

SAMPLE CONTRACT FOR GOVERNMENTS

This is a sample contract. The Colorado Water Conservation Board uses this type of contract for loans with the following entities:

- Counties
- Irrigation Districts
- Municipalities
- Special Districts
- Water Activity Enterprises
- Water Conservancy Districts
- Water Conservation Districts
- Water/Sanitation Districts
- Other Governmental Entities

The Colorado Water Conservation Board drafts individual loan contracts on a loan-by-loan basis. Nothing contained in this sample will limit the authority of the Colorado Water Conservation Board to modify, revise, add, or eliminate any term or condition of this sample.

BORROWER: [REDACTED] WATER
CONSERVANCY DISTRICT
Contract No. [REDACTED]
Project Amount \$20,000,000
Loan Service Fee \$200,000
Loan Amount \$20,200,000

Agency Name: Water Conservation Board
Agency Number PDA
Routing Number 05 PDA _____

LOAN CONTRACT

(STANDARD CONTRACT – WAIVER #160 – APPROVED NOVEMBER 10, 2003)

THIS CONTRACT, made this June 21, 2005, by and between the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board (“CWCB” or “STATE”), and the [REDACTED] Water Conservancy District, [REDACTED], Colorado [REDACTED] (“BORROWER”).

FACTUAL RECITALS

1. Authority exists in the law, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for

encumbering and subsequent payment of this contract under: Contract Encumbrance No. [REDACTED], Fund Number [REDACTED].

2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies.
3. The **PROJECT Summary**, attached as **Appendix 1** and incorporated herein, contains BORROWER Information (Section 1), the PROJECT Description (Section 2), CWCB's authority for making this loan (Section 3), and CWCB Approval and Legislative Authorization which identifies the amount of the loan and the terms of repayment (Section 4).
4. The CWCB now desires, by this contract, to loan money to the BORROWER for this PROJECT upon mutually agreeable terms and conditions.

THEREFORE, in consideration of the mutual and dependent covenants contained herein, the parties agree as follows:

A. LOAN PROVISIONS

1. **Loan Service Fee.** The amount of the loan (LOAN AMOUNT) shall include (1) the amount of the funds loaned by the CWCB to the BORROWER for the PROJECT and (2) a service fee of one percent (1%) of the PROJECT amount. In the event that the BORROWER does not use the LOAN AMOUNT authorized, the parties shall amend this contract to revise the LOAN AMOUNT including adjustment of the service fee to reflect 1% of the actual LOAN AMOUNT disbursed to the BORROWER.
2. **Contract Amendment Service Fees.** Under certain circumstances, the BORROWER shall be assessed a fee for amending the contract.
 - a. A service fee shall be imposed on the BORROWER for amendments processed for the benefit of the BORROWER and necessary for the BORROWER'S course of business but not necessary for the CWCB, including, but not limited to, a change in borrower name (novation), assignment of contract, substitution of collateral, loan payment deferrals in excess of 3 per loan, and loan consolidation. Amendments in the course of CWCB business, including, but not limited to, loan payment deferrals (up to 3 per loan), and changes in terms of loan repayment will be processed at no additional charge to the BORROWER.
 - b. The amount charged shall be in accordance with the fee rate structure set forth in the CWCB Loan Service Charge Policy in effect at the time the BORROWER shall request an amendment. The current fee for an amendment is \$1,000.
 - c. The BORROWER shall remit the service fee to the CWCB prior to initiation of the amendment. Any service fee remitted to the CWCB cannot be refunded
3. **Promissory Note Provisions.** The CWCB agrees to loan to the BORROWER an amount not to exceed the LOAN AMOUNT and the BORROWER agrees to repay the loan in accordance with the terms as set forth in the Promissory Note, attached hereto as **Appendix 2** and incorporated herein. The Promissory Note shall identify the LOAN

AMOUNT. If the amount of loan funds disbursed by the CWCB to the BORROWER differs from the LOAN AMOUNT, the parties agree to amend this contract, including its appendices where necessary, to revise the LOAN AMOUNT.

4. **Interest Prior to PROJECT Completion.** As the loan funds are disbursed by the CWCB to the BORROWER, interest shall accrue at the rate set by the CWCB for this loan. The CWCB shall calculate the amount of the interest that accrued prior to PROJECT's substantial completion (as determined by the CWCB) and notify BORROWER of such amount. The BORROWER shall repay that amount to the CWCB either within ten (10) days from the date of notification from the CWCB, or, at the CWCB's discretion, said interest shall be deducted from the final disbursement of loan funds that the CWCB makes to the BORROWER.
5. **Return of Unused Loan Funds.** Any loan funds disbursed but not expended for the PROJECT in accordance with the terms of this contract shall be remitted to the CWCB within 30 calendar days from notification from the CWCB of either (1) completion of the PROJECT or (2) determination by the CWCB that the PROJECT will not be completed.
6. **BORROWER'S Authority To Contract.** The BORROWER warrants that it has full power and authority to enter into this contract. The execution and delivery of this contract and the performance and observation of its terms, conditions and obligations have been duly authorized by all necessary actions of the BORROWER. The BORROWER's authorizing resolution(s) or ordinance(s) are attached as **Appendix 3** and incorporated herein.
7. **Attorney's Opinion Letter.** Prior to the execution of this contract by the CWCB, the BORROWER shall submit to the CWCB a letter from its bond counsel stating that it is the attorney's opinion that
 - a. the contract has been duly executed by officers of the BORROWER who are duly elected or appointed and are authorized to execute the contract and to bind the BORROWER;
 - b. the resolutions or ordinances of the BORROWER authorizing the execution and delivery of the contract were duly adopted by the governing bodies of the BORROWER;
 - c. there are no provisions in the Colorado Constitution or any other state or local law that prevent this contract from binding the BORROWER;
 - d. the contract will be valid and binding against the BORROWER if entered into by the CWCB; and
 - e. the election held by the Borrower to obtain voter approval of this loan met all requirements of the Colorado Constitution or any other state or local law.
8. **Pledge of revenues.** The BORROWER irrevocably pledges to the CWCB, for purposes of repayment of this loan, revenues levied for that purpose as authorized in Appendix 3 and any other funds legally available to the BORROWER, in an amount sufficient to pay the annual payment due under this contract ("Pledged Revenues"). Further, the BORROWER agrees to:
 - a. **Segregation of Pledged Revenues.** The BORROWER shall set aside and keep the

Pledged Revenues in an account separate from other BORROWER revenues, and warrants that these revenues will not be used for any other purpose.

- b. **Establish Security Interest.** The BORROWER has duly executed a Security Agreement, attached hereto as **Appendix 4** and incorporated herein, to provide a security interest to the CWCB in the Pledged Revenues. The CWCB shall have priority over all other competing claims for said revenues, except for the liens of the BORROWER'S existing loans as listed in Section 5 (Schedule of Existing Debt), of the **Project Summary**, which sets forth the position of the lien created by this contract in relation to any existing lien(s).
- c. **Rate Covenant.** Pursuant to its statutory authority and as permitted by law, the BORROWER shall take all necessary actions consistent therewith during the term of this contract to establish, levy and collect rates, charges and fees as described in Appendix 3, in amounts sufficient to pay this loan as required by the terms of this contract and the Promissory Note, to cover all expenditures for operation and maintenance and emergency repair services, and to maintain adequate debt service reserves, including obtaining voter approval, if necessary, of increases in the BORROWER'S rate schedule or taxes, if applicable.
- d. **Debt Service Reserve Account.** To establish and maintain the debt service reserve account, the BORROWER shall deposit an amount equal to one-tenth of an annual payment into its debt service reserve fund on the due date of its first annual loan payment and annually thereafter for the first ten years of repayment of this loan. In the event that the BORROWER applies funds from this account to repayment of the loan, the BORROWER shall replenish the account within ninety (90) days of withdrawal of the funds.
- e. **Additional Debts or Bonds.** The BORROWER shall not issue any indebtedness payable from the pledged revenues and having a lien thereon which is superior to the lien of this loan. The BORROWER may issue parity debt only with the prior written approval of the CWCB, provided that:
 - i. The BORROWER is currently and at the time of the issuance of the parity debt in substantial compliance with all of the obligations of this contract, including, but not limited to, being current on the annual payments due under this contract and in the accumulation of all amounts then required to be accumulated in the BORROWER'S debt service reserve fund;
 - ii. The BORROWER provides to the CWCB a Parity Certificate from an independent certified public accountant certifying that, based on an analysis of the BORROWER'S revenues, for 12 consecutive months out of the 18 months immediately preceding the date of issuance of such parity debt, the BORROWER'S revenues are sufficient to pay its annual operating and maintenance expenses, annual debt service on all outstanding indebtedness having a lien on the pledged revenues, including this loan, the annual debt service on the proposed indebtedness to be issued, and all required deposits to any reserve funds required by this contract or by the lender(s) of any indebtedness having a lien on the pledged revenues. The analysis of revenues shall be based on the BORROWER'S current rate structure or the rate

structure most recently adopted. No more than 10% of total revenues may originate from tap and/or connection fees.

The BORROWER acknowledges and understands that any request for approval of the issuance of additional debt must be reviewed and approved by the CWCB Director prior to the issuance of any additional debt.

- f. **Annual Statement of Debt Coverage.** Each year during the term of this contract, the BORROWER shall submit to the CWCB an annual audit report and a certificate of debt service coverage from a Certified Public Accountant.
9. **Pledged Revenues During Loan Repayment.** The BORROWER shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the Pledged Revenues, so long as any of the principal, accrued interest, and late charges, if any, on this loan remain unpaid, without the prior written concurrence of the CWCB.
10. **Release After Loan Is Repaid.** Upon complete repayment to the CWCB of the entire principal, all accrued interest, and late charges, if any, as specified in the Promissory Note, the CWCB agrees to release and terminate any and all of the CWCB's right, title, and interest in and to the Pledged Revenues.

11. **Warranties.**

- a. The BORROWER warrants that, by acceptance of the loan under this contract and by its representations herein, the BORROWER shall be estopped from asserting for any reason that it is not authorized or obligated to repay the loan to the CWCB as required by this contract.
 - b. The BORROWER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the BORROWER, to solicit or secure this contract and has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this contract.
 - c. The BORROWER warrants that the Pledged Revenues and collateral for this loan are not encumbered by any other deeds of trust or liens of any party other than the CWCB or in any other manner, except for any existing lien(s) identified in Section 5 (Schedule of Existing Debt) of the **Project Summary**, which sets forth the position of the lien created by this contract in relation to any existing lien(s).
12. **Remedies For Default.** Upon default in the payments to be made by the BORROWER under this contract, or default in the performance of any covenant or agreement contained herein, the CWCB, at its option, may:
- a. suspend this contract and withhold further loan disbursements pending corrective action by the BORROWER, and if the BORROWER does not cure the default as provided for below, permanently cease loan disbursements and deem the PROJECT substantially complete;

- b. exercise its rights under any appendices to this contract, including, but not limited to, the Promissory Note and Security Agreement; and/or
- c. take any other appropriate action.

The CWCB shall provide written notice to the BORROWER of any such default and shall give the BORROWER an opportunity to cure within thirty (30) days of receipt of such notice. All remedies described herein may be simultaneously or selectively and successively enforced. The CWCB may enforce the provisions of this contract at its option without regard to prior waivers of previous defaults by the BORROWER, through judicial proceedings to require specific performance of this contract, or by such other proceedings in law or equity as may be deemed necessary by the CWCB to ensure compliance with provisions of this contract and the laws and regulations under which this contract is executed. The CWCB's exercise of any or all of the remedies described herein shall not relieve the BORROWER of any of its duties and obligations under this contract.

- 13. **OPERATION OF PROJECT.** The BORROWER shall, without expense or legal liability to the CWCB, manage, operate and maintain the PROJECT continuously in an efficient and economical manner.
- 14. **BORROWER'S Liability Insurance.**
 - a. Because the BORROWER is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the BORROWER shall at all times maintain such liability insurance, by commercial policy or self-insurance as is necessary to meet its liabilities under the Act.
 - b. Prior to the disbursement of any loan funds, the BORROWER shall provide the CWCB with an Acord Form 27 or other form satisfactory to the CWCB evidencing said insurance and shall provide the CWCB with documentation of renewals of said insurance.
- 15. **Additional Contract Requirements.** Any additional contract requirements are set forth in Additional Contract Requirement (Section 6) of the **Project Summary**.

B. PROJECT PROVISIONS

- 1. **Construction Fund Program Procedures.** During the completion of the PROJECT, the BORROWER shall adhere to the CWCB Construction Fund Program Procedures (Section 7) of the **Project Summary**.
- 2. **Eligible Expenses.** The PROJECT expenses for which the BORROWER is eligible for loan disbursements are listed in Eligible Expenses (Section 8) of the **Project Summary**.
- 3. **Loan Disbursements.** The CWCB shall disburse loan funds in accordance with the Disbursement Schedule (Section 9) of the **Project Summary**.
- 4. **Time for Performance.** The BORROWER recognizes that time is of the essence in the performance of all of its obligations under this contract. Therefore, the BORROWER shall

complete the PROJECT within the time specified in Time for Performance (Section 10) of the **Project Summary**.

5. **Indemnification By The Construction Firm.** The BORROWER shall require all Construction Firms and their subcontractors to indemnify the STATE and the BORROWER against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of those parties or sustained in connection with the performance of any contract related to the PROJECT or by conditions created thereby, or based upon any violation of any statute, ordinance, or regulation, and the defense of any such claims or actions.
6. **Liability Insurance During Construction.** During construction of the PROJECT, the BORROWER shall require the construction firm(s) and any subcontractors to maintain the following insurance coverage in the limits shown during the term of their contracts for the construction of the PROJECT. The BORROWER shall provide the CWCB with an Acord Form 27 evidencing said insurance prior to commencement of construction, maintained until construction is complete, and shall provide the CWCB with documentation of renewals of said insurance. No payments shall be made to the BORROWER unless all insurance certificates are current.
 - a. Builder's risk insurance for construction in progress for all perils of loss including fire, wind, hail, and vandalism in an amount equal to the completed value of the PROJECT.
 - b. Worker's compensation and employer's liability insurance in the required statutory amounts.
 - c. Automobile liability insurance that includes coverage for all owned, non-owned and hired vehicles with minimum limits of \$1,000,000 combined single limit for bodily injury and property damage.
 - d. Commercial general liability insurance with minimum limits of \$1,000,000 combined single limit for each occurrence and \$2,000,000 general aggregate. This insurance coverage shall include products/completed operations and bodily injury/property damage.

C. GENERAL PROVISIONS

1. **Periodic Inspections.** Throughout the term of this contract, the BORROWER shall permit a designated representative of the CWCB to make periodic inspections of the PROJECT. Such inspections shall cover the condition of the PROJECT, operating records, maintenance records, and financial records. These inspections are solely for the purpose of verifying compliance with the terms and conditions of this contract and shall not be construed nor interpreted as an approval of the actual design, construction or operation of any element of the PROJECT facilities
2. **Applicable Laws.** The BORROWER shall strictly adhere to all applicable federal, state, and local laws and regulations that are in effect or may hereafter be established

throughout the term of this contract.

3. **Designated Agent Of The CWCB.** The CWCB's employees are designated as the agents of the CWCB for the purpose of this contract.
4. **Assignment.** The BORROWER may not assign this contract except with the prior written approval of the CWCB.
5. **Contract Relationship.** The parties to this contract intend that the relationship between them under this contract is that of lender-borrower, not employer-employee. No agent, employee, or servant of the BORROWER shall be, or shall be deemed to be, an employee, agent, or servant of the CWCB. The BORROWER shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants, engineering firms, construction firms, and subcontractors during the term of this contract.
6. **Integration Of Terms.** This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to STATE fiscal rules, unless expressly provided for herein.
7. **Controlling Terms.** In the event of conflicts or inconsistencies between the terms of this contract and conditions as set forth in any of the appendices, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) Colorado Special Provisions, (2) the remainder of this contract, and (3) the Appendices.
8. **Casualty and Eminent Domain.** If, at any time, during the term of this contract, (a) the BORROWER'S PROJECT facilities including buildings or any portion thereof, are damaged or destroyed, in whole or in part, by fire or other casualty, or (b) title to or use of the PROJECT facilities or any part thereof shall be taken under the exercise of the power of eminent domain, the BORROWER shall cause the net proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair and restoration of the PROJECT facilities or any portion thereof, or to repayment of this loan. Any net proceeds remaining after such work has been completed or this loan has been repaid, shall be retained by the BORROWER. If the net insurance proceeds are insufficient to pay the full cost of the replacement, repair and restoration, the BORROWER shall complete the work and pay any cost in excess of the net proceeds. In the event BORROWER chooses to repay the loan, BORROWER shall remain responsible for the full loan amount outstanding regardless of the amount of such insurance proceeds or condemnation award.
9. **Captions.** The captions and headings contained in this contract are for convenience and reference only and shall not be construed so as to define or limit the terms or provisions contracted herein.
10. **CWCB's Approval.** This contract requires review and approval of plans, specifications,

and various other technical and legal documents. The CWCB's review of these documents is only for the purpose of verifying BORROWER'S compliance with this contract and shall not be construed or interpreted as a technical review or approval of the actual design or construction of the PROJECT. Notwithstanding any consents or approvals given to the BORROWER by the CWCB on any such documents, BORROWER and any of its consultants, by preparing any such documents, shall be solely responsible for the accuracy and completeness of any of said documents.

11. **Waiver.** The waiver of any breach of a term of this contract shall not be construed as a waiver of any other term or of any subsequent breach of the same term.
12. **Addresses for mailing.** All notices, correspondence, or other documents required by this contract shall be delivered or mailed to the addresses shown in the **Project Summary**, Section 1 for the BORROWER and to the address below for the CWCB:

Colorado Water Conservation Board
Attn: Construction Fund Section
1313 Sherman Street, Room 721
Denver, CO 80203

SPECIAL PROVISIONS (4/1/04 version). State Fiscal Rule 3-1 requires the inclusion of these Special Provisions in every STATE contract, including grants.

1. **CONTROLLER'S APPROVAL.** CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. **FUND AVAILABILITY.** CRS 24-30-202 (5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.**

To the extent authorized by law, the BORROWER shall indemnify, save, and hold harmless the State against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the BORROWER, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract, or as a result of the CWCB's interest in the PROJECT facilities and any other property identified in Section 6 (Collateral) of the **Project Summary**.

No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions for the parties, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq. or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. as applicable, as now or hereafter amended.

4. **NON-DISCRIMINATION.**

The BORROWER agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

5. **CHOICE OF LAW**

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this

contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

6. SOFTWARE PIRACY PROHIBITION Governor's Executive Order D 002 00

No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Borrower hereby certifies that, for the term of this Contract and any extensions, the BORROWER has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the BORROWER is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

7. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

Revised April 1, 2004

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

BORROWER: [Redacted]
[Redacted] of the [Redacted]
Water Conservancy District

State of Colorado
Bill Owens, Governor

By _____
[Redacted], President

By _____
For the Executive Director
Department of Natural Resources
Colorado Water Conservation Board
Rod Kuharich, Director

(CORPORATE
SEAL)

Attest

Pre-Approved Form

By _____
[Redacted], Secretary

By _____
CWCB Contract Manager

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

Leslie M. Shenefelt, State Controller

By _____

Effective Date _____

Project Summary – [REDACTED] W.C.D. – Contract No. [REDACTED]

SECTION 1 –BORROWER INFORMATION

Name: [REDACTED] of the [REDACTED]
Water Conservancy District
Address: [REDACTED]
Federal Identification No.: [REDACTED]
Contact: [REDACTED], Executive Director
Phone Number: [REDACTED] Fax Number: [REDACTED]
E-mail address: [REDACTED]
Type of Entity: The [REDACTED]

[REDACTED] Water Conservancy District is a water conservancy district formed pursuant to and governed by Article 45, Title 37, C.R.S. and located [REDACTED] [REDACTED] counties. The BORROWER held an election on November 2, 2004, whereby voters approved increasing the BORROWER's debt by up to approximately \$39,000,000 based on assessed valuation, to acquire water rights and to construct [REDACTED] water storage, as shown on the BORROWER's Official Ballot and Official Election Results, which are incorporated herein by reference.

Section 2 – Project Description

- A. Description of PROJECT: The BORROWER applied to the CWCB for a loan to acquire water rights and to construct [REDACTED] water storage, located in [REDACTED] counties, hereinafter referred to as the PROJECT, at an estimated total cost of \$22,200,000.
- B. Description of Feasibility Study: The CWCB has reviewed a feasibility study report on the PROJECT compiled by [REDACTED], which is incorporated herein by reference, and, based upon the feasibility report, the CWCB determined the PROJECT to be technically and financially feasible.

SECTION 3 – CWCB'S AUTHORITY

Severance Tax Trust Fund Perpetual Base Account: This loan is made pursuant to the provisions of §§ 39-29-109(1)(a)(I), 37-60-119 and 37-60-120, C.R.S., which authorize the CWCB to loan money for water projects from the CWCB Severance Tax Trust Fund Perpetual Base Account for the benefit of the people of the state, provided that the borrower assures repayment of that money.

SECTION 4 - BOARD APPROVAL AND LEGISLATIVE AUTHORIZATION (IF NEEDED)

- A. At its November 17, 2004 meeting, the CWCB approved a loan from the Severance Tax Trust Fund Perpetual Base Account to the BORROWER in an amount up to \$20,200,000 for PROJECT costs, not to exceed 90% of the cost of the PROJECT, with a

loan origination fee of 1% in accordance with CWCB Policy No. 16, at an interest rate of 2.50% per annum for a repayment term of 30 years.

- B. Pursuant to Bill SB05-084, the Colorado General Assembly authorized CWCB to loan to the BORROWER an amount up to \$20,200,000 for the PROJECT

SECTION 5 – SCHEDULE OF EXISTING DEBT

BORROWER'S existing debt consists of a [REDACTED].

SECTION 6 – ADDITIONAL CONDITIONS & CONTRACT REQUIREMENTS

Upon execution of this LOAN CONTRACT, the BORROWER may request disbursement of funds according to the procedures described below for an amount up to \$11,200,000. The remaining \$9,000,000 will be disbursed to the BORROWER according to the procedures described below only after such date that the BORROWER provides the CWCB with a written letter stating that the BORROWER defeased its Limited Tax General Obligation Note, principal amount of [REDACTED].

SECTION 7 – PROCEDURES FOR WATER PURCHASE PROJECTS AND CONSTRUCTION PROJECTS

- A. The BORROWER must submit a written appraisal or opinion of value from a qualified water rights appraiser supporting the purchase price prior to disbursal of loan funds.
- B. The BORROWER shall pay all of the expenses related to the PROJECT when such bills are due.
- C. The BORROWER shall employ an engineer, registered in the state of Colorado to prepare plans and specifications for the PROJECT.
- D. The BORROWER'S and the Engineering Consultant's Agreements and the plans and specifications must be submitted to the CWCB staff for verification of compliance with the terms of this Contract when available prior to bidding. Any modifications to the plans and specifications must be approved in writing by the CWCB staff.
- E. For plans and specifications for all jurisdictional dams and reservoirs, as defined by § 37-87-105 C.R.S., the BORROWER shall provide a letter of approval from the State Engineer's Office prior to construction.
- F. CWCB staff must be present at bid opening and must approve the award of the construction contract.
- G. The BORROWER shall contract for the construction of the work with responsible and capable Construction Firms, which said Construction Firms shall be selected by the BORROWER and found acceptable by the CWCB staff.
- H. The BORROWER must provide a copy of the executed construction contract documents consisting of the contractor's proposal, construction contract,

performance bond, payment bond, notice of award, notice to proceed, sample change order, and sample field order, as well as the advertisement for bid and bid bond at bidding. After the CWCB staff verifies that these documents comply with the terms of this contract, the BORROWER may issue the notice to proceed to the Construction Firms.

- I. The BORROWER shall conduct a pre-construction conference at which time the CWCB staff shall have the opportunity to review and approve the construction schedule.
- J. If the CWCB staff determines that the PROJECT requires a resident inspector during construction, the BORROWER shall employ an inspector who has been approved by the CWCB staff.
- K. The BORROWER shall construct the PROJECT in accordance with the approved plans and specifications.
- L. Upon completion of the PROJECT construction, the BORROWER shall provide as-built drawings of the PROJECT to the CWCB staff, or, if required by § 37-87-105, C.R.S., the BORROWER shall provide the as-built drawings to the State Engineer's Office for approval and filing.
- M. Upon completion of the PROJECT construction, the BORROWER shall arrange a final inspection for the CWCB staff.

SECTION 8 – ELIGIBLE EXPENSES. The following items are eligible for loan disbursements.

- A. Engineering associated with the feasibility report prepared as a requirement for this loan and associated with evaluating the suitability of the water rights for purchase by the BORROWER.
- B. Interest during completion of the PROJECT pursuant to Paragraph A.4 herein.
- C. Legal services for reviewing engineering services contracts and this Contract.
- D. Purchase of the water rights.
- E. Preparing final designs and specifications for the PROJECT.
- F. Preparing bid and construction contract documents.
- G. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
- H. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.
- I. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.
- J. Actual construction as called for in the design documents and in change orders approved by the CWCB and the BORROWER.
- K. Engineering services for construction management, including design and construction management for CWCB-approved change orders.

- L. Interest during completion of the PROJECT pursuant to Paragraph A.4 of the Contract.
- M. Legal services for reviewing engineering services contracts, reviewing this Contract, reviewing construction contract documents, and for complying with all federal, state, and local regulatory requirements.

SECTION 9 – DISBURSEMENT SCHEDULE

For Project costs, the BORROWER shall prepare a periodic progress report which contains a statement of the PROJECT costs expended for that period and shall forward said statement to the CWCB. After receipt of the periodic progress report from the BORROWER, and review and acceptance of the items therein as eligible expenses as described below, the CWCB will pay to the BORROWER the amount set forth in the report or such portion that has been approved by the CWCB. Such payment shall be made within thirty (30) days from the CWCB's approval of each progress report.

For a water rights purchase, the BORROWER shall prepare a written request for funds that shall describe the upcoming closing on water rights purchase including, but not limited to, the name of the seller, cost, closing date, and appraisal value and support documentation in the form of copies of the sales agreement and the appraisal pursuant to Section 7(a) above. After receipt of the written request from the BORROWER, and review and acceptance of the items therein as eligible expenses as described above, the CWCB will pay to the BORROWER the amount set forth in the request or such portion that has been approved by the CWCB. Such payment shall be made within thirty (30) days from the CWCB's approval of each request.

SECTION 10 – TIME FOR PERFORMANCE

PROJECT Beginning: Upon Effective Date of this Contract (the date this contract is signed by the State Controller or his designee).

PROJECT Finish: Two years from the Effective Date of this Contract

PROMISSORY NOTE

Date: June 21, 2005

Borrower: [REDACTED] of the [REDACTED] Water Conservancy District

Principal Amount: \$20,200,000

Interest Rate: 2.5% per annum

Term of Repayment: 30 years

Loan Contract No.: [REDACTED], dated June 21, 2005

Loan Payment: \$965,108.34

Payment Initiation Date*: _____

Maturity Date*: _____

* Payment Initiation Date and Maturity Date fields are filled in after the project has been substantially completed.

1. FOR VALUE RECEIVED, the BORROWER promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the LOAN CONTRACT and this promissory note.
2. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from Payment Initiation Date (the date the CWCB determines that the project is substantially complete), and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 721, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within 15 calendar days of the due date.
5. This Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
7. This Note is issued pursuant to the LOAN CONTRACT between the CWCB and the BORROWER. The LOAN CONTRACT creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement(s), Deed(s) of Trust, and/or Assignment(s) ("Security

Instruments”) of even date and amount and cover certain revenues, real property, water rights and/or accounts of the BORROWER. The LOAN CONTRACT and Security Instruments grant additional rights to the CWCB.

8. The CWCB shall give the BORROWER written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this Promissory Note.
9. The BORROWER and any co-signer or guarantor hereby agree that if this Note or interest thereon is not paid when due or if suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
10. This Note shall be governed in all respects by the laws of the State of Colorado.

BORROWER: [REDACTED] Water
Conservancy District

(SEAL)

By _____,
[REDACTED], President

Attest:

By _____,
[REDACTED], Secretary

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
[REDACTED] OF THE
[REDACTED] WATER CONSERVANCY DISTRICT**

WHEREAS, the [REDACTED] of the [REDACTED] Water Conservancy District [REDACTED] Counties, Colorado (the "Subdistrict"), is a quasi-municipal corporation and political subdivision of the State of Colorado (the "State"), acting pursuant to the provisions of Article 45 of Title 37, C.R.S. (the "Water Conservancy Act"), and established for the purpose of providing the beneficial use of water, conservation of water and construction of works within the Subdistrict; and

WHEREAS, Subdistrict was authorized, pursuant to a regular election of the qualified electors of the Subdistrict, duly called and held November 2, 2004, to incur indebtedness in the aggregate of \$39,000,000 and to authorize a mill levy not to exceed 9 mills, for the purchase of water rights and the construction of water storage facilities; and

WHEREAS, the Board of Directors of the Subdistrict (the "Board") resolved to seek a loan from the Colorado Water Conservation Board (the "CWCB Loan") in a principal amount not to exceed \$20,200,000.

THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WELL AUGMENTATION SUBDISTRICT OF THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT IN THE COUNTIES OF WELD, ADAMS AND MORGAN, AND THE STATE OF COLORADO:

1. The Board hereby authorizes and directs the Board's President, [REDACTED], and Board's Secretary, [REDACTED], to execute and deliver on behalf of the Subdistrict a Loan Contract, Promissory Note, and Security Agreement and such other documents referenced in the loan commitment to obtain the CWCB Loan.
2. This resolution was authorized by all of the members of the Board at its regular meeting held on June 21, 2005, and will remain in effect until closing of the CWCB loan.
3. This Resolution shall take effect immediately upon its passage. ADOPTED AND APPROVED this 21st day of June, 2005.

[REDACTED] OF THE
[REDACTED] WATER CONSERVANCY
DISTRICT IN WELD, ADAMS AND
MORGAN COUNTIES

[SEAL]

By _____
[REDACTED], President

ATTEST:

By _____
[REDACTED], Secretary

SECURITY AGREEMENT

(PLEDGE OF REVENUES)

DATE: JUNE 21, 2005

DEBTOR: [REDACTED] of the [REDACTED]
Water Conservancy District

SECURED PARTY: COLORADO WATER CONSERVATION BOARD
1313 SHERMAN STREET, ROOM 721
DENVER, CO 80203

PROMISSORY NOTE: \$20,200,000, DATED JUNE 21, 2005

TERMS OF REPAYMENT: 2.5% PER ANNUM FOR 30 YEARS

LOAN CONTRACT: [REDACTED], DATED JUNE 21, 2005

COLLATERAL: All revenues pledged to repay the loan as described in Pledge of Revenues provisions of the LOAN CONTRACT and in the Resolution adopted by the DEBTOR on June 21, 2005.

To secure payment of the loan evidenced by the PROMISSORY NOTE payable in accordance with the TERMS OF REPAYMENT, or until all principal, interest, and late charges, if any, are paid in full, the DEBTOR grants to SECURED PARTY a security interest in the above described COLLATERAL.

DEBTOR EXPRESSLY WARRANTS AND COVENANTS:

1. That except for the security interest granted hereby and any other security interests described in Section 5 of the Loan Contract Project Summary, DEBTOR is the owner of the COLLATERAL free from any adverse lien, security interest or encumbrances; and that DEBTOR will defend the COLLATERAL against all claims and demands of all persons at any time claiming the same or any interest therein.
2. That the execution and delivery of this agreement by DEBTOR will not violate any law or agreement governing DEBTOR or to which DEBTOR is a party.
3. To not permit or allow any adverse lien, security interest or encumbrance whatsoever upon the COLLATERAL and not to permit the same to be attached or replevined.
4. That by its acceptance of the loan money pursuant to the terms of the CONTRACT and by its representations herein, DEBTOR shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the COLLATERAL pursuant to the terms of this agreement.

UNTIL DEFAULT DEBTOR may have possession of the COLLATERAL, provided that DEBTOR keeps the COLLATERAL in an account separate from other revenues of DEBTOR and does not use the COLLATERAL for any purpose not permitted by the CONTRACT. Upon default, SECURED PARTY shall have the immediate right to the possession of the COLLATERAL.

DEBTOR SHALL BE IN DEFAULT under this agreement upon any of the following events or conditions:

- a. default in the payment or performance of any obligation contained herein or in the Promissory Note or Loan Contract;
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against DEBTOR; or
- c. the making or furnishing of any warranty, representation or statement to SECURED PARTY by or on behalf of DEBTOR which proves to have been false in any material respect when made or furnished.

UPON SUCH DEFAULT and at any time thereafter, SECURED PARTY shall have the remedies of a secured party under Article 9 of the Colorado Uniform Commercial Code. SECURED PARTY may require DEBTOR to deliver or make the COLLATERAL available to SECURED PARTY at a place to be designated by SECURED PARTY, which is reasonably convenient to both parties. Expenses of retaking, holding, preparing for sale, selling or the like shall include SECURED PARTY'S reasonable attorney's fees and legal expenses.

The SECURED PARTY shall give the DEBTOR written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the DEBTOR shall be considered in default for purposes of this Security Agreement. No default shall be waived by SECURED PARTY except in writing, and no waiver by SECURED PARTY of any default shall operate as a waiver of any other default or of the same default on a future occasion. The taking of this security agreement shall not waive or impair any other security SECURED PARTY may have or hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this security agreement; but SECURED PARTY shall retain its rights of set-off against DEBTOR. In the event court action is deemed necessary to enforce the terms and conditions set forth herein, said action shall only be brought in the District Court for the City and County of Denver, State of Colorado, and DEBTOR consents to venue and personal jurisdiction in said Court.

All rights of SECURED PARTY hereunder shall inure to the benefit of its successors and assigns; and all promises and duties of DEBTOR shall bind its successors or assigns.

DEBTOR: _____ of the
_____ Water Conservancy
District

By _____,
_____, President

SEAL

ATTEST:
By _____,
_____, Secretary