

## DEVELOPMENT AGREEMENT FOR NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE (NISP)

This Agreement is made this 7<sup>th</sup> day of January, 2021 between the Board of County Commissioners of Larimer County, Colorado ("County"); and Northern Integrated Supply Project Water Activity Enterprise ("NISP"), a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.*, and owned by the Northern Colorado Water Conservancy District whose address is 220 Water Avenue, Berthoud, Colorado 80513. Together they may be referred to as the parties.

WHEREAS, County has approved the Application by NISP filed on February 21, 2020 for a 1041 Permit for the construction of a Reservoir (variously referred to as Glade Reservoir or Glade Reservoir Complex or Glade Unit) and associated recreation facilities and Pipelines by Findings and Resolution dated October 27, 2020 and recorded November 2, 2020, at Reception No. 20200090691 of the Larimer County records; and

WHEREAS, as a part of the 1041 Permit approval, this Development Agreement is made to memorialize and more specifically describe certain obligations of the parties; and

WHEREAS, County and NISP mutually acknowledge and agree that the matters described in this Agreement are necessary to protect, promote, and enhance the general welfare of Larimer County.

NOW, THEREFORE, the parties agree as follows.

### **1. Title of the Development**

The title of the development is the Northern Integrated Supply Project.

### **2. Description of Development and Uses**

The Northern Integrated Supply Project (NISP or Project) is a water storage and distribution project. NISP will consist of one new reservoir in Larimer County; a forebay reservoir, four pipelines and pumping plants to deliver water from the Poudre River to the reservoir and to the water users; and improvements to existing canals that divert water from the Poudre River near the canyon mouth west of Fort Collins. It will also include recreation facilities to be located at the Glade Reservoir Complex. Water-based recreation is a secondary use to the water supply purpose of the Project and NISP may vary water levels at its sole discretion to meet the primary water supply purpose.

### **3. Conditions of Approval**

The conditions of approval are those found on pages 15-21 of the Board of County Commissioners 1041 Permit Findings and Resolution.

The parties agree the following conditions remain to be satisfied:

- a. General 1.a and 1.c
- b. Development Review and Construction Permitting 2.a, 2.b, 2.c, 2.d, 2.e.i, 2.e.ii., 2.e.iii, 2.e.iv, 2.e.v, 2.e.vi, 2.e.vii, 2.e.viii, 2.e.ix, 2.e.x, 2.e.xi, and 2.f
- c. Construction 3.a, 3.b, 3.c, 3.d, 3.e, 3.f, 3.g, 3.h, and 3.i
- d. Reservoir Conditions Next Steps 1.a
- e. Reservoir Conditions Development Review 2.a and 2.b
- f. Reservoir Conditions Noise 3.a
- g. Reservoir Conditions Other 4.a
- h. Recreation Facility Conditions Development Review 1.b and 1.c
- i. Pipeline Conditions Development Review 1.a, 1.b, and 1.c
- j. Pipeline Conditions Construction 2.a, 2.b, 2.c, 2.d, 2.e, and 2.f

The above conditions remaining to be satisfied are further clarified and supplemented as follows:

#### **Development Review and Construction Permitting Condition 2.b:**

Prior to any construction, the applicant shall submit a Traffic Control and Management Plan. The Plan shall address the traffic control topics identified in the comments received from Larimer County Engineering Department as prepared by Steven Rothwell and dated May 9, 2020.

#### **Supplement:**

Traffic Control Conditions from May 9, 2020 Engineering Department Comments:

Comment No. 8 – Northern Water and/or the NISP WAE shall submit to Larimer County a Traffic Control and Management Plan for review by the County Engineer prior to construction addressing traffic control devices/personnel (warning signs, flaggers, traffic control supervisors, etc.), any specific delay times, adjacent neighboring property owner notifications, and use and placement of message boards. The Traffic Control and Management Plan will include requirements to provide safe and acceptable access for emergency responders, mail and package delivery, garbage pickup, and school bus stops. The Traffic Control and Management Plan will also identify all proposed access points.

Comment No. 17 – When construction activity is taking place within or impacting Larimer County ROW in anyway, Northern Water and/or the NISP WAE shall obtain and

abide by the standards and conditions of applicable County ROW permit(s), per the Code of Ordinances and the Land Use Code. Construction plans will need to be provided detailing the work to be completed. Additionally, Traffic Control Plans, developed by a certified traffic control company, must be submitted for all work performed within road ROW or that will directly affect the travelling public.

**Construction Condition 3.e:**

As-built construction plans, coordination meetings, inspections, material and construction testing, and similar engineering requirements as noted in the Larimer County Engineering referral comments as prepared by Steven Rothwell and dated May 9, 2020 shall be provided by the applicant.

**Supplement:**

As-built construction plans, coordination meetings, inspections, material and construction testing, and similar engineering requirements/conditions from May 9, 2020 Engineering Department Comments:

Comment No. 22 – Northern Water and/or the NISP WAE shall allow access to Larimer County staff and consultants for inspections and construction observation throughout the Project and for the term of the construction.

Comment No. 23 – Northern Water and/or the NISP WAE shall reimburse Larimer County for reasonable costs associated with County-provided construction observation/ inspection staff and/or independent, supplemental geotechnical or materials testing deemed appropriate by the County Engineer for purposes of quality assurance/control. The applicant shall also reimburse Larimer County for time and expenses incurred with Project coordination, design review, permit review and processing and related Project activities during the duration of Project construction and closeout for the work conducted in unincorporated Larimer County.

Comment No. 24 – Northern Water and/or the NISP WAE shall invite Larimer County staff to attend regularly scheduled coordination meetings during construction - at a frequency to-be determined- to understand planned construction activities and stay abreast of issues arising from construction impacts to County infrastructure or the public.

Comment No. 31 – The applicant shall develop and provide Larimer County with accurate as-built horizontal and vertical survey data (state plane coordinates and elevations in NAVD 88) and GIS shapefiles describing the location of the pipeline and all appurtenant structures.

Comment No. 32 – The applicant shall provide Larimer County with as-built construction drawings certified by a Colorado registered professional engineer, for all portions of the pipeline located in unincorporated Larimer County.

Comment No. 35 – Material test reports, as per Larimer County Standard, must be submitted to and approved by Larimer County for any work to take place within County ROW.

**Reservoir Conditions Development Review Condition 2.a:**

Prior to any construction of Glade Unit, the applicant shall demonstrate that the traffic, safety access concerns regarding the re-alignment of US 287 as identified in the comments from the County Engineering Department as prepared by Steven Rothwell and dated May 9, 2020 have been addressed to the satisfaction of the County Engineer.

**Supplement:**

Traffic, safety access concerns regarding the re-alignment of US 287 requirements/conditions from May 9, 2020 Engineering Department Comments:

Comment No. 5 – Northern Water and/or the NISP WAE shall coordinate with Larimer County and CDOT to ensure that traffic, safety, and access concerns associated with the proposed US 287 realignment are adequately evaluated and addressed.

**Reservoir Conditions Development Review Condition 2.b:**

Prior to any construction of Glade Unit, the applicant shall demonstrate that all transportation safety concerns for the intersection of the US 287 (re-aligned) and County Road 21 as identified in the comments from the County Engineering Department as prepared by Steven Rothwell and dated May 9, 2020 have been addressed to the satisfaction of the County Engineer.

**Supplement:**

Transportation safety concerns for US 287 and CR 21 requirements/conditions from May 9, 2020 Engineering Department Comments:

Comment No. 6 – Northern Water and/or the NISP WAE shall coordinate with CDOT and Larimer County on the preparation of a Traffic Safety Study for the US 287 and CR 21C intersection. If improvements are warranted, Northern Water and/or the NISP WAE shall ensure that they are implemented as part of the US 287 realignment.

**4. Additional Documentation**

The parties anticipate and agree that additional documents and agreements will subsequently be prepared and/or agreed on to carry out the project. These include but are not limited to a:

- a. Recreation Development Plan

- b. Lease Agreement for County's lease and management of Glade Reservoir Recreation Areas
- c. Escrow Agreement for construction funds for development of the recreational facilities

## **5. Recreation Development Plan**

### **a. Requirements**

NISP Enterprise and the County will jointly develop a Recreation Development Plan that:

- 1) Is consistent with and further implements the 2017 Reservoir Parks Master Plan or the Reservoir Parks Master Plan in place at the time of Recreation Development Plan adoption
- 2) Utilizes consultant cost estimates to prioritize a list of recreation facilities to be constructed using the money jointly contributed by the parties
- 3) Identifies a priority list of recreation facilities and also includes contingency facilities that would not be built if total cost exceeds the identified funding commitments or County or funding from other sources, as described in Section 6, is not available
- 4) Recognizes the identified recreation commitments, actions, and strategies committed to by NISP in the NISP Fish and Wildlife Mitigation and Enhancement Plan (FWMEP), including the identified Glade Reservoir Recreation and Wildlife Adaptive Management Program
- 5) Meets recreation goals and objectives jointly agreed to by the parties in consideration of public comment leading up to and at the 1041 Permit hearings

### **b. Timeline**

It is the intention of the parties that the Recreational Development Plan will be finalized prior to beginning construction on the Glade Reservoir Complex, which is anticipated to start in 2023. The following timeline is anticipated, but may be subject to change depending on when construction will begin:

- 1) 2 Years Prior to Glade Dam Construction: Parties jointly work on the Recreation Development Plan and develop and implement a public outreach process and scope of design, including west-side recreation.
- 2) 1 Year Prior to Construction: Parties jointly work on Recreation Development Plan, address public outreach comments, and finalize design.
- 3) Prior to Construction: Parties finalize the Recreation Development Plan including construction plans.

- 4) In 2021, a request for west-side recreation will be presented to Colorado Parks and Wildlife (CPW) for consideration and approval relative to the NISP Fish and Wildlife Mitigation and Enhancement Plan. If allowed by CPW, with terms acceptable to NISP and the County, and jointly agreed to by the parties, this component shall be added to the Recreation Development Plan

The parties agree to act in good faith to complete the Recreation Development Plan based upon this timeline.

## **6. Recreation Commitments**

### **a. Scope and Funding Limits**

#### East-side Recreation

The parties agree to a total cost commitment of \$21.8 million to develop recreation on the east side of the reservoir, as shown on Exhibit A. This includes but is not limited to funding for:

- 1) The cost of the recreation commitments set forth in the FWMEP and funded by NISP including:
  - a. Visitor center
  - b. Paved road with guardrails to the east-side boat ramp
  - c. Foothills Recreation Area (170 acres)
  - d. Boat ramp
  - e. Campground rough grading
  - f. Parking lots
  - g. Cool-water fishery development
- 2) NISP's purchase price for the existing KOA property adjacent to the reservoir site.
- 3) The costs incurred by the parties to develop the Recreation Development Plan
- 4) The costs to develop on-site storage and distribution systems for potable water and on-site wastewater treatment facilities
- 5) Any transportation upgrades identified by the County as being needed to safely transport recreation traffic to the recreation area

#### West-side Recreation

The parties agree to an additional total cost commitment of \$2.6 million to support recreation development on the west side of the reservoir, as generally shown on Exhibit A. The recreation infrastructure in this area will be determined

as outlined in Section 5.b.4 and may include an access road, parking lot, and an access ramp for non-motorized watercraft.

**b. Funding Sources and Accounting**

East-side Recreation

Costs and funding commitments associated within the \$21.8 million to fund recreation development on the reservoir's east side are:

- 1) \$9.1 million associated with the NISP Fish and Wildlife Mitigation and Enhancement Plan that will be paid for 100% by NISP
- 2) \$12.7 million to be cost-shared with 75% (or \$9.525 million) contributed by NISP and 25% (or \$3.175 million) by the County (or other identified funding source)
- 3) The recent acquisition of the KOA by NISP (\$1.5 million) is considered part of NISP's 75% contribution and as such reduces its future funding commitment to East-side Recreation by a like amount (\$9.525 million less \$1.5 million) or \$8.025M. The Parties agree the KOA was purchased with 100% NISP funds.

West-side Recreation

Funding commitments associated within the \$2.6 million to fund recreation development on the reservoir's west side are:

- 1) NISP will contribute \$2.0 million and the County or other funding source will contribute \$.6 million

**c. Funding Management**

NISP's future recreational funding commitments (as related to this Development Agreement on both the east and west side areas) are \$10.025 million and will be escalated per a construction price index (CPI) to the month and year construction starts and from the date of the recorded Findings and Resolution of November 2, 2020.

Subject to Section 6(d) below, the County (or other identified funding sources) may provide lump sum payment or annual payments to offset its associated 25% funding commitments.

Both parties agree to actively pursue grants or other outside funding sources. Any outside funding contributions would first be attributed to meeting the County or other funding sources 25% funding commitment.

**d. Fund Accounting for Recreation Development Project**

By the start of construction of Glade Reservoir, parties agree to transfer 50% percent of such party's total required contribution to an interest-bearing account to be held in escrow for NISP to draw upon during construction of those facilities agreed upon in the Recreation Development Plan. Transfer of the remaining funds shall occur on a yearly basis to meet the next year's, or any remaining construction costs. During construction, NISP will draw funds for construction of recreation facilities from the escrow account and separately account for, and report to, the County the costs of recreation facility construction. In no event shall NISP or the County be required to provide funding for any shortfall in construction funds from any source.

**e. Excess Funding**

Any funding remaining in the construction escrow account after construction of recreation facilities identified in the Recreation Development Plan would be dedicated for future development of additional recreation facilities, as agreed to by the County and NISP.

**f. Facility Ownership**

NISP shall own the land and all facilities constructed thereon under the Recreation Development Plan and Fish and Wildlife Mitigation and Enhancement Plan.. For the term of the lease agreement, the County shall own all revenue it generates as the managing entity of public recreation at Glade Reservoir unless otherwise agreed to by both parties.

**g. Glade Reservoir Recreation Facility Management**

The County has indicated a desire to manage recreation at Glade Reservoir. Unless the County decides to defer management, the County and NISP will enter into a 35-year lease agreement for the County to act as the managing entity to manage recreation at Glade Reservoir. Coordination regarding renewal of the recreation lease will start on year 30 of the lease to allow for unrushed discussion. The parties have contemplated the renewal period extending for 25 years.

Such lease agreement shall be entered into between the parties within one year prior to Project start-up, but not later than 90 days prior to Project start-up. Project start-up shall mean final completion of reservoir construction activities.

Management and public recreation may begin upon notice to the County from NISP of Project start-up.



**h. Water Supply**

Water supply to the facility will consist of the supply available from the following West Fort Collins Water District taps:

- 1) One ¾-inch tap and one 1-inch tap associated with the historic KOA
- 2) One ¾-inch tap owned by the Northern Colorado Water Conservancy District
- 3) County will not be required to purchase additional water rights to utilize these taps.

**i. Operations and Maintenance**

NISP agrees to pay for security at Glade Reservoir and appurtenant structures, and capital improvements maintenance and replacement costs for land and infrastructure owned by NISP. Pursuant to the terms of the lease agreement, the County will be responsible for all other annual operations and maintenance costs associated with recreation on the site including but not limited to:

- 1) Monthly service and utility costs used solely by the County in its operation of the site. Northern is responsible for monthly service and utility costs associated with its use of the site
- 2) Equipment, vehicles, staffing, and operational materials costs not otherwise included in an agreement with the County for site security at Glade Reservoir
- 3) Routine daily, monthly, and weekly maintenance of campgrounds, trails, boat ramps, and other recreation facilities

The County, as managing entity, may determine the recreation fee structure to address funding needs. NISP shall not be responsible for addressing recreation management funding shortfalls.

**7. Construction Phasing and Project Outline**

Construction of Glade Reservoir and water supply infrastructure may commence after final design of the project and NISP receives and accepts all final, post-litigation permits or at an earlier date at the sole discretion of NISP. Construction of recreation facilities may commence after final design and at a date agreed on by the parties.

A project outline, including construction phasing, is included in Figure 5 of the submitted Project Description, included here as Exhibit B. As demonstrated in Exhibit B, the relocation of US 287 will start at the same time as Glade Reservoir construction and will be completed, with realignment of traffic, before decommissioning the existing highway.

NISP will construct recreation facilities at Glade Reservoir. Construction of facilities will occur concurrently with construction of the dam, reservoir, and appurtenant facilities at Glade Reservoir to allow for the most efficient and safe work environment. No areas shall be open to the public during this construction period, unless agreed upon by all parties.

## **8. Site Plan Reviews**

During final design activities, NISP will go through the Site Plan Review process with the County for:

- a. Glade Unit Infrastructure including the expanded Poudre Valley Canal (PVC), forebay, glade pump station, electrical/control building, surge building, buried conduits, utilities (including power supplies, water lines and septic system components), and other components of the reservoir site.
- b. Recreation Facilities including those established in the Recreation Development Agreement

## **9. Additional Permits**

Prior to any construction, NISP shall obtain all necessary local, state, and federal permits and approvals. In addition to other permitting processes in this agreement, such approvals and permits for the County could include, but are not limited to:

- a. Building Permits
- b. Floodplain Development Permits
- c. Development Construction Permits
- d. Access Permits
- e. Heavy Equipment and Vehicle Oversize/Overweight Permits
- f. Right-of-Way Permits
- g. Stormwater Permits.

## **10. As-built Plans and Final Completion Requirements**

NISP shall submit the following items as part of final completion requirements:

- a. As-built construction drawings certified by a Colorado registered professional engineer, for all portions of the pipeline located in unincorporated Larimer County (All deviations from approved plans must be listed and shown on the as-built plans.)
- b. Material test reports, per Larimer County Standards, for any work taking place within County right of way

- c. As-built horizontal and vertical survey data (state plane coordinates and elevations in NAVD 88) and GIS shapefiles describing the location of the pipeline and all appurtenant structures

#### **11. Dams and Water Supply Pipelines, Valves, and Similar Facilities**

No additional permits from Larimer County are required for Glade dam, forebay, canals, pipelines, siphons, or other water supply facilities at the Glade Reservoir complex unless outlined specifically elsewhere in this Development Agreement.

#### **12. Inspections**

Authorized Larimer County staff, including consultants, shall be allowed access for construction observations and inspections throughout the construction life of the Project, and for follow-up/warranty inspections after construction has ceased.

NISP shall invite Larimer County staff to attend regularly scheduled coordination meetings during construction, at a frequency to-be-determined, to understand planned construction activities and stay abreast of issues arising from construction impacts to County infrastructure or the public.

#### **13. Modifications**

NISP shall have the right to modify a recreation facility design or location at any time if, in its sole discretion, it determines it is necessary to comply with NISP operations or maintenance, NISP permit conditions, or other issues that present a conflict with the primary water supply purposes of the Project. In this event, 60-days' notice will be provided to Larimer County before such change becomes effective if such modification is not an emergency requirement. In an emergency, as much notice as feasible will be given to Larimer County.

NISP will coordinate any such modification with Larimer County to minimize disruptions to recreation and to potential revenue sources, to the extent possible. NISP will be responsible for the cost of the physical modifications, if and when it may occur. In the event a physical modification markedly reduces recreational revenue to the County, parties agree to explore measures or actions that may offset identified financial impacts, including replacement of lost revenue.

#### **14. Reimbursement of Reasonable Fees**

NISP shall reimburse Larimer County for time and expenses incurred with Project coordination, design review, permit review and processing.

NISP shall reimburse Larimer County for time and expenses for related Project activities during the duration of Project construction and closeout for the work conducted in unincorporated Larimer County.

NISP shall reimburse Larimer County for reasonable costs associated with County-provided construction observation/inspection staff or outside consultants and/or independent, supplemental geotechnical or materials testing deemed appropriate by the County Engineer for purposes of quality assurance/control.

NISP shall pay required fees for all site plan reviews, building permits, and other applicable permits.

**15. Governmental Immunity**

Nothing in this Agreement shall be construed as a waiver, either express or implied, of the immunities, rights, benefits, and protections afforded the parties under the Colorado Governmental Immunity Act.

**16. Default/Remedies/Enforcement**

Upon default of the provisions of this Agreement, the parties agree that this Agreement may be specifically enforced by any party or any party may proceed in any other manner authorized by law for a breach of contract.

**17. No Third-party Beneficiaries**

This Development Agreement is entered into for the sole benefit of the parties and no other individuals or entities are intended to be direct, indirect, or incidental beneficiaries of this Agreement and no third party shall have any right to enforce or benefit in, under, or to this Development Agreement.

**18. Applicability of Other Regulations and Conditions**

This Agreement and the terms, conditions, and covenants contained herein shall be deemed to complement and shall be in addition to the conditions and requirements of the Board of County Commissioners 1041 Permit Findings and Resolution.

**19. Parties' Representatives**

Each party shall designate a representative who shall have the authority to make all necessary and proper decisions with reference to the Agreement. All requests for Agreement interpretations, changes, and other clarifications shall be directed to the parties' Representatives. Unless otherwise designated in writing, the NISP Representative will be Carl Brouwer. Unless otherwise designated in writing, the County's representative shall be Lesli Ellis, Community Development Director.

**20. Force Majeure**

Neither party shall be liable to the other party for any delay or inability to perform its obligations hereunder by reason of acts of God, acts of the public enemy, riot, litigation, civil commotion, insurrection, acts or failure to act of governmental authorities, war, or any other cause or causes beyond the party's reasonable control, and an appropriate extension to the schedule shall be granted in each such event of delay.

**21. Binding Effect of Agreement and Site-Specific Development Plan**

This Agreement is intended to provide for the orderly construction and maintenance of structures and other improvements on the Property. The parties agree that this Development Agreement, County approved Site Plan, and development plans for the recreation facilities and the water supply facilities including Glade dam, forebay, canals, pipelines, siphons, the expanded Poudre Valley Canal (PVC), glade pump station, electrical/control building, surge building, buried conduits, utilities (including power supplies, water lines and septic system components), and other components of the reservoir site are a site specific development plan as that is described in the Vested Property Rights Act (VPRA), C.R.S. § 24-68-101 et seq. and the common law.

**22. Conflict with Other Documents**

In the event of conflicts between this Agreement and the Findings and Resolution approving NISP dated October 27, 2020, the Findings and Resolution shall control.

**23. Severability**

If any part, terms, or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, terms, or provision and the rights of the parties will be construed as if the part, terms, or provision was never part of this Agreement.

**24. Amendment**

This Agreement may be amended by mutual written consent of the parties.

**25. Controlling Law**

This Agreement shall be governed by the laws of the State of Colorado.

**LARIMER COUNTY:**

**Board of County Commissioners of  
Larimer County, Colorado**

*Steve Johnson*

Chair



ATTEST:

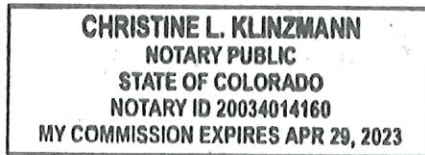
*Dan Greiner*

Deputy Clerk to the Board

DATE 12/23/20  
APPROVED AS TO FORM  
*Frank J. [Signature]*  
ASSISTANT COUNTY ATTORNEY

STATE OF COLORADO)  
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 29 day of  
December, 2020 by Steve Johnson as Chair of the  
Board of County Commissioners of Larimer County, Colorado.



*[Signature]*  
Notary Public

Witness my hand and official seal

My Commission Expires: 4-29-2023

APPLICANT

Northern Integrated Supply Project Water Activity Enterprise

*Mike Applegate*

Mike Applegate

Chair, Board of Directors

STATE OF COLORADO)  
COUNTY OF LARIMER)

Acknowledged before me this 7<sup>th</sup> day of January, 2021 by  
Mike Applegate, chair Board of Directors



Sherri Lynn Rasmussen  
Notary Public

Witness my hand and official seal.

My commission expires: 10/09/2023