

BORROWER: PAGOSA AREA WATER &  
SANITATION DISTRICT, ACTING BY AND  
THROUGH ITS WATER ACTIVITY ENTERPRISE  
Contract No. C150261  
Project Amount \$11,105,941  
Loan Service Fee \$111,059  
Loan Amount \$11,217,000

Agency Name: Water Conservation Board  
Agency Number PDA  
Routing Number 09 PDA 00021

## LOAN CONTRACT

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

THIS CONTRACT, made this July 21, 2008, 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 PAGOSA AREA WATER & SANITATION DISTRICT, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, P.O. Drawer 4610, 100 Lyn Avenue, Pagosa Springs, CO 81157 ("BORROWER" OR "CONTRACTOR").

### 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. C150261, Fund Number 424, Appropriation Code L08, Organization YYYY, GBL P261, Program WTRC, Object Code 5560, Reporting Category 0261.
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

**Loan Contract C150261**

Page 1 of 12

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 deferments in excess of 3 per loan, and loan consolidation. Amendments in the course of CWCB business, including, but not limited to, loan payment deferments (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 (the final disbursement of funds 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.
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 a restricted fund in accordance with standard governmental accounting procedures for fund accounting, 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 the BORROWER'S Availability to Tap Fee and 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 and found in compliance with the terms of this section 8.e 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. A certificate of debt service coverage from a Certified Public Accountant shall be provided to the CWCB prior to BORROWER'S issuance of any additional parity debt.
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. To the extent permitted by law, 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 25 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 25 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

[The rest of this page is intentionally left blank.]

## SPECIAL PROVISIONS

The Special Provisions apply to all contracts except where noted in *italics*.

**1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

**2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State 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 permitted by law, Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

**[Applicable Only to Intergovernmental Contracts]** 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, 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. INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

**5. NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

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

**7. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to Intergovernmental Agreements]** The State Controller may withhold payment of certain debts owed to State agencies under the State's vendor offset intercept system for: (a) unpaid child support debts or child support arrearages;

(b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et. seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts certified by the State Controller as owing to the State as a result of final agency determination or judicial action.

**8. 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 federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor 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 this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**9. EMPLOYEE FINANCIAL INTEREST. CRS §24-18-201 and §24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

**10. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract 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 contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**11. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.


Revised May 13, 2008

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

BORROWER: PAGOSA AREA WATER &  
SANITATION DISTRICT, ACTING BY AND  
THROUGH ITS WATER ACTIVITY  
ENTERPRISE

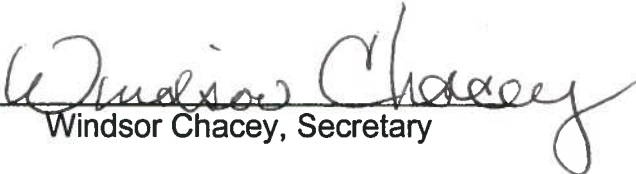
By   
Karen Wessels, President

State of Colorado  
Bill Ritter, Jr., Governor

By   
For the Executive Director  
Department of Natural Resources  
Colorado Water Conservation Board  
Jennifer L. Gimbel, Director

(CORPORATE  
SEAL)

Attest

By   
Windsor Chacey, Secretary

Pre-Approved Form

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.

David J. McDermott, CPA, State Controller

By 

Effective Date 9/18/08

## **Project Summary – PAGOSA AREA WATER & SANITATION DISTRICT – Contract No. C150261**

### **SECTION 1 – BORROWER INFORMATION**

Name: Pagosa Area Water & Sanitation District, Acting By and Through Its Water Activity Enterprise  
Address: P.O. Drawer 4610, 100 Lyn Avenue, Pagosa Springs, CO 81157  
Contact: Carrie Weiss  
Phone Number: (970) 731-2691  
Fax Number: (970) 731-2693  
E-mail address: carrie@pawsd.org  
Type of Entity: The Water Activity Enterprise is an enterprise established by the Pagosa Area Water & Sanitation District by a resolution dated July 13, 1995 pursuant to Article 45.1, Title 37, C.R.S., which resolution is incorporated herein by reference. The Enterprise was formed and is operated as an enterprise within the meaning of Colo. Const. Art. X, Section 20.

### **SECTION 2 – PROJECT DESCRIPTION**

- A. Description of Project: The BORROWER applied to the CWCB for a loan to be used for the land acquisition and initial project development costs for the future Dry Gulch Reservoir site, located in Archuleta County, hereinafter referred to as the PROJECT, at an estimated total cost of \$12,340,000.
- B. Description of Feasibility Study: The CWCB has reviewed a feasibility study report on the PROJECT compiled by Harris Water Engineering, 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**

**Construction Fund:** This loan is made pursuant to the provisions of §§ 37-60-119 and 37-60-120, C.R.S., which authorize the CWCB to loan money for water projects from the CWCB Construction Fund for the benefit of the people of the state; provided that the BORROWER assures repayment of that money.

Section 37-60-122(1)(b) C.R.S, authorizes the CWCB to make loans of up to \$10,000,000 from the CWCB's Construction Fund and the State Severance Tax Trust Fund Perpetual Base Account Fund without prior approval from the General Assembly.

## **Appendix 1 to Loan Contract C150261**

#### **SECTION 4 – BOARD APPROVAL AND LEGISLATIVE AUTHORIZATION (IF NEEDED)**

At its January 2008 meeting, the CWCB approved a loan from the Construction Fund to the BORROWER in an amount up to \$11,217,000 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 3.50% per annum for a repayment term of 30 years.

Pursuant to Bill 1346, the Colorado General Assembly authorized CWCB to loan to the BORROWER an amount up to \$11,217,000 for the PROJECT.

#### **SECTION 5 – SCHEDULE OF EXISTING DEBT**

The BORROWER provides the following list of existing revenue debt as of the date of this contract having a lien on the Pledged Revenues on a parity with the security interest granted pursuant to the Security Agreement appended to the LOAN CONTRACT. A parity certificate for each debt issue subsequent to the oldest existing revenue debt issue can be provided upon request.

- A. Revenue Note No. 0990-006 held by Wells Fargo Brokerage Services, LLC (Contract date of 11/07; Original Amount of \$8,600,000; 1.5 years; Balance Outstanding as of 12/07, \$8,600,000).
- B. Sewer Refunding and Water Improvement Revenue Bonds Series 2006 (Original Amount of \$7,320,000; Balance Outstanding as of 12/07, \$7,260,000).
- C. Sewer Refunding and Water Improvement Revenue Bonds Series 2000 (Original Amount of \$2,950,000 for 15 years of which \$2,085,000 was refunded in the 2006 issue described above and \$520,000 of the original balance remained after the 2006 refunding; Balance Outstanding as of 12/07, \$180,000).
- D. Water Revenue Bonds Series 1998 (Original amount of \$4,815,000 for 14 years; Balance Outstanding as of 12/07, \$2,375,000).
- E. June 12, 2008 Loan Agreement Colorado Water Resources and Power Development Authority (Original amount of \$7,158,870 for 21 years).

#### **SECTION 6 – ADDITIONAL CONDITIONS AND CONTRACT REQUIREMENTS**

- A. If any parcel of land purchased with CWCB loan funds is sold in part (or whole) the proceeds generated from the sale in excess of the expenses of the sale shall be applied to the remaining balance of the CWCB loan within six months of the date of sale. Annual payments shall remain unchanged unless the LOAN CONTRACT is amended as described in the contract documents.
- B. CWCB disbursements for the purchase of the Lavery property shall not be made until an appraisal is performed by a Colorado Certified General Appraiser and submitted to CWCB.

## **Appendix 1 to Loan Contract C150261**

**SECTION 7 – CONSTRUCTION FUND PROGRAM PROCEDURES FOR REAL ESTATE  
PURCHASE PROJECTS**

- A. The BORROWER must submit a written appraisal or opinion of value from a qualified real property appraiser supporting the purchase price prior to disbursement of loan funds.
- B. The BORROWER shall pay all of the expenses related to the PROJECT when such bills are due.

**SECTION 8 – ELIGIBLE EXPENSES FOR REAL ESTATE PURCHASE PROJECTS**

- A. Engineering associated with the feasibility report prepared as a requirement for this loan and associated with evaluating the suitability of the real estate 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 land and water real property rights associated with the PROJECT.
- E. PROJECT-related expenses incurred prior to the Effective Date of this contract in accordance with the legislative approval of this loan.
- F. Pay off existing loan:
  - Revenue Note No. 0990-006
  - Wells Fargo Brokerage Services, LLC
  - NW-8210
  - P.O. Box 1450
  - Minneapolis, MN 55485-8210

**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 loan payoffs: For loan disbursements to payoff existing debt described in Section 8(f), the BORROWER shall provide the CWCB with a request that includes the amount needed to pay in full each existing loan, the loan number and the name and address, of the creditor, and the phone number and name of creditor contact. After review and acceptance of the request,

**Appendix 1 to Loan Contract C150261**

the CWCB will pay to the BORROWER the amount set forth in the request. Payment of said request shall be made within thirty (30) days from the CWCB's approval of said 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. 4 years from the Effective Date of this Contract.

#### **SECTION 11 – ADDITIONAL PROVISIONS**

- A. ***Flow of Funds.*** Notwithstanding any other provision of the LOAN CONTRACT, including, without limitation, Sections A.8. and C.7. thereof: (a) it is hereby acknowledged by the BORROWER and the CWCB that the restricted fund referred to in Section A.8.a. of the LOAN CONTRACT is intended to mean and shall mean the BORROWER's existing Water and Wastewater Enterprise Fund, as that term is used in the resolutions of the governing body of the BORROWER authorizing the obligations of the BORROWER set forth in Section 5 of the Project Summary; and (b) the funding and any replenishment of the Debt Service Reserve Account pursuant to Section A.8. thereof shall be made at the same priority as the funding and replenishment of the debt service reserve accounts established by the BORROWER for payment of the obligations of the BORROWER set forth in Section 5 of the Project Summary and any parity lien obligations consented to by the CWCB pursuant hereto.
- B. ***No obligation of Borrower to levy taxes.*** It is hereby expressly agreed by the Borrower and the CWCB that any obligation set forth in Section A.8.c. of the LOAN CONTRACT to levy taxes or obtain voter approval for the same is not applicable with respect to the LOAN CONTRACT or the BORROWER's obligations thereunder.



# PROMISSORY NOTE

Date: July 21, 2008

Borrower: PAGOSA AREA WATER & SANITATION DISTRICT, ACTING BY  
AND THROUGH ITS WATER ACTIVITY ENTERPRISE

Principal Amount: \$11,217,000

Interest Rate: 3.50% per annum

Term of Repayment: 30 years

Loan Contract No.: C150261, dated July 21, 2008

Loan Payment: \$609,883.23

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 by direct check issued by the BORROWER or by properly authorized transfer of funds from BORROWER to an account designated by the CWCB.
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

## Appendix 2 to Loan Contract C150261

security interests are evidenced by a Security Agreement ("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.

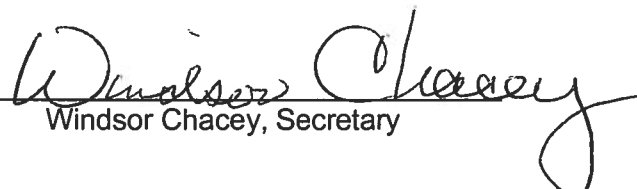
8. The CWCB shall give the BORROWER written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this Promissory Note.
9. The BORROWER and any co-signer or guarantor hereby agree that 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. For purposes of compliance with Section 11-59-110, Colorado Revised Statutes, as amended, and Rule 59-10.3 of the Colorado Division of Securities promulgated thereunder, this Note is issued in a denomination equal to the full principal amount thereof stated above.
11. This Note shall be governed in all respects by the laws of the State of Colorado.

BORROWER: PAGOSA AREA WATER &  
SANITATION DISTRICT, ACTING BY AND  
THROUGH ITS WATER ACTIVITY  
ENTERPRISE

(SEAL)

By   
Karen Wessels, President

Attest:

By   
Windsor Chacey, Secretary

Appendix 3 to Loan Contract C150261

STATE OF COLORADO )  
 )  
 ARCHULETA COUNTY )  
 )  
 PAGOSA AREA WATER AND )  
 AND SANITATION DISTRICT, ) ss.  
 ACTING BY AND THROUGH )  
 ITS WATER ACTIVITY )  
 ENTERPRISE )

I, the Secretary/Treasurer of the Pagosa Area Water and Sanitation District, Archuleta County, Colorado (the "District"), do hereby certify that:

(a) the Board of Directors of Pagosa Area Water and Sanitation District, acting by and through its Water Activity Enterprise, Archuleta County, Colorado (the "District"), met in regular session, pursuant to due notice and call within the boundaries of the District, on July 15, 2008;

(b) notice of such meeting, in the form attached hereto as Exhibit A, was posted in three public places within the District, and at the office of the Clerk and Recorder of Archuleta County, Colorado, respectively, at least three days prior to the meeting, in accordance with law; and

(c) attached hereto as Exhibit B is a true and correct copy of a resolution (the "Resolution") adopted by the Board of Directors of the District, acting as the governing body of the Water Activity Enterprise (as so acting, the "Board") at the regular meeting held on July 15, 2008.

Upon roll call, the members of the Board not marked absent, below, were present, constituting a quorum, and the Resolution was duly introduced, moved, seconded and adopted at such meeting by the affirmative vote of a majority of the members of the Board as follows:

Board Member	Yes	No	Absent	Abstaining
Windsor D. Chacey, Ph.D.	<u>X</u>	_____	_____	_____
Steven B. Hartvigsen	<u>X</u>	_____	_____	_____
Robert A. Huff	<u>X</u>	_____	_____	_____
Harold Slavinski	<u>X</u>	_____	_____	_____
Karen A. Wessels	<u>X</u>	_____	_____	_____

(a) the Resolution was duly approved by the Board, signed by the President of the District, sealed with the District's seal, attested by the Secretary/Treasurer of the District and recorded in the minutes of the Board;

(b) the meeting at which the Resolution was adopted was noticed, and all proceedings relating to the adoption of the Resolution were conducted in accordance with all applicable bylaws, rules, regulations and resolutions of the District, in accordance

with the normal procedures of the District relating to such matters, and in accordance with applicable constitutional provisions and statutes of the State of Colorado;

WITNESS my hand and the seal of the District this 15<sup>th</sup> day of July, 2008.

[SEAL]

By

Wendy Chae  
Secretary/Treasurer

EXHIBIT A

NOTICE  
OF

1. CANCELLATION OF REGULAR MEETING
2. CHANGE IN DATE OF REGULAR MEETING
3. CHANGE IN TIME
4. WORK SESSION

NOTICE IS HEREBY GIVEN THAT the Regular Meeting of the Board of Directors of the Pagosa Area Water and Sanitation District originally scheduled for Tuesday, July 8, 2008, has been cancelled. The meeting has been rescheduled for Tuesday, July 15, 2008. Notice is further provided that the Regular Meeting scheduled at 6:30 p.m. has been changed to 6:00 p.m. The Board of Directors will immediately enter into executive session for the purposes to receive legal advice and discussion of matters subject to negotiations pursuant to Sections 24-6-402(4)(b) and 24-6-402(4)(e), C.R.S. A Work Session is also scheduled for 5:30 p.m. The Work Session and Meeting will be held at the District's administrative offices located at 100 Lyn Avenue, Pagosa Springs, Colorado. The proposed Agenda is as follows:

1. Call to Order
2. Approval of Consent Agenda
  - Minutes – 06/10/08, 06/16/08, and 06/17/08
  - Staff Reports
  - Projects Update
  - Quarterly Consultant Expense Report
  - Investment Report
  - Revised Water Conservation Plan Update
3. Public Comment
4. Presentation of 2007 Financial Statements – Karla Clark, Clark White & Associates, Inc.
5. Report on Enlargement of Stevens Reservoir Project and Consideration of Resolution Authorizing the Purchase of Real Property
6. Consideration of Resolution Approving Loan with Colorado Water Conservation Board and Revised Loan Contract
7. Consideration of Public Outreach and Participation
8. Consideration of Resolution on Calculation of Equivalent Units and Amortization Agreement and Consideration of Equivalent Unit Calculation on Residential Properties
9. Consideration of Affordable Housing Agreements
  - Habitat for Humanity, and Hickory Ridge Apartments, LP
10. Consideration of Request from Housing Solutions for the Southwest for Reduction in Equivalent Units
11. Consideration of Main Line Extension Permits
  - Parkwood Homes, LLC and Merriion Family Limited Partnership (renewals)
  - David Scherer
12. Consideration of Contract with MWH Americas, Inc. for Dry Gulch Reservoir Project
13. Update on Automatic Meter Reading Project and Consideration of Use of Skywerx Internet Service
14. Consideration of Award of Bid for Additional Storage Facilities
15. Consideration of Access Easement to Running Iron Ranch, LLC
16. Consideration of Financial Participation with Cloud Seeding Program
17. Consideration of Request for Contributions
  - United Way
  - Archuleta County Fair Board
18. Consideration of Acquisition of Park Ditch Water Shares
19. Consideration of Memorandum of Understanding with LaPlata Electric Assn., Inc. for Funding and Installation of Sewer Lift Stations in Chris Mountain
20. Report on Sludge Disposal
21. Consideration of Commercial Water Hauling Trucks Obtaining Water from Vista Complex
22. Water and Wastewater Connections Update
23. Any Other Business Brought Before the Board Will Be Duly Considered.

PAGOSA AREA WATER AND SANITATION DISTRICT

By /s/ Carrie S. Weiss

For the Board of Directors

SEAL

EXHIBIT B

A RESOLUTION OF PAGOSA AREA WATER AND SANITATION DISTRICT, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, APPROVING A LOAN BETWEEN THE COLORADO WATER CONSERVATION BOARD AND THE DISTRICT, ACTING BY AND THROUGH THE WATER ACTIVITY ENTERPRISE, FOR THE PURPOSE OF LAND ACQUISITION AND INITIAL PROJECT DEVELOPMENT COSTS FOR THE FUTURE DRY GULCH RESERVOIR SITE; AUTHORIZING THE FORM AND EXECUTION OF A LOAN CONTRACT AND A PROMISSORY NOTE EVIDENCING THE LOAN; PROVIDING FOR REPAYMENT OF THE PROMISSORY NOTE FROM REVENUES OF THE WATER ACTIVITY ENTERPRISE; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, Pagosa Area Water and Sanitation District, Archuleta County, Colorado, is a quasi-municipal corporation duly organized and existing as a water and sanitation district under the constitution and laws of the State of Colorado, including particularly Title 32, Article 1 of the Colorado Revised Statutes ("C.R.S."), and is operating hereunder by and through its Water Activity Enterprise under §37-45.1-101 et seq., C.R.S. (as so operating, the "District"); and

WHEREAS, the District is authorized by Title 32, Article 1, Parts 1 and 10, C.R.S., to supply water for domestic and other public and private purposes by any available means and provide all necessary or proper reservoirs, treatment works and facilities, equipment, and appurtenances incident thereto, and to provide for storm or sanitary sewers, or both, flood and surface drainage, treatment and disposal works and facilities, and all necessary or proper equipment and appurtenances incident thereto; and to fix and from time to time to increase or decrease fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District; and

WHEREAS, the District has heretofore determined and undertaken to acquire and develop certain properties and facilities for the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange or discharge of water or wastewater, which constitute a "water activity enterprise" within the meaning of §37-45.1-102(4), C.R.S. (collectively, as further defined herein, the "System"); and

WHEREAS, the District is authorized by §32-1-1101(1)(d), C.R.S., and §37-45.1-104, C.R.S., to issue revenue obligations authorized by action of the Board of Directors, acting as the governing body of its Water Activity Enterprise (the "Board"), such obligations to be issued in the manner provided in Part 4 of Article 35 of Title 31, C.R.S.; and

WHEREAS, the District operates its System as a "water activity enterprise" pursuant to the provisions of Title 37, Article 45.1, C.R.S.; in addition, the System is a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in Grants, as defined in 37-45.1-102(2), C.R.S., from all Colorado state and local governments combined, and it is hereby determined that the System is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Board has heretofore determined and does hereby determine that it is necessary for the District and its residents and ratepayers to acquire certain land and incur certain

initial project development costs for the future Dry Gulch Reservoir site (collectively, as further defined in the Loan Contract, defined herein, the "Project"); and

WHEREAS, the Board has determined that the need for the Project requires the Board to obtain financing for the Project; and

WHEREAS, in anticipation of obtaining permanent financing for the Project, the District on October 23, 2007 issued its Enterprise Revenue Note, Series 2007 (the "2007 Note"), in the aggregate principal amount of \$8,600,000, to Wells Fargo Brokerage Services, LLC, pursuant to a resolution of the Board adopted on October 15, 2007; and

WHEREAS, the payment of the 2007 Note in accordance with the provisions thereof and of the Loan Contract shall constitute a cost of the Project; and

WHEREAS, on April 15, 2008, the Board adopted a resolution approving the District entering into a loan contract with the Colorado Water Conservation Board (the "CWCB"), subject to certain parameters set forth in such resolution, for the purpose of providing for such permanent financing for the Project; and

WHEREAS, in furtherance thereof and after extended discussions and consultation, the Board has determined and hereby determines that it is in the best interests of the District and its residents and ratepayers that the Project should be financed by the execution and delivery of (a) a Loan Contract dated as of July 21, 2008 (including the Security Agreement and Project Summary appended thereto, the "Loan Contract") between the District and the CWCB and (b) a Promissory Note (the "Note") dated as of July 21, 2008 from the District to the CWCB evidencing the loan (the "Loan") made pursuant to the Loan Contract; and

WHEREAS, the Loan Contract shall create an irrevocable and first lien on the availability of service charge revenue and the net revenue of the System, on parity with that of (a) the 2007 Note, (b) the Governmental Agency Bond dated June 12, 2008 from the District to the Colorado Water Resources and Power Development Authority (the "2008 CWRPDA Bond"), (c) the District's Enterprise Revenue Refunding and Improvement Bonds, Series 2006, (d) the District's Enterprise Revenue Bonds, Series 2000, (e) the District's Water Revenue Bonds, Series 1998 (collectively, the "Prior Parity Obligations"), and (f) any additional Parity Lien Bonds (as defined herein) issued by the District; and

WHEREAS, none of the members of the Board have any potential conflicting interests in connection with the authorization, execution and delivery of the Loan Contract or the Note; and

WHEREAS, the Board desires to authorize the execution and delivery of the Loan Contract and the Note and the approval, execution and delivery of any other documents necessary and appropriate to effectuate the transactions described in this Resolution;

THEREFORE, be it resolved by the Board of Directors of Pagosa Area Water and Sanitation District, Archuleta County, Colorado, acting as the governing body of the District's Water Activity Enterprise:

**Section 1. Definitions.** As used herein, the following capitalized terms shall have the respective meanings set forth below, unless the context indicates otherwise.

*“Adjusted Net Revenue”* means the sum of Net Revenue plus availability of service charge revenue.

*“Board”* means the Board of Directors of the District, acting as the governing body of the Water Activity Enterprise of the District.

*“Capital Improvements”* means the acquisition of land, easements, facilities, and equipment (other than ordinary repairs and replacements), and the design, construction or reconstruction of improvements, betterments, and extensions, for use by or in connection with the System.

*“C.R.S.”* means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

*“CWCB”* means the Colorado Water Conservation Board and any successor thereto.

*“CWRPDA”* means the Colorado Water Resources and Power Development Authority and any successor thereto.

*“District”* means the Pagosa Area Water and Sanitation District, acting by and through its Water Activity Enterprise, Archuleta County, Colorado.

*“Financing Documents”* means, collectively, the Loan Contract and the Note.

*“Gross Revenue”* means all income and revenues directly or indirectly derived by the District from the operation and use of the System, or any part thereof, including without limitation, any rates, fees, plant investment fees, standby charges, availability fees, tolls, and charges for the services furnished by, the use of, or the availability of the System, and all income attributable to any past or future dispositions of property or rights or related contracts, settlements, or judgments held or obtained in connection with the System, its operations or availability, and including investment income accruing from moneys held to the credit of the Water and Wastewater Enterprise Fund; provided however, that there shall be excluded from Gross Revenue any moneys borrowed and used for providing Capital Improvements; any money and securities, and investment income therefrom, in any refunding fund, escrow account, or similar account pledged to the payment of any bonds or other obligations; and any moneys received as grants or appropriations from the United States, the State of Colorado, or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

*“Loan”* means the loan made by the CWCB to the District pursuant to the Loan Contract and evidenced by the Note.

*“Loan Contract”* means the Loan Contract dated as of July 21, 2008 between the District and the CWCB, including the Security Agreement and Project Summary appended thereto.



*"Net Revenue"* means the Gross Revenue after deducting the availability of service charge revenues and Operation and Maintenance Expenses.

*"Note"* means the Promissory Note dated as of July 21, 2008 from the District to the CWCB attached as Appendix 2 to the Loan Contract.

*"Operation and Maintenance Expenses"* means all reasonable and necessary current expenses of the District, paid or accrued, for operating, maintaining, and repairing the System, including without limitation legal and overhead expenses of the District directly related to the administration of the System, insurance premiums, audits, charges of depository banks and paying agents, professional services, salaries and administrative expenses, labor, and the cost of materials and supplies for current operation; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations issued to provide Capital Improvements, and charges for the accumulation of reserves.

*"Parity Lien Bonds"* means, collectively: (a) the Prior Parity Obligations; and (b) one or more series of additional bonds, notes, interim securities, or other obligations having a lien on the Adjusted Net Revenue on a parity with the lien pledged to the CWCB in the Loan Contract that are issued by the District in conformance with the provisions of the Loan Contract, the 2008 CWRPDA Loan Agreement and the resolutions authorizing the Prior Parity Obligations.

*"Prior Parity Obligations"* means, collectively: (a) the 2007 Note; (b) the 2008 CWRPDA Bond; (c) the District's Enterprise Revenue Refunding and Improvement Bonds, Series 2006; (d) the District's Enterprise Revenue Bonds, Series 2000; and (e) the District's Water Revenue Bonds, Series 1998.

*"Project"* is defined in Appendix 1 to the Loan Contract.

*"Reserve Account"* means the debt service reserve account provided for in Section A.8.d. of the Loan Contract.

*"Resolution"* means this Resolution, including any amendments properly made hereto.

*"System"* means all of the District's water and wastewater facilities and properties, now owned or hereafter acquired, whether situated within or without the District boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto, which facilities and properties comprise the District's Water Activity Enterprise.

*"2007 Note"* means the District's Enterprise Revenue Note, Series 2007, issued on October 23, 2007.

*"2008 CWRPDA Bond"* means the Governmental Agency Bond dated as of June 12, 2008 from the District to the CWRPDA.

*"2008 CWRPDA Loan Agreement"* means the Loan Agreement dated as of June 1, 2008 between the District and the CWRPDA pursuant to which the 2008 CWRPDA Bond is issued.

*“Water and Wastewater Enterprise Fund”* means, collectively, the funds of the District designated as the “Water Enterprise Fund” and the “Wastewater Enterprise Fund,” previously established by the District and reaffirmed by the provisions hereof.

**Section 2. Authorization.** In accordance with the Constitution of the State of Colorado, Title 31, Article 35, C.R.S., Title 32, Article 1, C.R.S.; Title 37, Article 45.1, C.R.S., and all other laws of the State of Colorado thereunto enabling, the Loan Contract and the Note are incorporated herein by reference and are hereby approved for the purpose of financing the costs of the Project; the Chairman of the Board and President of the District, the Secretary/Treasurer of the Board and all other appropriate officers of the District are hereby authorized and directed to execute and deliver the Loan Contract and the Note, in substantially the forms made available to the Board, with such changes, not inconsistent herewith, as are approved by the persons executing the same (whose signatures thereon shall constitute conclusive evidence of such approval); and the District is hereby authorized and directed to perform its obligations under the Loan Contract and the Note. The accomplishment of the Project is hereby authorized, approved, and ordered and it is hereby determined that the Note matures at such time not exceeding the estimated life of the Project.

**Section 3. Pledge and Lien for Payment of Note and Amounts Payable Pursuant to Loan Contract.** The principal of and interest on the Note and any other amounts payable pursuant to the Note and the Loan Contract, including, without limitation, amounts required to fund the Reserve Account, the loan service fee payable pursuant to Section A.1. of the Loan Contract, any contract amendment service fees payable pursuant to Section A.2. of the Loan Contract and any late charges payable pursuant to Section 4 of the Note, shall be payable only out of Adjusted Net Revenue. Pursuant to the Loan Contract, the District grants an irrevocable and first lien on the Adjusted Net Revenue, but not an exclusive such lien, for the payment of the Note, and the Adjusted Net Revenue is hereby pledged to the payment of the Note. The Parity Lien Bonds have a lien on the Adjusted Net Revenue which is on a parity with the lien granted pursuant to the Loan Contract. Notwithstanding the foregoing or anything else contained herein, the Note shall have no pledge of or lien or claim on any debt service reserve account created for any Parity Lien Bonds. The CWCB may not look to any general or other fund of the District for the payment of the principal of and interest on the Note or any other such amounts payable under the Loan Contract or the Note, except the Water and Wastewater Enterprise Fund and the Reserve Account, and neither the Note nor the Loan Contract shall constitute a debt or an indebtedness of the District within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the District.

**Section 4. Water and Wastewater Enterprise Fund.** There is hereby reaffirmed the Water and Wastewater Enterprise Fund, which shall be maintained by the District in accordance with the provisions of this Resolution. The District shall apply amounts on deposit in the Water and Wastewater Enterprise Fund as provided in the Loan Contract, the 2008 CWRPDA Loan Agreement and the resolutions authorizing the issuance of the Parity Lien Bonds.

**Section 5. Maintenance of Water Activity Enterprise.** The District hereby further irrevocably covenants and agrees with the CWCB that so long as the Note remains outstanding, the District has established and covenants to continue to maintain the System as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution, and as a “water activity enterprise” within the meaning of Title 37, Article 45.1, C.R.S.; provided, however, after

calendar year 2008 the District may disqualify the System as an "enterprise" in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made by the District in the Financing Documents. In the event that the System is disqualified as an enterprise and the enforceability of the covenants made by the District in the Financing Documents are materially, adversely affected, the District covenants to immediately take all actions necessary to (i) qualify the System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Financing Documents.

**Section 6. Authorization to Execute Documents.** The President and Secretary/Treasurer of the District, the District Manager, and any other duly authorized officer of the District, shall, and they are hereby authorized and directed to, take all actions necessary or desirable to effectuate the provisions of this Resolution, including, but not limited to, the execution of an such certificates and other documents as may be reasonably required by the CWCB or as are necessary and appropriate to effectuate the transactions described in this Resolution. The execution by the President or Secretary/Treasurer of the District, the District Manager or any other duly authorized officer of the District of any document authorized herein shall be conclusive proof of the approval by the District of the terms thereof.

**Section 7. Costs and Expenses.** All costs and expenses incurred in connection with the execution and delivery of the Loan Contract and the Note shall be paid as provided in the Loan Contract, and such moneys are hereby appropriated for that purpose.

**Section 8. Ratification and Approval of Prior Actions.** All actions heretofore taken by the officers and agents of the District and the members of the Board, not inconsistent with the provisions of this Resolution, relating to the authorization, execution and delivery of the Loan Contract and the Note are hereby ratified, approved, and confirmed.

**Section 9. Resolution Irrepealable; Amendments.** After the Note has been executed and delivered by the District, this Resolution shall constitute a contract between the CWCB and the District, and shall be and remain irrepealable until the Note and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 10. Repealer.** All orders, bylaws, and resolutions of the District, or parts thereof, inconsistent or in conflict with this Resolution, are hereby repealed to the extent only of such inconsistency or conflict.


**Section 11. Severability.** If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution, the intent being that the same are severable.

[remainder of page intentionally left blank]

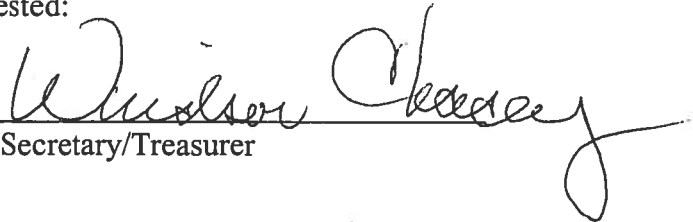
**Section 12. Effective Date.** This Resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED this 15<sup>th</sup> day of July, 2008.

[SEAL]

By   
President

Attested:

By   
Secretary/Treasurer

# SECURITY AGREEMENT

(Pledge of Revenues)

DATE: JULY 21, 2008

DEBTOR: PAGOSA AREA WATER & SANITATION DISTRICT,  
ACTING BY AND THROUGH ITS WATER ACTIVITY  
ENTERPRISE

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

PROMISSORY NOTE: \$11,217,000, DATED JULY 21, 2008

TERMS OF REPAYMENT: 3.50% PER ANNUM FOR 30 YEARS

LOAN CONTRACT: C150261, DATED JULY 21, 2008

COLLATERAL: Those Water Activity Enterprise revenues  
pledged to repay the loan as described in  
Pledge of Revenues provisions of the LOAN  
CONTRACT.

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 on a parity with the liens described in Section 5 of the LOAN CONTRACT Project Summary and any additional liens or other security interests on or in the COLLATERAL that are permitted by SECURED PARTY to be granted by DEBTOR on a parity with said security interest.

## 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 without the prior written consent of SECURED PARTY in accordance with the LOAN CONTRACT.
4. That by its acceptance of the loan money pursuant to the terms of the CONTRACT and by its representations herein, to the extent permitted by law 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, subject to the rights of the holders of the parity liens described in Section 5 of the LOAN CONTRACT PROJECT SUMMARY

## Appendix 4 to Loan Contract C150261

and any additional liens or other security interests on or in the COLLATERAL that are permitted by SECURED PARTY to be granted by DEBTOR on a parity with said security interest.

**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; subject to the rights of the holders of the parity liens described in Section 5 of the LOAN CONTRACT Project Summary and any additional liens or other security interests on or in the Collateral that are permitted by SECURED PARTY to be granted by DEBTOR on a parity with said security interest. 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: PAGOSA AREA WATER & SANITATION  
DISTRICT, ACTING BY AND THROUGH ITS WATER  
ACTIVITY ENTERPRISE

S E A L

By   
Karen Wessels, President

ATTEST:

By   
Windsor Chacey, Secretary