

AGENCY NAME: Water Conservation Board

AGENCY NUMBER: PDA

ROUTING NUMBER: ~~99 PDA~~

**\$922,000**

## LOAN CONTRACT

THIS CONTRACT, made this 23<sup>rd</sup> day of November 1999, by and between the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board, hereinafter referred to as the CWCB and/or STATE, and the Town of Palisade, hereinafter referred to as the BORROWER and/or CONTRACTOR, 175 E. 3rd Street, P.O. Box 128, Palisade, Colorado 81526.

### 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 payment in Fund Number 424, Organization YYYY, Appropriation 533, Program WTRC, Reporting Category 0006, Object Code 5110, Contract Encumbrance Number **C150006**.
2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to the provisions of §§ 37-60-119 and 37-60-120, C.R.S. (1999), the STATE is authorized to loan money for the construction of water projects for the benefit of the people of the STATE, provided that the borrower assures repayment of that money.
4. The TOWN is a duly constituted statutory town pursuant to § 31-1-203, C.R.S. (1999), located in Mesa County, Colorado.
5. The BORROWER applied to the STATE for a loan to be used for the construction, installation and replacement of the Cottonwood Creek Pipeline, hereinafter referred to as the PROJECT, at an estimated total cost of \$1,242,000.
6. The STATE has reviewed a feasibility study report on the PROJECT compiled by WestWater Engineering (Grand Junction) and Hydrosphere Resource Consultants (Boulder), which is incorporated herein by reference, and, based upon the feasibility report, the STATE determined the PROJECT to be technically and financially feasible.
7. At its November 1994 meeting, the CWCB approved a loan to the BORROWER in the amount of up to \$750,000, not to exceed 75% of PROJECT costs, at an interest rate of 4% per annum for a term of thirty (30) years, to finance a portion of the PROJECT. At its November 1997 meeting, the CWCB approved increasing that loan by \$172,000 to a total of up to \$922,000, not to exceed 75% of PROJECT costs, at an interest rate of 4% per annum for a term of thirty (30) years, to finance a portion of the PROJECT.
8. Pursuant to 1995 Colo. Sess. Laws, Ch. 117, Section 1(1)(13) and to 1998 Colo. Sess. Laws, Ch. 175, Section 3(1), the Colorado General Assembly authorized CWCB to loan to the

BORROWER \$922,000, hereinafter referred to as AUTHORIZED LOAN AMOUNT, at an interest rate of 4% per annum for a term of thirty (30) years for financing PROJECT costs.

9. The BORROWER held an election on November 2, 1999, whereby voters approved increasing the BORROWER's debt by up to \$922,000 to be used to finance the construction, installation and replacement of a water line to the Cottonwood Creek area, as shown on the BORROWER's Official Ballot and Official Election Results, which are incorporated herein by reference.
10. The STATE now desires, by this contract, to loan money to the BORROWER for this PROJECT upon mutually agreeable terms and conditions, subject to the availability of funding for that purpose.

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

A. The BORROWER agrees as follows:

1. **Time for PROJECT completion.** 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 two (2) years of the date of this contract. The time for completion of the PROJECT may be extended subject to the approval of the STATE. The BORROWER must provide, in writing, documented justification for any request for an extension within sixty (60) days prior to the end of the period for completion. The STATE will provide to the BORROWER within thirty (30) days following receipt of the BORROWER's request, a letter of approval or denial of the request for extension of time for completion.
2. **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.
3. **Liability Insurance During Construction.** The BORROWER shall require the CONSTRUCTION FIRM and its subcontractors to maintain, during the term of their contracts for construction of the PROJECT, the following insurance with a company that is satisfactory to the STATE:
  - a. Worker's compensation and employer's liability insurance in the required statutory amounts.
  - b. Automobile liability insurance which 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.
  - c. 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 personal injury.
  - d. Builder's risk insurance for construction in progress for all perils of loss including fire, wind, hail, vandalism, and flood in an amount equal to the completed value of the PROJECT.

Said general liability insurance shall name the BORROWER and the STATE as additional insureds. An additional insured endorsement and a current copy of a certificate of said liability insurance must be provided to the STATE prior to commencement of construction and maintained until construction is complete. No payments shall be made to the BORROWER unless all insurance

certificates are current. The BORROWER shall file notices of renewals of said policies with the STATE as renewals occur.

During the time of construction, the STATE reserves the right to increase the above amount of insurance so that said amounts at a minimum correspond to the amount established by the Colorado Governmental Immunity Act, now and as hereafter amended.

4. **BORROWER'S Indemnification Of The STATE.** The BORROWER shall, without expense or legal liability to the STATE, manage, operate, and maintain the PROJECT continuously in an efficient and economical manner. The BORROWER agrees to indemnify and hold the STATE harmless from any liability incurred by the STATE as a result of the STATE'S interest in the Collateral.
5. **BORROWER'S Liability Insurance.** Upon execution of this contract and continuing until complete repayment of the loan is made to the STATE, the BORROWER shall maintain commercial general liability insurance with a company that is satisfactory to the STATE covering the management, operation, and maintenance of the PROJECT with minimum limits of \$1,000,000 combined single limit for each occurrence and \$2,000,000 general aggregate, including products/completed operations and personal injury.

Said general liability insurance shall name the STATE as additional insured. The BORROWER shall provide the STATE with an Acord Form 27 evidencing said insurance and an additional insured endorsement, and shall provide the STATE with documentation of renewals of said insurance. The STATE will not disburse any loan funds without evidence of said insurance coverage. Throughout the life of this contract, the STATE reserves the right to increase the above amount of insurance so that said amounts at a minimum correspond to the amount established by the Colorado Governmental Immunity Act, now and as hereafter amended.

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. Upon request by the STATE, the BORROWER shall provide proof of such insurance.

6. **BORROWER'S Authority To Contract.** Pursuant to its election held on November 2, 1999, and to its statutory authority, the BORROWER'S Board of Trustees has duly passed an ordinance that constitutes a legislative measure of the BORROWER and is irrevocable for the term of this loan contract, authorizing the BORROWER:
  - a. To enter into and comply with the terms of this contract and the promissory note; and
  - b. To make annual loan payments in accordance with the promissory note; and
  - c. To pledge revenues from the BORROWER'S Utility Fund to repay this loan, and to execute a Security Agreement to convey a security interest to the STATE in the pledged revenues; and
  - d. To set aside sufficient revenues each year to pay the annual installment in a special account, separate and apart from other revenues of the BORROWER, in accordance with the Pledge of Revenues provisions of this contract; and
  - e. To establish a reserve debt service fund in the amount of one annual loan payment, and to replenish that fund anytime it is depleted;

Said ordinance is attached hereto as **Appendix A** and incorporated herein.

7. **Attorney's opinion letter.** Prior to the execution of this contract by the STATE, the BORROWER shall submit to the STATE an opinion from Red Book bond counsel that the contract will be 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; that the election held by the BORROWER to obtain voter approval of this loan met all requirements of the Colorado Constitution or any other state or local law, that the ordinances/resolutions of the BORROWER authorizing the execution and delivery of the contract were duly adopted by the governing body of the BORROWER; that there are no provisions in the Colorado Constitution or any other state or local law that prevent this contract from binding the BORROWER; and that the contract will be valid and binding against the BORROWER if entered into by the STATE.

8. **Promissory Note Provisions.** The Promissory Note setting forth the terms of repayment and evidencing this debt in the amount of up to \$922,000 at an interest rate of 4% per annum for a term of thirty (30) years is attached as **Appendix B** and incorporated herein.
- a. **Final Loan Amount.** In the event that the final loan amount is at least 90% of the AUTHORIZED LOAN AMOUNT, the STATE shall apply the remaining loan funds to reduce the final loan amount and the annual loan payment shall remain the same. If the final loan amount is less than 90% AUTHORIZED LOAN AMOUNT, the State may apply those funds to reduce the final loan amount with the BORROWER'S consent, or the STATE and the BORROWER shall execute a REVISION LETTER, attached hereto as **Appendix C** and incorporated herein, which will establish the final loan amount and amend or replace the loan documents that reflect the final loan amount, including the Promissory Note and Security Agreement. .
- b. **Interest During Construction.** As the loan funds are disbursed by the STATE to the BORROWER during PROJECT completion, interest shall accrue at the rate of 4% per annum. The amount of the interest accrued during PROJECT completion shall be calculated by the STATE and the BORROWER shall repay that amount to the STATE either within ten (10) days after the date the STATE notifies the Borrower of the amount due, or, at the STATE'S discretion, the amount shall be deducted from the final disbursement of loan funds that the STATE makes to the BORROWER.
9. **Warranties.** The BORROWER warrants the following:
- a. By acceptance of the loan money pursuant to the terms of this contract and by its representations herein, the BORROWER shall be estopped from asserting for any reason that the BORROWER is not authorized or obligated to repay the loan money to the STATE as required by this contract.
- b. The BORROWER 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.
- c. The BORROWER has not employed or retained any company or person, other than a bona fide employee working solidly for the BORROWER, to solicit or secure this contract. The BORROWER 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.
10. **Pledge of revenues.** The BORROWER hereby irrevocably pledges to the STATE, for purposes of repayment of this loan, water user fee revenues and any other funds legally available from its Utility Fund in an amount sufficient to pay the annual payment due under this contract ("pledged revenues"). Further, the BORROWER agrees to:

- a. **Keep pledged revenues separate.** The BORROWER shall set aside and keep the pledged revenues in an account separate from other BORROWER revenues, and warrants that these revenues will not be used for any other purpose.
- b. **Security interest in pledged revenues.** To provide a security interest to the STATE in the pledged revenues so that the STATE shall have priority over all other competing claims for said revenues, the BORROWER has duly executed a Security Agreement, attached hereto as **Appendix D** and incorporated herein.
- 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 water rates, charges and fees in amounts sufficient to pay this loan as required by 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 water user fees.
- d. **Debt Service Reserve Account.** THE BORROWER shall deposit an amount equal to one annual loan payment into a separate debt service reserve account on or before the date it executes this contract.
- 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 or additional subordinate debt only with the prior written approval of the STATE, 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 STATE a Parity Certificate from an independent certified public accountant certifying that, based on an analysis of the BORROWER'S revenues, excluding tap and/or connection fees, 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 at least the 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.

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

11. **Annual Statement of Debt Coverage.** Each year during the term of this contract, the BORROWER shall submit to the STATE an annual audit report and a certificate of debt service coverage from a Certified Public Accountant.
12. **Collateral during repayment.** The BORROWER shall not convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the revenues pledged herein to repay this

loan, 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 STATE. In the event of any such transfer or encumbrance without the STATE's written concurrence, the STATE may at any time thereafter declare all outstanding principal and interest on this loan immediately due and payable.

13. **Remedies for default.** Upon default in the payments herein set forth to be made by the BORROWER, or default in the performance by the BORROWER of any covenant or agreement contained herein, the STATE, at its option, may (a) declare the entire principal amount and accrued interest then outstanding immediately due and payable; (b) exercise its rights under this contract, the Promissory Note, and/or the security agreement; (c) take any other appropriate action.

All remedies described herein may be simultaneously or selectively and successively enforced. The provisions of this contract may be enforced by the STATE 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 STATE to ensure compliance with provisions of this contract and the laws and regulations under which this contract is executed. The STATE'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.

14. **In event of a conflict.** In the event of conflict between the terms and conditions as set forth in the any of the appendices, the provisions of this contract shall control.

15. **Periodic inspections.** Throughout the term of this contract, the BORROWER shall permit a designated representative of the STATE to make periodic inspections of the PROJECT. Such inspections are solely for the purpose of verifying compliance with the terms and conditions of this contract. Furthermore, such inspections shall cover the condition of the PROJECT, operating records, maintenance records, and financial records, and shall not be construed nor interpreted as an approval of the actual design and/or construction of any element of the PROJECT facilities.

16. **Adhere to 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.

17. **Progress Reports.** 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 State.

18. **Construction Fund Program Procedures.** The Borrower shall follow such procedures as shown on the Construction Fund Program Procedures attached hereto as **Appendix E** and incorporated herein.

B. The STATE agrees as follows:

1. **Agreement to loan money.** The STATE agrees to loan to the BORROWER up to \$922,000 at an interest rate of 4% per annum for a term of thirty (30) years to finance PROJECT costs.
2. **Disbursements.** 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 STATE will pay to the BORROWER the amount set forth in the report or such portion that has been approved by the STATE. Such payment shall be made within thirty (30) days from the STATE's approval of each progress report.



3. **Release after loan is repaid.** Upon completion of repayment to the STATE of the entire principal, all accrued interest, and late charges, if any, as specified in the promissory note, the STATE agrees to execute a release of security agreement to terminate all of the STATE'S rights in and to the pledged revenues and a release of deed of trust to terminate all of the STATE'S right, title and interest in and to the COLLATERAL.
- C. The STATE and the BORROWER mutually agree as follows:
1. **Designated agent of the STATE.** The CWCB, which includes its agents and employees, is hereby designated as the agent of the STATE for the purpose of this contract.
  2. **Contract is not assignable.** This contract is not assignable by the BORROWER except with the prior written approval of the STATE.
  3. **Contract relationship.** The parties to this contract intend that the relationship between them contemplated by 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 STATE. The BORROWER will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, engineering firms, construction firms, and subcontractors during the performance of this contract.
  4. **Complete integration of all understandings.** This agreement 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.
  5. **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.
  6. **Eligible expenses.** PROJECT costs eligible for financing by the STATE shall be limited to 75% of the cost of:
    - a. Preparing final designs and specifications for the PROJECT.
    - b. Preparing bid and construction contract documents.
    - c. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
    - d. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.
    - e. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.
    - f. Actual construction as called for in the design documents and in change orders approved by the STATE, the BORROWER, the CONSULTANT and the CONSTRUCTION FIRM.
    - g. Engineering services for construction management, including design and construction management for STATE-approved change orders.
    - h. Legal services for reviewing engineering services contracts, reviewing this contract, reviewing construction contract documents, and for complying with all federal, state, and local regulatory requirements.
  7. **STATE may release contract at its option.** In its sole discretion, the STATE may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of the

BORROWER'S obligations under this contract, with valuable consideration, upon such terms and conditions as the STATE may determine to be:

- a. advisable to further the purposes of this contract or to protect the STATE'S financial interest therein, and
  - b. consistent with both the statutory purposes of this contract and the limitations of the statutory authority under which it is made.
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. Any net proceeds remaining after such work has been completed shall be paid to the BORROWER. If the net 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.
9. **Services of PROJECT available without discrimination.** The BORROWER shall make the services of said PROJECT available within its capacity to all qualified persons in the BORROWER'S service area without discrimination as to race, color, religion, or natural origin at reasonable charges (including assessments, taxes, or fees), whether for one or more classes of service, in accordance with a schedule of such charges formally adopted by the BORROWER through their ordinances or resolutions.
10. **Captions.** That 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.
11. **STATE'S approval.** This contract requires review and approval of plans, specifications, and various other technical and legal documents. The STATE'S review of these documents is only for the purpose of verifying the 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 STATE on any such documents, the BORROWER and its CONSULTANT, in preparing any such documents shall be solely responsible for the accuracy and completeness of any of said documents.
12. **Addresses for mailing.** All notices, correspondence, or other documents required by this contract shall be delivered or mailed to the following addresses:

For the STATE:

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

For the BORROWER:

Town of Palisade  
Attn: Town Administrator  
P.O. Box 128  
Palisade, CO 81526-0128

- D. **SPECIAL PROVISIONS (6/97 version).** State Fiscal Rule 3-1 requires the inclusion of these Special Provisions in every STATE contract, including grants.



#### **Controller's Approval**

1. This contract shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado or such assistant as he may designate. This provision is applicable to any contract involving the payment of money by the STATE.

#### **FUND AVAILABILITY**

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

#### **BOND REQUIREMENT**

3. If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this STATE, the CONTRACTOR shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the STATE official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the CONTRACTOR or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provendor or other supplies used or consumed by such CONTRACTOR or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the CONTRACTOR arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with C.R.S. 38-26-106.

#### **INDEMNIFICATION**

4. To the extent authorized by law, the 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 incurred as a result of any act or omission by the CONTRACTOR, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

#### **DISCRIMINATION AND AFFIRMATIVE ACTION**

5. The CONTRACTOR agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (C.R.S. 24-34-402), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. *Pursuant thereto, the following provisions shall be contained in all STATE contracts or sub-contracts.*

During the performance of this contract, the CONTRACTOR agrees as follows:

- a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, martial status, religion, ancestry, mental or physical handicap, or age. The CONTRACTOR will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer, recruitment or recruitment advertisings; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.
- b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, martial status, religion, ancestry, mental or physical handicap, or age.

- c. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the CONTRACTOR's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and of the rules, regulations, and relevant Orders of the Governor.
- d. The CONTRACTOR and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- e. A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment of work opportunity because of race, creed, color, sex, national origin, or ancestry.
- f. A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this contract to be discriminatory or obstruct or prevent any person from complying with the provisions of this contract or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this contract to be discriminatory.
- g. In the event of the CONTRACTOR's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further STATE contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations, or orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.
- h. The CONTRACTOR will include the provisions of paragraphs (a) through (h) in every sub-contract and subcontractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any sub-contracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation, with the subcontractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

#### **COLORADO LABOR PREFERENCE**

- 6. a. Provisions of C.R.S. 8-17-101 & 102 for preference of Colorado labor are applicable to this contract if public works within the State are undertaken hereunder and are financed in whole or in part by State funds.
- b. When construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a non-resident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the non-resident bidder is a resident. If it is determined by the officer responsible for awarding the bid that compliance with this subsection .06 may cause denial of federal funds which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements (C.R.S. 8-19-101 and 102).

#### **GENERAL**

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

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

8. At all times during the performance of this contract, the CONTRACTOR shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.
9. Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.
10. The signatories aver that they are familiar with C.R.S. 18-8-301, et seq., (Bribery and Corrupt Influences) and 18-8-401, et seq., (Abuse of Public Office), and that no violation of such provisions is present.
11. The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the day first above written.

CONTRACTOR: Town of Palisade, Colorado

By   
Dean Smith, Mayor


Federal ID Number: 84-6000708

Attest (Seal)

By   
Vivian Louve, Town Clerk



State of Colorado  
Bill Owens, Governor

By   
For the Executive Director  
DEPARTMENT OF NATURAL RESOURCES  
Colorado Water Conservation Board  
Peter H. Evans, Director

#### APPROVALS

ATTORNEY GENERAL

By   
KEN SALAZAR  
ATTORNEY GENERAL

  
JAMES E. MARTIN, JR.  
ASSISTANT ATTORNEY GENERAL  
STATE SERVICES SECTION

STATE CONTROLLER

By   
ARTHUR L. BARNHART



ORDINANCE NO. 827  
SERIES 1999

AN ORDINANCE APPROVING A LOAN FROM THE COLORADO WATER CONSERVATION BOARD IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$922,000; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN CONTRACT, A PROMISSORY NOTE TO EVIDENCE SUCH LOAN, AND A SECURITY AGREEMENT IN CONNECTION THEREWITH; AUTHORIZING THE CONSTRUCTION OF A PROJECT; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Palisade, in the County of Mesa and State of Colorado (the "Town"), is a statutory Town duly existing under the Constitution and laws of the State of Colorado, more particularly Title 31, Colorado Revised Statutes ("C.R.S."); and

WHEREAS, the members of the Board of Trustees of the Town (the "Board") have been duly elected and qualified; and

WHEREAS, at an election held in the Town on November 2, 1999 (the "Election"), the Board was authorized to contract indebtedness in an aggregate amount not exceeding \$922,000 pursuant to the following ballot question:

SHALL THE TOWN OF PALISADE DEBT BE INCREASED \$922,000 WITH A REPAYMENT COST OF \$1,599,581 FOR THE PURPOSE OF CONSTRUCTING, INSTALLING AND REPLACING A WATER LINE TO THE COTTONWOOD CREEK AREA; SUCH DEBT BEING REPAID BY WATER USE FEES AND OTHER AVAILABLE FUNDS OVER A PERIOD OF 30 YEARS; SUCH DEBT TO BE EVIDENCED BY A LOAN FROM THE COLORADO WATER CONSERVATION BOARD WITH AN INTEREST RATE NOT TO EXCEED 4%; AND SHALL THE PROCEEDS OF SUCH DEBT AND THE INVESTMENT INCOME THEREON CONSTITUTE A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

WHEREAS, the Town has not issued any of the debt authorized at the Election; and

WHEREAS, the Board has heretofore determined that the interest of the Town and the public interest and necessity demand and require the acquisition, construction, and completion of certain water facilities, at a cost of approximately \$1,242,000, including design, engineering, legal, financing and administrative costs relating thereto, and any other costs incidental thereto (the "Project"); and

WHEREAS, the Board has determined that in order to finance a portion of the Project, it is necessary and advisable and in the best interests of the Town to enter into a loan contract (the "Loan Contract") with the Colorado Water Conservation Board (the "Water Board"), a body corporate and political subdivision of the State of Colorado, pursuant to which the Water Board shall loan the Town an amount of not to exceed \$922,000 (the "Loan") for such purposes; and

WHEREAS, the Town's repayment obligations under the Loan Contract shall be evidenced by a promissory note (the "Note") to be issued by the Town to the Water Board; and

WHEREAS, the Board hereby determines to use the proceeds of the Loan to effect the Project; and

WHEREAS, pursuant to Section 31-35-402, C.R.S., the Town is authorized to issue revenue bonds payable solely from the revenues of its water system (the "System"); and

WHEREAS, the Note, the Loan Contract, and the security agreement executed in connection with the Loan Contract (the "Security Agreement") (collectively, the Note, the Loan Contract, and the Security Agreement shall be referred to herein as the "Financing Documents") shall be revenue obligations of the Town, payable from the net revenues of the System; and

WHEREAS, there have been presented to the Board the forms of the Financing Documents; and

WHEREAS, the Board desires to approve the forms of the Financing Documents and authorize the execution thereof; and

WHEREAS, pursuant to Section 31-16-106, C.R.S., the Board may pass an emergency ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF PALISADE, COLORADO:

Section 1. Approvals, Authorizations, and Amendments. The forms of the Financing Documents presented at this meeting are incorporated herein by reference and are hereby approved. The Town shall enter into and perform its obligations under the Financing Documents in the forms of such documents, with such changes as are not inconsistent herewith. The Mayor and Town Clerk are hereby authorized and directed to execute the Financing Documents and to affix the seal of the Town thereto, and further to execute and authenticate such other documents or certificates as are deemed necessary or desirable in connection therewith. The Financing Documents shall be executed in substantially the forms approved at this meeting. The execution of any instrument or certificate or other document in connection with the matters referred to herein by the Mayor and Town Clerk or by other appropriate officers of the Town, shall be conclusive evidence of the approval by the Town of such instrument.

Section 2. Loan Details. The Loan shall be in the principal amount of not to exceed \$922,000, shall bear interest at a net effective interest rate not to exceed 4.00% per annum, and shall have a maximum maturity of not to exceed thirty (30) years from the date the Water Board determines that the Project is substantially complete, as provided in the Loan Contract, and shall be payable in the time and manner, and shall be subject to prepayment, as set forth in the Financing Documents. The Town shall execute and deliver to the Water Board the Note pursuant to the Loan Contract as evidence of the Loan repayments. The Town shall execute and deliver to the Water Board the Security Agreement pursuant to the Loan Contract as security for the Loan repayments.

Section 3. Limited Obligation; Special Obligation. The Financing Documents are payable solely from the Pledged Revenues (as defined in the Loan Contract).

No elected or appointed officers or agents of the Town shall be subject to any pecuniary liability in connection with any contract, covenant, or undertaking by the Town, or by them, contained in any document executed in connection with the authorization, execution, and delivery of the Financing Documents or this Ordinance or with respect to any action taken or omitted to be taken in good faith with reference thereto.

Section 4. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied to pay the costs and expenses of acquiring, constructing and equipping the Project, including costs related thereto and reimbursement to the Town for capital expenditures



heretofore incurred and paid from Town funds in anticipation of the incurrence of long-term financing therefor, and all other costs and expenses incident thereto, including without limitation the costs of obtaining the Loan. The Water Board shall not be responsible for the application or disposal by the Town or any of its officers of the funds derived from the Loan. In the event that all of the proceeds of the Loan are not required to pay such costs and expenses, any remaining amount shall be used for the purpose of paying the principal amount of the Loan and the interest thereon.

Section 5. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan is not less than the final maturity of the Loan.

Section 6. Declaration of Emergency and Effective Date. In order to execute the Financing Documents while favorable market conditions exist, it is hereby declared that an emergency exists and that this ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the Town. The Ordinance shall be effective upon final adoption.

Section 7. Direction to Take Authorizing Action. The appropriate officers of the Town and members of the Board are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to such certificates and affidavits as may reasonably be required by the Water Board.

Section 8. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and members of the Board, not inconsistent with the provisions of this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 9. Severability. If any section, paragraph, clause, or provision of this Ordinance 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 Ordinance, the intent being that the same are severable.

Section 10. Repealer. All orders, resolutions, bylaws, ordinances or regulations of the Town, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 11. Ordinance Irrepealable. After the Note is issued, this Ordinance shall constitute an irrevocable contract between the Town and the Water Board, and shall be and remain irrepealable until the Note and the interest thereon shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, charter, ordinance, resolution or other measure enacted after the issuance of the Note shall in any manner be construed as impairing the obligations of the Town to keep and perform the covenants contained in this Ordinance.

Section 12. Recordation. A true copy of this Ordinance, as adopted by the Board, shall be numbered and recorded on the official records of the Town and its adoption and publication shall be authenticated by the signatures of the Mayor and the Town Clerk, and by a certification of publication.

INTRODUCED AND FINALLY ADOPTED AS AN EMERGENCY ORDINANCE  
and ordered published in full at a regular meeting of the Board of Trustees of the Town of Palisade,  
Colorado on November 23, 1999.

(SEAL)

ATTEST:

  
  
Town Clerk

  
Mayor

STATE OF COLORADO           )  
  )  
COUNTY OF MESA            ) SS.  
  )  
TOWN OF PALISADE            )

I, Vivian Touve, Town Clerk of the Town of Palisade, Colorado (the "Town"), do hereby certify:

1. The foregoing is a true and correct copy of an ordinance (the "Ordinance") introduced and finally adopted on first reading by the Board at the regular meeting of the Board of Trustees of the Town ("Board") on November 23, 1999. A quorum of the Board was in attendance at this meeting.

2. The adoption of the Ordinance was duly moved and seconded and the Ordinance was adopted by an affirmative vote of not less than five members of the Board at the regular meeting of the Board on November 23, 1999 as follows:

Those Voting Aye:

Geraldine Burdick  
Richard Mathews  
Tom Flanagan  
Dean Smith  
Richard Sketcher  
Dee Gerber  
Rick McKay

Those Voting Nay:

-none-

Those Absent:

-none-

Those Abstaining:

-none-

3. The Ordinance was approved and authenticated by the signature of the Mayor, sealed with the Town seal, attested by the Town Clerk and recorded in the minutes of the Board.

4. The Ordinance was published in full in the *Palisade Tribune* and attached hereto as Exhibit B is an affidavit of publication of the Ordinance.

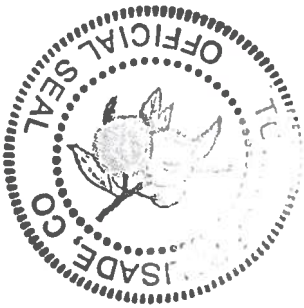



5. Notice of the meeting of the Board was duly given to the Mayor and each member of the Board and was duly posted in the Town at least 24 hours prior to the meeting. A true and correct copy of such notice is attached hereto as Exhibit A.

6. There are no bylaws or rules of the Board which would prevent the adoption of the Ordinance as an emergency ordinance.

IN WITNESS WHEREOF, I have hereto set my hand and the seal of the Town this 23<sup>rd</sup> day of November, 1999.

(SEAL)



  
\_\_\_\_\_  
Town Clerk

**PAYED  
IN FULL**

EXHIBIT A

(attach notice of meeting)

-next page-

PAID  
IN FULL

**TOWN OF PALISADE COLORADO**  
**A G E N D A**  
**MEETING OF THE BOARD OF TRUSTEES**  
**November 23, 1999**

7:30 p.m.      Call to Order  
                    Pledge of Allegiance  
                    Roll Call

**APPROVAL OF AGENDA:**

**CONSENT ITEM AGENDA**

- Minutes of November 9, 1999 regular meeting

**PROPOSED EXPENDITURES**

**OLD BUSINESS:**

Agenda Item 1 - Consideration of Ordinance 827, Series 1999 - emergency ordinance approving the Cottonwood Water Line loan.

Agenda Item 2 - Discussion of sight impairment at intersections.

**NEW BUSINESS:**

Agenda Item 3 - Regional Transportation Planning Commission - Consideration of adoption of their 20/20 Regional Plan.

**REPORTS**

- Committees
- Town Administrator Report
- Town Clerk/Treasurer

**PUBLIC COMMENTS**

**ADJOURNMENT**

*Posted @ Town Hall  
Bulletin Board  
11-17-99  
AJR*



EXHIBIT B

(attach affidavit of publication)

PAID  
IN FULL

Serving the East Grand Valley for 97 Years

50¢

# Palisade Tribune & Valley Report



Number 47

Thursday, November 18, 1999

To subscribe, call 970-464-5614

*Palisade Tribune*

## TOWN OF PALISADE, COLORADO AGENDA (DRAFT)

Regular Meeting Board of Trustees • November 23, 1999  
7:30 p.m. Call to Order • Pledge of Allegiance • Roll Call

### APPROVAL OF AGENDA

CONSENT ITEM AGENDA: Minutes of November 9, 1999  
regular meeting.

### PROPOSED EXPENDITURES

OLD BUSINESS: Consideration of Ordinance 827, Series 1999, emergency ordinance approving the Cottonwood Water Line loan; Discussion of sight impairment at intersections.

NEW BUSINESS: Regional Transportation Planning Commission - Consideration of adoption of the 20/20 Regional Plan.

REPORTS: Committees; Town Administrator, Town Clerk.

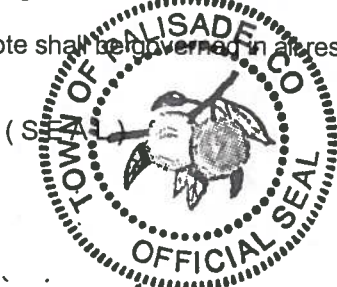
PUBLIC COMMENTS • ADJOURNMENT

# Promissory Note

Date November 23, 1999

Date of Substantial Completion October 1, 2000

1. FOR VALUE RECEIVED, the Town of Palisade, Colorado ("BORROWER") promises to pay the State of Colorado Water Conservation Board ("STATE"), the principal sum of \$922,000 plus interest at the rate of four percent (4%) per annum for a term of thirty (30) years from the date of the first payment as set forth in paragraph 2 herein, pursuant to Loan Contract No. C150006 ("LOAN CONTRACT").
2. The first payment of \$53,319.35 shall be due one year from the date that the State determines that the project is substantially complete, and annually thereafter on that date until the entire principal sum, all accrued interest, and all late charges, if any, shall have been paid in full.
3. Payments shall be made payable to the Colorado Water Conservation Board and mailed to 1313 Sherman Street, Room 721, Denver, Colorado 80203.
4. If the STATE does not receive the annual payment within 15 calendar days of the due date, the State may impose a late charge in the amount of 5% of the annual payment.
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 STATE and the BORROWER. The LOAN CONTRACT creates security interests in favor of the STATE to secure the prompt payment of all amounts that may become due hereunder. The security interests, evidenced by a Security Agreement, cover certain revenues of the BORROWER. The LOAN CONTRACT and Security Agreement grant additional rights to the STATE, including the right to accelerate the maturity of this Note in certain events.
8. If any annual payment is not paid when due or any default under the LOAN CONTRACT or the Security Agreement occurs, the STATE 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 STATE 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, any guarantor, and any other person who is now or may hereafter become primarily or secondarily liable for the payment of this Note or any portion thereof hereby agree that if this Note or interest thereon is not paid when due or suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
10. This Note shall be governed in all respects by the laws of the State of Colorado.



Attest:

By

*Vivian Touve*

Vivian Touve, Town Clerk

BORROWER: Town of Palisade, Colorado

By

*Dean Smith*  
Dean Smith, Mayor



**REVISION LETTER  
FOR CWCB LOAN CONTRACTS**

Date:

BORROWER NAME  
ADDRESS

Subject: Loan Contract C1500XX

The Colorado Water Conservation Board ("State") and the X ("Borrower") entered into Loan Contract Encumbrance No. C1500XX ("Loan Contract"), dated X, 19XX, for a loan in the amount of \$X. The total amount of the loan disbursed by the State to the Borrower is \$X.

Therefore, pursuant to the Promissory Note Provisions of said Loan Contract, the parties agree to replace and/or amend the following documents that convey a security interest to the State under said Loan Contract to reflect a final loan amount of \$X.

- Appendix X – Promissory Note (Replace)
- Appendix X – Security Agreement (Amend)

Borrower:

By \_\_\_\_\_  
Name, President

( S E A L )

Attested

By \_\_\_\_\_  
Name, Corporate Secretary

STATE OF COLORADO:  
Bill Owens, Governor

By \_\_\_\_\_  
For the Executive Director  
Colorado Water Conservation Board  
Peter H. Evans, Director

## SECURITY AGREEMENT

DEBTOR: Town of Palisade  
P.O. Box 128  
Palisade, CO 81526-0128

FEDERAL TAX NUMBER: 84-6000708

COUNTY: MESA

SECURED PARTY: State of Colorado - Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, CO 80203

DEBTOR, for consideration, hereby grants to SECURED PARTY a security interest in the following property and any and all additions, accessions and substitutions thereto or therefor, hereinafter called the COLLATERAL: Revenues from DEBTOR'S Utility Fund pledged to repay the indebtedness on the amount loaned to DEBTOR by SECURED PARTY, as described in pledge of revenues provisions in contract No. C150006 (CONTRACT).

To secure payment of the indebtedness evidenced by a certain Promissory Note between the above named parties in the amount of \$922,000.00 at an interest rate of 4% per annum for a term of 30 years, payable by DEBTOR to the SECURED PARTY until all principal, interest, and late charges, if any, are paid in full in accordance with said Promissory Note.

### DEBTOR EXPRESSLY WARRANTS AND COVENANTS:

1. That except for the security interest granted hereby, DEBTOR is, or to the extent that this agreement states that the COLLATERAL is to be acquired after the date hereof, will be, 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 anytime 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. That by its acceptance of the loan money pursuant to the terms of the CONTRACT and by its representations herein, DEBTOR shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the COLLATERAL pursuant to the terms of this agreement.
4. 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.
5. That the DEBTOR will not use the COLLATERAL in violation of any applicable statutes, regulations, ordinances, articles of incorporation or by-laws.

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

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

- a. default in the payment or performance of any obligation, covenant or liability contained or referred to herein or in any note evidencing the same;

## Appendix D to Loan Contract C150006

- b. 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;
- c. loss, theft, damage, destruction, sale or encumbrance to or of any of the COLLATERAL, or the making of any levy seizure or attachment thereof or thereon;
- d. 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 any guarantor or surety for DEBTOR.

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

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 said 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 said SECURED PARTY shall retain its rights of set-off against DEBTOR.

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 heirs, executors or administrators or its successors or assigns. If there be more than one DEBTOR, their liabilities hereunder shall be joint and several.

Dated this 23<sup>rd</sup> day of November 1999.

(SEAL)

ATTEST:

By

Vivian Toure  
Vivian Toure, Town Clerk

DEBTOR: Town of Palisade, Colorado

By

Dean Smith  
Dean Smith, Mayor



## **CONSTRUCTION FUND PROGRAM PROCEDURES**

The Borrower shall follow the following procedures during the construction phase of the Project.

1. The BORROWER shall employ an engineer, registered in the State of Colorado, hereinafter referred to as the CONSULTANT, to prepare plans and specifications for the PROJECT.
2. The agreement between the BORROWER and the CONSULTANT and the plans and specifications must be submitted to the CWCB staff for verification of compliance with the terms of this contract prior to bid opening. Any modifications to the plans and specifications must be approved in writing by the CWCB staff.
3. CWCB staff must be present at bid opening and must approve the award of the construction contract.
4. The BORROWER shall contract for the construction of the work with responsible and capable firms, hereinafter referred to as CONSTRUCTION FIRMS, which CONSTRUCTION FIRMS shall be selected by the BORROWER and found acceptable by the CWCB staff before work under this contract begins.
5. The BORROWER must provide a copy of the executed construction contract documents consisting of the advertisement for bid, contractor's proposal, construction contract, bid bond, performance bond, payment bond, notice of award, notice to proceed, sample change order, and sample field order. After the CWCB staff verifies that these documents comply with the terms of this contract, the BORROWER may issue the notice to proceed to the CONSTRUCTION FIRMS.
6. The BORROWER shall conduct a pre-construction conference at which time the CWCB staff shall have the opportunity to review and approve the construction schedule.
7. If the CWCB staff determines that the PROJECT requires a resident inspector during construction, the BORROWER shall employ an inspector who has been approved by the CWCB staff.
8. The BORROWER shall construct the PROJECT in accordance with the approved plans and specifications.
9. Upon completion of the PROJECT construction, the BORROWER shall provide as-built drawings of the PROJECT to the CWCB staff, and, if required by § 37-87-105, C.R.S. (1999), the BORROWER shall provide the same drawings to the State Engineer's Office for approval and filing.
10. Upon completion of the PROJECT construction, the BORROWER shall arrange a final inspection for the CWCB staff, CONSTRUCTION FIRM, and the CONSULTANT.