** | | **$81,000** |
| **3.0 - Design** | | | | | | |
| 3.1 | Final Horizontal Well Design | 2 | $9,000 | - | | $9,000 |
| 3.2 | CDPHE System Design Review | 4 | $13,000 | - | | $13,000 |
| 3.3 | Design Pump Vault | 4 | $59,000 | - | | $59,000 |
| 3.4 | Design Pump Station and Pipeline | 4 | $29,000 | - | | $29,000 |
| 3.5 | Electrical Eng and United Power | 12 -16 | $16,000 | $150,000 | United Power | $166,000 |
| 3.6 | Prepare Contractor Bid Package | 4 | $34,000 | - | | $34,000 |
| 3.7 | Project Management Activities | 16 | $21,000 | - | | $21,000 |
| **Task 3 Subtotal** | | **16** | **$181,000** | **$150,000** | | **$331,000** |
| **4.0 - Construction and Testing** | | | | | | |
| 4.1 | Contracting and Mobilization | 5 | $3,000 | - | | $3,000 |
| 4.2 | Construction Dewatering | 4 | $20,000 | $155,000 | Excavator | $175,000 |
| 4.3 | H-well and Vault Cons. Admin. | 10 | $98,000 | $565,000 | Excavator | $663,000 |
| 4.4 | Recovery and Recharge Tests | 4 | $29,000 | - | | $29,000 |
| 4.5 | Final Pump Design | 2 | $13,000 | - | | $13,000 |
| 4.6 | Pipeline Construction | 6 | $9,000 | $150,000 | Pipeline | $159,000 |
| 4.7 | Pump House Construction | 6 | $5,000 | $135,000 | Building | $140,000 |
| 4.8 | Project Management Activities | na | $10,000 | - | | $10,000 |
| **Task 4 Subtotal** | | **20** | **$187,000** | **$1,005,000** | | **$1,192,000** |
| **5.0 - Pump Installation and Start-up Report** | | | | | | |
| 5.1 | Pump Installation and Startup | 2-3 | $5,000 | $100,000 | Pump | $105,000 |
| 5.2 | Testing Report and O&M Manual | 2-3 | $20,000 | - | | $20,000 |
| **Task 5 Subtotal** | | **4-6** | **$25,000** | **$100,000** | | **$125,000** |
| **Total** | | | **$547,000** | **$1,255,000** | | **$1,752,000** |
| **Contingency** | | Percent | | 40% | | |
| | | Total $ | | $502,000 | | **$502,000** |
| **Grand Total** | | | | | | **$2,254,000** |
| **Notes:** 1) Design Team includes: McGrane Water Engineering, LLC (MWE), Acuity, Inc., Miller Groundwater Engineering, LLC, and Casare Inc. * See Gantt chart for schedule of each subtask. | | | | | | |

We estimate that the engineering related tasks described above can be completed for **$547,000.** The total cost for engineering and construction is $1,752,000. Due to the high uncertainty in construction costs, we added a **40% contingency totaling $502,000**. The greatest component of uncertainty is the H-well installation which could take 60 to 90 days depending on the dewatering and trenching methods and effectiveness. Therefore, **we recommend that the Town budget $2,254,000** for the project. This is $154,000 more than our preliminary cost estimate provided last year, but the earlier estimate did not include the water pipeline to the water treatment plant (MWE, 12-9-18). Our current proposal also does not include: drainage improvements, permanent access roads or security fencing, existing trench restoration or SCADA equipment for remote operation or data collection.

Payments for our services, like other professional services, are based on the actual time spent on your behalf and at hourly rates offered for this specific project scope ($168/hr for Dennis McGrane (MWE), $193/hr for Kevin O'Connell (Acuity) and $145/hr for Calvin Miller (MGE). Billing occurs on a monthly basis and payment is expected within 30 days.

## V. Needs from the Town

We request the Town:

- **S**ubcontract separately with contractors shown on Table 1.
- Arrange permission with the Pelican Shores HOA to drill one additional permanent monitoring well on their property (Figure 1) which we will equip with a water level sensor to monitor water levels during testing. At a later date, the Town may decide to install a continuous data logger with SCADA to provide continuous, real-time monitoring of water levels at that location, or similar, near the Pelican Shores basements.
- Request permission from the Pelican Shores HOA to discharge some of our construction dewatering water to their lake due to the fact that that our construction dewatering pumping will be much more intense than future water-supply operations. We would like to pursue two dewatering discharge options: (1) route water to the river directly north along CR 13 right of way or possibly along the existing tail water path to the east (used during the Fall 2018 recharge test), and (2) to Pelican Shore Lake through a pipe routed under CR13 via an existing irrigation culvert. Having both options may be necessary to mitigate real and perceived impacts with the HOA. We believe the State would likely grant us dewatering discharge permits for both. To accomplish this, we ask the Town to request permission from the HOA to discharge our water to their lake.
- Acquire the necessary water rights for the project and arrange for surface water deliveries in September and October, 2020 for H-well and MAR testing.
- Obtain permission to install temporary discharge piping to allow dewatering discharge to recharge between the Varra property and Colorado Blvd.

## Time Required

We envision the project can be completed in 13 months by March 2021. Appendix A includes a Gantt chart that shows how some tasks overlap. Delays caused by circumstances beyond the control of the engineer could extend the time of completion.

## VI. Risk

It should be understood that the well type and installation method we have selected for this well is arguably unique for high-capacity water wells and contains several site-specific considerations. If a more common type and more routine *installation* method had been the highest priority, then we might have given more consideration to selecting multiple vertical wells, or large diameter vertical wells, or alternative H-well installation methods. However, at the Town's direction, the highest priority for this well has been clear: provide the best reliable yield possible given the hydrogeologic limitations of the site. That directive includes providing the desired yield at times with lower aquifer water levels, such as what might occur many months between potentially seasonal recharge operations. In response, we did consider several other options, but concluded that a horizontal well, installed via open trenching, is the preferred approach for the site conditions.

There is also risk when constructing any type of well, since there is uncertainty and variability in aquifer properties away from where test drilling occurred, plus uncertainties associated with groundwater modeling projections. Actual performance may be different from expected and projected performance. Finally, our consulting services have been limited to assessing site hydrogeologic conditions and projecting sustainable yield of a wellfield at the site. We have not been closely involved with all associated decisions such as characterizing the water quality or evaluating the cost-benefits of other water supply options.

## VII. Contracting

We envision the Town will include this proposal as an attachment in their standard professional services contract and MWE will subcontract work to other consultants as needed.

We look forward to working the Town of Firestone and CCG on this project.

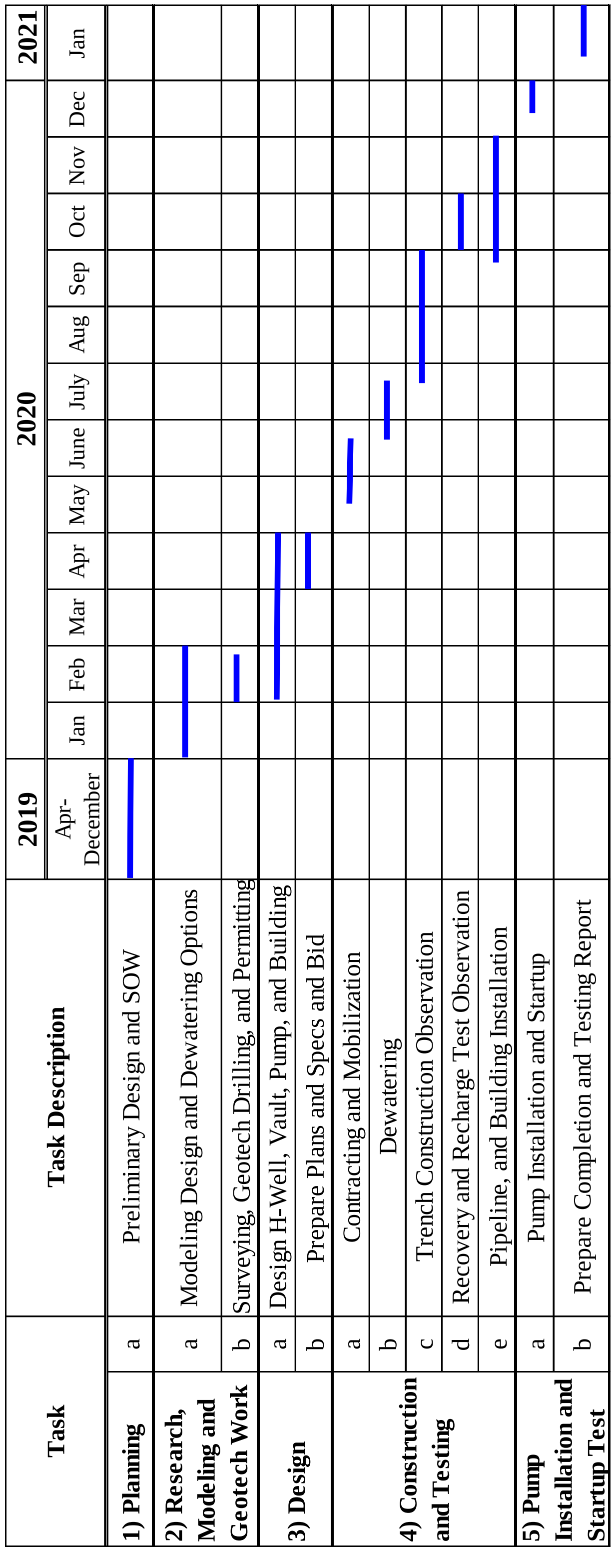
Sincerely,

**MCGRANE WATER ENGINEERING, LLC.**

Dennis McGrane

Dennis McGrane, P.E., C.P.G.
Principal Engineer and Hydrogeologist

## Appendix A – Gantt Chart



| AGENDA INFORMATION MEMORANDUM<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 8.d.<br><br>**Discussion/Action**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:**<br><br>**Dept:** Town Clerk |
|---|---|

**AGENDA TITLE**
2020 Ballot Question

**SUMMARY**

**HISTORY AND PREVIOUS BOARD ACTION**

**RECOMMENDATION**

**ALTERNATIVES**

**ATTACHMENTS**
None

**FINANCIAL CONSIDERATIONS**

| AGENDA INFORMATION MEMORANDUM<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 8.e.<br><br>**Discussion/Action**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:**<br><br>**Dept:** Town Clerk |
|---|---|

**AGENDA TITLE**

**Resolution 20-08:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DESIGN SERVICES AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND HALCYON DESIGN, LLC, FOR THE TOWN HALL PROJECT

**SUMMARY**

This agreement will allow Town staff to engage the Architect (Kelly Deitman with Halcyon Design) to begin preliminary design and design development of the Town Hall construction project.

The following items are included:

- Preliminary evaluation of Budget and Schedule
- Space Planning
- Building elevations
- Geological testing at the proposed site
- Selection of materials, building systems and equipment
- Preparation of a preliminary project schedule

Entering into this agreement will get the construction team to a point that a set of 50% Design Development Plan set will be produced, minimizing lost project time as the regular municipal election is being held.

**HISTORY AND PREVIOUS BOARD ACTION**

At the September 11, 2019 Regular Board of Trustees meeting, Town Staff was directed to revisit the option of constructing a new Town Hall on the same site as the new Police and Municipal Building

**RECOMMENDATION**

Staff recommends the approval of the design agreement, authorizing Town staff to execute the agreement and expend funds.

**ALTERNATIVES**

**ATTACHMENTS**

1. Halcyon Design Services Town Hall Res (3)
2. Town Hall Design - Phase 1 Professional Services Contract

**FINANCIAL CONSIDERATIONS**

**Project Budget**

| | |
|---|---|
| **Preliminary Design Phase** | **$ 8,250.00** |
| Creation of CAD for Space Planning, Floor Plans, Elevation and design options | |
| **Design Development (DD)** | **$ 52,021.00** |
| Geo-Tech analysis, preliminary draft of Civil & Landscape design, design | |

meetings, Code analysis, plan review with code officials, final Civil & Landscape design and 50% DD plan set.

| | |
|---|---|
| **Construction Documents (CD)** | **$ 32,000.00** |
| Color renderings of front elevation, selection of interior finishes, 70% CD review | |
| **Sub Total** | **$ 92,271.00** |
| **Contingency** | **$ 9,300.00** |
| **Total** | **$ 101,571.0**0 |

**RESOLUTION NO. 20-08**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DESIGN SERVICES AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND HALCYON DESIGN, LLC, FOR THE TOWN HALL PROJECT**

WHEREAS, the Town of Firestone ("Firestone") is in need of preliminary design and design development services regarding the Town Hall Project; and

WHEREAS, Halcyon Design, LLC, has the required expertise as it is currently providing design services for the Town's Public Works and Town Hall Projects; and

WHEREAS, Halcyon Design, LLC, is thus best suited to perform the Town Hall Project's design and design development services in a timely and cost effective manner.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Design Services Agreement between the Town of Firestone and Halcyon Design, LLC, is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this __ day of ____________, 2020.

TOWN OF FIRESTONE, COLORADO

______________________________
Bobbi Sindelar, Mayor

ATTEST:

________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

_____________________________
William P. Hayashi, Town Attorney

# AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this _____ day of January, 2020 (the "Effective Date"), by and between the Town of Firestone, a Colorado municipal corporation with an address of 151 Grant Avenue, P.O. Box 100, Firestone, Colorado 80520 (the "Town"), and **HALCYON DESIGN LLC**, an independent contractor with a principal place of business at 8310 Colorado Blvd., Suite #650 Firestone, Colorado 80504 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference and known as: **Town Hall Design - Phase 1 (P2020-9900**).

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

## II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

## III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor **$101,571.00.** This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

## IV. PROFESSIONAL RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

## V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

## VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

## VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.

2. Commercial General Liability insurance with minimum combined single limits of $1,000,000 each occurrence and $2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Professional liability insurance with minimum limits of $1,000,000 each claim and $2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## IX. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

## X. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Representative Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF FIRESTONE, COLORADO**

___________________________________

Mayor, Bobbi Sindelar

ATTEST:

___________________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

___________________________________
William P. Hayashi, Town Attorney

**HALCYON DESIGN LLC**

By: ___________________________________

## NO EMPLOYEE AFFIDAVIT

*To be completed only if Contractor has **no** employees*

**1. Check and complete one:**

☐ I, ______________________________, am a sole proprietor doing business as ___________________________. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Firestone (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, ______________________________, am the sole owner/member/shareholder of ____________________________, a ______________________________ [specify type of entity – *i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

☐ I am a United States citizen or legal permanent resident.

*The Town must verify this statement by reviewing one of the following items:*

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.*

_________________________________ _________________________

Signature Date

# DEPARTMENT PROGRAM AFFIDAVIT

*To be completed only if Contractor participates in the Department of Labor Lawful Presence Verification Program*

I, ________________________, as a public contractor under contract with the Town of Firestone (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

____________________________________ __________________________

Signature Date

STATE OF COLORADO )

) ss.

COUNTY OF _______________ )

The foregoing instrument was subscribed, sworn to (or affirmed) before me this ___ day of __________, 2019, by ________________________ as __________________ of ________________________.

My commission expires:

(S E A L)

____________________________________

Notary Public

## EXHIBIT A
## SCOPE OF SERVICES

Contractor's Duties & Deliverables

**Project Budget**

**Preliminary Design Phase**

Creation of CAD for Space Planning, Floor Plans, Elevation and design options

**Design Development (DD)**

Geo-Tech analysis, preliminary draft of Civil & Landscape design, design meetings, Code analysis, plan review with code officials, final Civil & Landscape design and 50% DD plan set.

**Construction Documents (CD)**

Color renderings of front elevation, selection of interior finishes, 70% CD review

| AGENDA INFORMATION MEMORANDUM<br><br>FIRESTONE<br>TOWN BOARD OF TRUSTEES<br><br>FIRESTONE<br>COLORADO | **AIM#:** 8.f.<br><br>**Discussion/Action**<br><br>**Meeting Date:** January 8, 2020<br><br>**Initiated By:**<br><br>**Dept:** Town Clerk |
|---|---|

**AGENDA TITLE**

**Resolution 20-09:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DESIGN SERVICES AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND HALCYON DESIGN, LLC, FOR THE PUBLIC WORKS FACILITY EXPANSION AND REMODEL PROJECT

**SUMMARY**

This agreement will allow Town staff to work with the Architect (Kelly Deitman with Halcyon Design) to finalize the design of the Public Works Facility Expansion and Remodel.

The following items are included:

- Geological testing
- Preliminary engineering designs i.e Grading, utility plans, HVAC, electrical and structural
- Design Development Plan set
- Construction Documents
- Permit document submittal
- Assist with permit application
- Product selection and submittals
- Construction administration services
- Site visits thru construction
- Final punch walk with punch list

The current Public Works Facility is lacking the means to adequately support the needs of the staff working at the site. This project will improve the conditions of the existing building, while adding necessary space for staff to work efficiently.

The existing building consists of an approximately 12,250 sf. single story storage building with office, restroom and break room area at the North end.

The Expansion and Remodel will be an addition of 8,000 sf, of shop area to the south of the existing building and on the north end the existing office and restroom area will be reconfigured for larger restrooms, added offices and enlarged break room. The existing wood-framed mezzanine will be demolished and reconstructed in a larger area to include offices and general storage.

It is also anticipated that Sanitary Sewer will be extended from the adjacent site.

**HISTORY AND PREVIOUS BOARD ACTION**

**RECOMMENDATION**

Staff recommends the approval of the design agreement, authorizing Town staff to execute the agreement and expend funds.

**ALTERNATIVES**

## ATTACHMENTS

1. Halcyon Design Services Public Works Res (1)
2. Public Works Facility Expansion and Remodel Design - Phase 1 Professional Services Contract

## FINANCIAL CONSIDERATIONS

| | |
|---|---|
| **Project Budget** | |
| **Design Development (DD)** | **$ 26,180.00** |
| Geological testing, Preliminary engineering designs i.e. Grading, utility plans, HVAC, electrical and structural and Design Development Plans | |
| **Construction Documents (CD)** | **$ 24,420.00** |
| Construction Documents, Permit document submittal, Assist with permit application, Product selection and submittal | |
| **Construction Administration** | **$ 7,640.00** |
| Construction administration services, Site visits thru construction, Final punch walk with punch list | |
| **Sanitary Sewer design allowance** | **$ 2,700.00** |
| **Sub Total** | **$ 60,940.00** |
| **Contingency** | **$ 6,100.00** |
| **Total** | **$ 67,040.0** |

**RESOLUTION NO. 20-09**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DESIGN SERVICES AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND HALCYON DESIGN, LLC, FOR THE PUBLIC WORKS FACILITY EXPANSION AND REMODEL PROJECT**

WHEREAS, the Town of Firestone ("Town") is in need of professional services to finalize the design work for the Public Works Facility Expansion and Remodel Project ("Project"); and

WHEREAS, Halcyon Design, LLC, has the required expertise as it is already providing design services for the Town's Public Works and Town Hall Project; and

WHEREAS, Halcyon Design, LLC, is thus best suited to perform the Project's design services in a timely and cost effective manner.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Public Works Facility Expansion and Remodel Design Services Agreement between the Town of Firestone and Halcyon Design, LLC, is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this __ day of ____________, 2020.

TOWN OF FIRESTONE, COLORADO

_______________________________
Bobbi Sindelar, Mayor

ATTEST:

_________________________
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

______________________________
William P. Hayashi, Town Attorney

# AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this _____ day of January, 2020 (the "Effective Date"), by and between the Town of Firestone, a Colorado municipal corporation with an address of 151 Grant Avenue, P.O. Box 100, Firestone, Colorado 80520 (the "Town"), and **HALCYON DESIGN LLC**, an independent contractor with a principal place of business at 8310 Colorado Blvd., Suite #650 Firestone, Colorado 80504 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference and known as: **Public Works Facility Expansion and Remodel Design (P2020-9901**).

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

## II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

## III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor **$67,040.00.** This amount shall include all fees, costs and expenses incurred by

Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

## IV. PROFESSIONAL RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

## V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

## VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

## VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.

2. Commercial General Liability insurance with minimum combined single limits of $1,000,000 each occurrence and $2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Professional liability insurance with minimum limits of $1,000,000 each claim and $2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## IX. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

## X. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Representative Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF FIRESTONE, COLORADO**

__________________________________

Mayor, Bobbi Sindelar

ATTEST:

__________________________________

Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

__________________________________

William P. Hayashi, Town Attorney

**HALCYON DESIGN LLC**

By: __________________________________

## NO EMPLOYEE AFFIDAVIT

*To be completed only if Contractor has **no** employees*

**1. Check and complete one:**

☐ I, ______________________________, am a sole proprietor doing business as __________________________. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Firestone (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, ______________________________, am the sole owner/member/shareholder of ___________________________, a ______________________________ [specify type of entity – *i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

☐ I am a United States citizen or legal permanent resident.

*The Town must verify this statement by reviewing one of the following items:*

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- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.*

______________________________ ______________________________
Signature Date

## DEPARTMENT PROGRAM AFFIDAVIT

*To be completed only if Contractor participates in the Department of Labor Lawful Presence Verification Program*

I, ________________________, as a public contractor under contract with the Town of Firestone (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

____________________________________ ________________________

Signature Date

STATE OF COLORADO )

) ss.

COUNTY OF _______________ )

The foregoing instrument was subscribed, sworn to (or affirmed) before me this ___ day of __________, 2019, by _______________________ as __________________ of ________________________.

My commission expires:

(S E A L) ___________________________________

Notary Public

# EXHIBIT A
# SCOPE OF SERVICES

Contractor's Duties & Deliverables

| | |
|---|---|
| **Project Budget** | |
| **Design Development (DD)** | **$ 26,180.00** |
| Geological testing, Preliminary engineering designs i.e. Grading, utility plans, HVAC, electrical and structural and Design Development Plans | |
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| Construction Documents, Permit document submittal, Assist with permit application, Product selection and submittal | |
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| **Sub Total** | **$ 60,940.00** |
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| **Total** | **$ 67,040.0** |