

BORROWER: SHEEK DITCH COMPANY
Contract No. C150200
Original Loan Amount: \$107,627.06
Adjustment (Decrease): \$28,203.98
Adjusted Loan Amount: \$79,423.08

Agency Name: Water Conservation Board
Agency Number PDA

CMS # 43385

LOAN CONTRACT AMENDMENT No. 2

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

This Amendment, made this April 1, 2012, by and between the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board ("CWCB"), and the Sheek Ditch Company, a Colorado nonprofit corporation ("BORROWER" or "CONTRACTOR").

FACTUAL RECITALS

- A. Authority exists in the law, and funds have been budgeted, appropriated, and otherwise made available for payment in Contract Encumbrance Number C150200.
- B. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies.
- C. The CWCB and the BORROWER entered into Contract Encumbrance Number C150200, dated August 8, 2005, and amended February 29, 2008 ("ORIGINAL CONTRACT"), incorporated herein by reference, wherein the CWCB agreed to loan money in the total amount up to \$107,627.06, and the BORROWER agreed to repay the loan in accordance with the terms of the ORIGINAL CONTRACT.
- D. The project financed with the loan proceeds was substantially complete as of March 1, 2007 and the loan was reduced to the actual amount borrowed, which was \$107,627.06. Since that time, the BORROWER has made five annual payments and one principal prepayment and has requested that the annual payment amount be re-amortized to reflect the current principal amount of \$79,423.08 and the remaining 25 year term.
- E. The parties agree to amend the contract to reduce the final loan amount to \$79,423.08 and the loan term to 25 years.

NOW THEREFORE, it is hereby agreed that

- 1. Consideration for this Amendment to the ORIGINAL CONTRACT consists of the payments that shall be made pursuant to this Amendment and ORIGINAL CONTRACT and the promises and agreements herein set forth.
- 2. It is expressly agreed by the parties that this Amendment is supplemental to the ORIGINAL CONTRACT, and all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this Amendment as though they were expressly rewritten, incorporated, and included herein.
- 3. The BORROWER agrees that it shall execute the following document, all of which shall

Loan Contract C150200 Amendment No. 2

set forth the revised loan amount of \$79,423.08 and the loan term of 25 years:

- a. Promissory Note, attached as Appendix A and incorporated herein, which shall replace and supersede the previously amended Promissory Note in the amount of \$107,627.06 dated February 29, 2008, attached to the CONTRACT Amendment No. 1 as Appendix B.
 - b. Amended Security Agreement, attached hereto as Appendix B and incorporated herein, which shall supplement and operate in conjunction with the Security Agreement dated August 8, 2005, and amended February 29, 2008, attached to the ORIGINAL CONTRACT as Appendix 4.
 - c. Amended Deed of Trust, attached hereto as Appendix C and incorporated herein, which shall supplement and operate in conjunction with the Deed of Trust dated August 8, 2005, and amended February 29, 2008, attached to the ORIGINAL CONTRACT as Appendix 5.
4. Except for the SPECIAL PROVISIONS, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the ORIGINAL CONTRACT, the provisions of this Amendment shall in all respects supersede, govern, and control. The SPECIAL PROVISIONS shall always be controlling over other provisions in the contract or amendments. The representations in the SPECIAL PROVISIONS concerning the absence of bribery or corrupt influences and personal interest of STATE employees are presently reaffirmed.
5. **INDEMNIFICATION.** 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.

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SPECIAL PROVISIONS

These 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 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. GOVERNMENTAL IMMUNITY.** 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, protections, 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. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** 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 deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
- 5. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not 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 shall not invalidate the remainder of this contract, to the extent capable of execution.
- 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
- 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain 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 provision, the State may exercise any remedy available at law or in 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/CONFLICT OF 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. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.1), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies 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 owing to the State as a result of final agency determination or judicial action.

11. 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 shall 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.

12. 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.

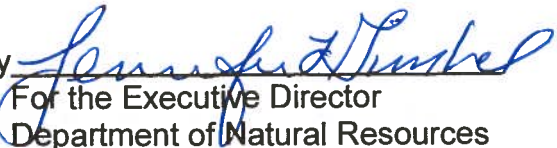
Revised 1-1-09

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

BORROWER: Sheek Ditch Company


State of Colorado

John W. Hickenlooper, Governor

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

(SEAL)

Attest


By 
Mary Jane Gosselin, Secretary -
Treasurer

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 
Susan Borup, DNR Controller
Effective Date 8/30/12

PROMISSORY NOTE

Date: April 1, 2012

Borrower: Sheek Ditch Company

Principal Amount: \$79,423.08

Interest Rate: 2.50% per annum

Term of Repayment: 25 years

Loan Contract No.: C150200, dated August 8, 2005, and amended February 29, 2008 and April 1, 2012

Loan Payment: \$4,310.76

Payment Initiation Date: March 1, 2012

Maturity Date: March 1, 2037

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. This Promissory Note replaces and supersedes the Promissory Note dated February 29, 2008, in the principal amount of \$107,627.06, which Promissory Note had previously replaced and superseded a Promissory Note dated August 8, 2005 in the amount of \$427,200.
3. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from Payment Initiation, 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.
4. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 721, Denver, Colorado 80203.
5. 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.
6. 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.
7. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
8. 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 and Deed of Trust ("Security

Appendix A to Loan Contract C150200 Amendment No. 2

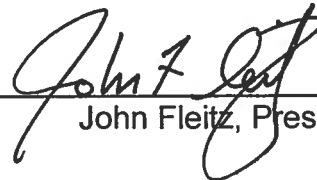
Instruments") of even date and amount and cover certain revenues, real property, water rights and/or accounts of the BORROWER. The LOAN CONTRACT and Security Instruments grant additional rights to the CWCB, including the right to accelerate the maturity of this Note in certain events.

9. If any annual payment is not paid when due or any default under the LOAN CONTRACT or the Security Instruments securing this Note occurs, the CWCB may declare the entire outstanding principal balance of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of 7% per annum from the date of default. 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.
10. 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.
11. This Note shall be governed in all respects by the laws of the State of Colorado.

BORROWER: Sheek Ditch Company

(SEAL)

By



John Fleitz, President

Attest:

By



Mary Jane Gosselin, Secretary - Treasurer

AMENDMENT NO. 2 TO SECURITY AGREEMENT

DEBTOR: SHEEK DITCH COMPANY

SECURED PARTY: COLORADO WATER CONSERVATION BOARD

DATE OF ORIGINAL SECURITY AGREEMENT: AUGUST 8, 2005, AND AMENDED FEBRUARY 29, 2008

Original Promissory Note: \$107,627.06, as amended on February 29, 2008, interest at the rate of 2.50% per annum with annual payment for a period of 30 years or until paid in full.

ORIGINAL LOAN CONTRACT: C150200, DATED AUGUST 8, 2005, AND AMENDED FEBRUARY 29, 2008

1. The Parties have amended the ORIGINAL LOAN CONTRACT and Promissory Note to decrease the loan amount from \$107,627.06 to \$79,423.08, to reduce the loan term to 25 years, and hereby amend the original Security Agreement to document the change of loan amount and repayment term.
2. The Parties expressly agree that this Amendment is supplemental to the Security Agreement and all terms, conditions, and provisions thereof, unless specifically modified below, are to apply to this Amendment as though they were expressly rewritten, incorporated, and included herein.

Amended Loan Contract: C150200, dated April 1, 2012

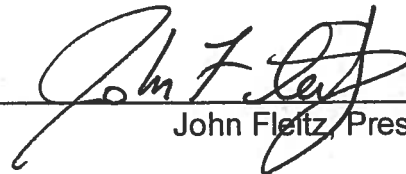
Replacement Promissory Note: \$79,423.08, dated April 1, 2012, interest at the rate of 2.50% per annum with annual payments for a period of 25 years or until paid in full

Date of Amended Security Agreement: April 1, 2012

DEBTOR: Sheek Ditch Company

SEAL

By



John Fleitz, President

ATTEST:

By 
Mary Jane Gosselin, Secretary - Treasurer

Amendment No. 2 to Deed of Trust

Date: April 1, 2012
Grantor (Borrower): Sheek Ditch Company
Beneficiary (Lender): Colorado Water Conservation Board
Date of Deed of Trust: August 8, 2005, amended February 29, 2008
Recording Date of Deed of Trust: 4/28/2006, amended 7/11/2008
County of Recording ("County"): Montezuma
Deed of Trust Recording Information: 539923 (3 pages), amended 557468 (2 pages)
Loan Contract: C150200, dated August 8, 2005 and amended
February 29, 2008 and April 1, 2012
Promissory Note: \$79,423.08, 2.50%, 25 years, April 1, 2012

This Amendment to the Deed of Trust is between the Grantor and the Public Trustee of the County, State of Colorado.

The Original Deed of Trust was recorded to secure repayment of the indebtedness evidenced by Loan Contract and Promissory Note between the Grantor and the Beneficiary.

Grantor and Beneficiary have agreed to amend the Original Deed of Trust to \$79,423.08 to reflect the revised principal and annual loan payment amount, as well as the new loan term of 25 years.

NOW THEREFORE, the CWCB and Grantor agree that:

1. The first full paragraph of the Original Deed of Trust is hereby amended to read as follows:

The Grantor has executed a Promissory Note dated April 1, 2012, to secure the repayment of the indebtedness evidenced by Contract No. C150200 dated August 8, 2005 and amended February 29, 2008 and April 1, 2012, for the total principal sum of \$79,423.08, to be repaid to the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board ("CWCB") the beneficiary herein, whose address is 1313 Sherman Street, Room 721, Denver, CO 80203, payable in 30 annual installments, in accordance with said Promissory Note, or until the loan is paid in full.


2. In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this amendment and any of the provisions of the original deed of trust, the provisions of this amendment shall in all respects supersede, govern, and control.
3. Any provisions of the original deed of trust not expressly modified herein remain in full force and effect.

Appendix C to Loan Contract C150200 Amendment No. 2

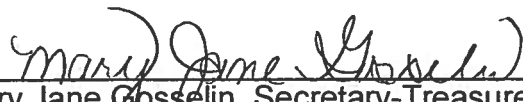
Executed on the date first written above.

GRANTOR: Sheek Ditch Company

(SEAL)

By 
John Fleitz, President

ATTEST:

By 
Mary Jane Gosselin, Secretary-Treasurer

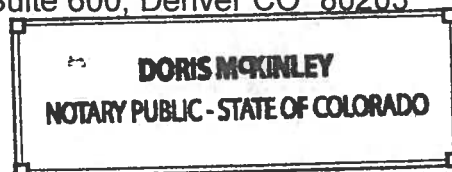
State of Colorado)
County of Montezuma) ss.

The foregoing instrument was acknowledged before me on March 26, 2012, by John Fleitz, as President and Mary Jane Gosselin as Secretary-Treasurer of the Sheek Ditch Company. Witness my hand and official seal.


Notary Public

My commission expires 11-18-13

Return recorded document to: CWCB Finance Section, Attn: Contract Manager, Colorado Water Conservation Board, 1580 Logan Street, Suite 600, Denver CO 80203 (Phone Number 303-866-3441)



INDIVIDUAL ACKNOWLEDGMENT

State/Commonwealth of Colorado
County of Montezuma } ss.

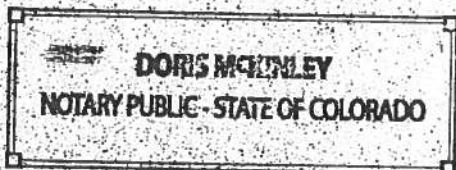
On this the 26 day of March, 2012, before
me, Doris McKinley, the undersigned Notary
Public, personally appeared John Fleitz + Mary Jane Gosselin,
Name(s) of Signer(s)

☐ personally known to me - OR -

☒ proved to me on the basis of satisfactory
evidence

to be the person(s) whose name(s) is/are
subscribed to the within instrument, and
acknowledged to me that he/she/they
executed the same for the purposes therein
stated.

WITNESS my hand and official seal.



Place Notary Seal and/or Any Stamp Above

Doris McKinley
Signature of Notary Public
138 N main Mancos, CO
Other Required Information (Printed Name of Notary, Residence, etc.)

OPTIONAL

Although the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Loan Contract Amend No. 2

Document Date: 3/26/12 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Right Thumbprint
of Signer

Top of thumb here