

BORROWER: THUNDERBIRD WATER AND
SANITATION DISTRICT
Contract No. C150320
Project Amount \$315,000
Loan Service Fee \$3,150
Loan Amount \$318,150

Agency Name: Water Conservation Board
Agency Number PDA

CMS# 37039

LOAN CONTRACT

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

THIS CONTRACT, made this 8th day of September 2011, by and between the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board ("CWCB" or "STATE"), and the Thunderbird Water and Sanitation District ("BORROWER").

FACTUAL RECITALS

1. Authority exists in the law, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this contract under: Contract Encumbrance No. C150320, Fund Number 424, Appropriation Code M12, Organization YYYY, GBL T320, Program WTRC, Object Code 5560, Reporting Category 0320.
2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies.
3. The **PROJECT Summary**, attached as **Appendix 1** and incorporated herein, contains BORROWER Information (Section 1), the PROJECT Description (Section 2), CWCB's authority for making this loan (Section 3), and CWCB Approval and Legislative Authorization which identifies the amount of the loan and the terms of repayment (Section 4).
4. The CWCB now desires, by this contract, to loan money to the BORROWER for this PROJECT upon mutually agreeable terms and conditions.

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

A. LOAN PROVISIONS

1. **Loan Service Fee.** The amount of the loan (LOAN AMOUNT) shall include (1) the amount of the funds loaned by the CWCB to the BORROWER for the PROJECT and (2) a service fee of one percent (1%) of the PROJECT amount. In the event that the BORROWER does not use the LOAN AMOUNT authorized, the parties shall amend this contract to revise the LOAN AMOUNT including adjustment of the service fee to reflect 1% of the actual LOAN AMOUNT disbursed to the BORROWER.
2. **Contract Amendment Service Fees.** Under certain circumstances, the BORROWER

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shall be assessed a fee for amending the contract.

- a. A service fee shall be imposed on the BORROWER for amendments processed for the benefit of the BORROWER and necessary for the BORROWER's course of business but not necessary for the CWCB, including, but not limited to, a change in borrower name (novation), assignment of contract, substitution of collateral, loan payment deferrals in excess of 3 per loan, and loan consolidation. Amendments in the course of CWCB business, including, but not limited to, loan payment deferrals (up to 3 per loan), and changes in terms of loan repayment will be processed at no additional charge to the BORROWER.
 - b. The amount charged shall be in accordance with the fee rate structure set forth in the CWCB Loan Service Charge Policy in effect at the time the BORROWER shall request an amendment. The current fee for an amendment is \$1,000.
 - c. The BORROWER shall remit the service fee to the CWCB prior to initiation of the amendment. Any service fee remitted to the CWCB cannot be refunded
3. **Promissory Note Provisions.** The CWCB agrees to loan to the BORROWER an amount not to exceed the LOAN AMOUNT and the BORROWER agrees to repay the loan in accordance with the terms as set forth in the Promissory Note, attached hereto as **Appendix 2** and incorporated herein. The Promissory Note shall identify the LOAN AMOUNT. If the amount of loan funds disbursed by the CWCB to the BORROWER differs from the LOAN AMOUNT, the parties agree to amend this contract, including its appendices where necessary, to revise the LOAN AMOUNT.
4. **Interest Prior to PROJECT Completion.** As the loan funds are disbursed by the CWCB to the BORROWER, interest shall accrue at the rate set forth in the Promissory Note. The CWCB shall calculate the amount of the interest that accrued prior to PROJECT's substantial completion (as determined by the CWCB) and notify BORROWER of such amount. The BORROWER shall repay that amount to the CWCB either within ten (10) days from the date of notification from the CWCB, or, at the CWCB's discretion, said interest shall be deducted from the final disbursement of loan funds that the CWCB makes to the BORROWER.
5. **Return of Unused Loan Funds.** Any loan funds disbursed but not expended for the PROJECT in accordance with the terms of this contract shall be remitted to the CWCB within 30 calendar days from notification from the CWCB of either (1) completion of the PROJECT or (2) determination by the CWCB that the PROJECT will not be completed.
6. **BORROWER's Authority To Contract.** The BORROWER warrants that it has full power and authority to enter into this contract. The execution and delivery of this contract and the performance and observation of its terms, conditions and obligations have been duly authorized by all necessary actions of the BORROWER. The BORROWER's authorizing resolution(s) or ordinance(s) are attached as **Appendix 3** and incorporated herein.
7. **Attorney's Opinion Letter.** Prior to the execution of this contract by the CWCB, the BORROWER shall submit to the CWCB a letter from its counsel stating that it is the

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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 body of the BORROWER;
 - c. there are no provisions in the Colorado Constitution or any other state or local law that prevent this contract from binding the BORROWER;
 - d. the contract will be valid and binding against the BORROWER if entered into by the CWCB; and
 - e. the election held by the Borrower to obtain voter approval of this loan met all requirements of the Colorado Constitution or any other state or local law.
8. **Pledge of revenues.** The BORROWER irrevocably pledges to the CWCB, for purposes of repayment of this loan, revenues levied for that purpose as authorized in Appendix 3 and any other funds legally available to the BORROWER, in an amount sufficient to pay the annual payment due under this contract. As used herein, the ad valorem property tax revenues resulting from the tax levy imposed by BORROWER for the purpose of making the foregoing payments are referred to as the "Pledged Revenues." Further, the BORROWER agrees to:
- a. **Segregation of Pledged Revenues.** The BORROWER shall set aside and keep the Pledged Revenues in an account separate from other BORROWER revenues, and warrants that these revenues will not be used for any other purpose.
 - b. **Establish Security Interest.** The BORROWER has duly executed a Security Agreement, attached hereto as **Appendix 4** and incorporated herein, to provide a security interest to the CWCB in the Pledged Revenues. The CWCB shall have priority over all other competing claims for said Pledged 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. **General Obligation Pledge; Rate Covenant.** The obligation of the BORROWER to make the annual payment due under this Contract shall constitute a general obligation of the BORROWER, and the full faith and credit of the BORROWER is hereby pledged for the payment thereof. Pursuant to its statutory authority, the Election held within the District on November 2, 2010, and as permitted by law, the BORROWER shall cause to be levied on all the taxable property within the District, in addition to all other taxes, direct annual taxes in each of the years 2012 to 2031, inclusive, without limitation of rate and in amounts sufficient, when combined with any other legally available monies of the BORROWER, to pay when due the annual payment due under this Contract.
 - d. **Debt Service Reserve Account.** To establish and maintain the debt service reserve account, the BORROWER shall deposit an amount equal to one-tenth of an

annual payment into its debt service reserve fund on the due date of its first annual loan payment and annually thereafter for the first ten years of repayment of this loan. In the event that the BORROWER applies funds from this account to repayment of the loan, the BORROWER shall replenish the account within ninety (90) days of withdrawal of the funds.

- e. **Additional Debts or Bonds.** The BORROWER shall not issue any indebtedness payable from the Pledged Revenues and having a lien thereon which is superior to the lien of this loan. The BORROWER may issue parity debt only with the prior written approval of the CWCB, provided that:
 - i. The BORROWER is currently and at the time of the issuance of the parity debt in substantial compliance with all of the obligations of this contract, including, but not limited to, being current on the annual payments due under this contract and in the accumulation of all amounts then required to be accumulated in the BORROWER's debt service reserve fund;
 - ii. The BORROWER provides to the CWCB a Parity Certificate from an independent certified public accountant certifying that, based on an analysis of the BORROWER's revenues, for 12 consecutive months out of the 18 months immediately preceding the date of issuance of such parity debt, the BORROWER's revenues are sufficient to pay its annual operating and maintenance expenses, annual debt service on all outstanding indebtedness having a lien on the pledged revenues, including this loan, the annual debt service on the proposed indebtedness to be issued, and all required deposits to any reserve funds required by this contract or by the lender(s) of any indebtedness having a lien on the pledged revenues. The analysis of revenues shall be based on the BORROWER's current rate structure or the rate structure most recently adopted. No more than 10% of total revenues may originate from tap and/or connection fees.

The BORROWER acknowledges and understands that any request for approval of the issuance of additional debt must be reviewed and approved by the CWCB Director prior to the issuance of any additional debt. Nothing herein contained shall be construed as prohibiting or restricting the right of the BORROWER to incur indebtedness payable from sources other than the Pledged Revenues, including without limitation indebtedness payable from tax levies which are in addition to the levy imposed pursuant to this Contract.

- f. **Annual Statement of Debt Coverage.** Each year during the term of this contract, the BORROWER shall submit to the CWCB an annual audit report and a certificate of debt service coverage from a Certified Public Accountant.
9. **Pledged Revenues During Loan Repayment.** The BORROWER shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the Pledged Revenues, so long as any of the principal, accrued interest, and late charges, if any, on this loan remain unpaid, without the prior written concurrence of the CWCB.

10. **Release After Loan Is Repaid.** Upon complete repayment to the CWCB of the entire principal, all accrued interest, and late charges, if any, as specified in the Promissory Note, the CWCB agrees to release and terminate any and all of the CWCB's right, title, and interest in and to the Pledged Revenues.

11. **Warranties.**

- a. The BORROWER warrants that, by acceptance of the loan under this contract and by its representations herein, the BORROWER shall be estopped from asserting for any reason that it is not authorized or obligated to repay the loan to the CWCB as required by this contract.
- b. The BORROWER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the BORROWER, to solicit or secure this contract and has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this contract.
- c. The BORROWER warrants that the Pledged Revenues and collateral for this loan are not encumbered by any other deeds of trust or liens of any party other than the CWCB or in any other manner, except for any existing lien(s) identified in Section 5 (Schedule of Existing Debt) of the **Project Summary**, which sets forth the position of the lien created by this contract in relation to any existing lien(s).

12. **Remedies For Default.** Upon default in the payments to be made by the BORROWER under this contract, or default in the performance of any covenant or agreement contained herein, the CWCB, at its option, may:

- a. suspend this contract and withhold further loan disbursements pending corrective action by the BORROWER, and if the BORROWER does not cure the default as provided for below, permanently cease loan disbursements and deem the PROJECT substantially complete;
- b. exercise its rights under any appendices to this contract, including, but not limited to, the Promissory Note and Security Agreement; and/or
- c. take any other appropriate action.

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

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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. To the extent such insurance is required, the BORROWER shall provide the CWCB with an Acor Form 27 evidencing said insurance prior to commencement of construction, maintained until construction is complete, and shall provide the CWCB with documentation of renewals of said insurance. No payments shall be made to the BORROWER unless all insurance certificates are current.

- a. Worker's compensation and employer's liability insurance in the required statutory amounts.
- b. 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.
- 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 bodily injury/property damage.

C. GENERAL PROVISIONS

1. **Periodic Inspections.** At any and all reasonable times, CWCB or its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect any and all books, papers, resolutions, and records of the BORROWER pertaining to the Project or the Pledged Revenues.
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) Special Provisions, provided that the parties hereby agree that, for the purposes of such Special Provisions, (a) "Contractor" shall mean BORROWER and (b) this Loan Contract is, and shall be, considered an "Intergovernmental Contract." (2) The remainder of this Contract, and (3) the Appendices.
8. **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.
9. **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.
10. **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.
11. **Addresses for mailing.** All notices, correspondence, or other documents required by this contract shall be delivered or mailed to the addresses shown in the **Project Summary**, Section 1 for the BORROWER and to the address below for the CWCB:

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

SPECIAL PROVISIONS

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

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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 (3.5), 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

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THE PARTIES HERETO HAVE EXECUTED THIS CONTRACTBORROWER: Thunderbird Water and
Sanitation DistrictBy Larry Morris
Larry Morris, PresidentState of Colorado
John W. Hickenlooper, Governor
By John W. Hickenlooper
For the Executive Director
Department of Natural Resources
Colorado Water Conservation Board
Jennifer L. Gimbel, Director(CORPORATE
SEAL)

Attest

By Gary Cammarata
Gary Cammarata, Secretary

Pre-Approved Form

By David Bassi
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
Susan Borup, DNR Controller
Effective Date 10/12/2011

Project Summary – Thunderbird Water and Sanitation District – Contract No. C150320

SECTION 1 –BORROWER INFORMATION

Name: Thunderbird Water and Sanitation District
Address: P.O. Box 157, Sedalia, CO 80135
Contact: Larry Morris, President
Phone Number: 303-688-5962
E-mail address: larrygmorris@msn.com
Type of Entity: The District is a Title 32 special district located in Douglas County, Colorado. The BORROWER held an election in November 2010, whereby voters approved increasing the BORROWER's debt by up to \$375,000 to be used for the purchase of the Lambert Ranch Water Rights, as shown on the BORROWER's Official Ballot and Official Election Results, which are incorporated herein by reference.

Section 2 – Project Description

- A. Description of PROJECT: The BORROWER applied to the CWCB for a loan to be used for the Lambert Ranch Water Rights Purchase, located in Douglas County, hereinafter referred to as the PROJECT, at an estimated total cost of \$350,000.
- B. Description of Feasibility Study: The CWCB has reviewed a feasibility study report on the PROJECT compiled by Leonard Rice Engineers, Inc., 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.

Small Project Loan: This loan is made pursuant to the provisions of §§ 37-60-119 and 37-60-120, C.R.S., which authorizes the CWCB to loan money for water projects 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

SECTION 4 - BOARD APPROVAL AND LEGISLATIVE AUTHORIZATION

At its July 2011 meeting, the CWCB approved a Small Project Loan from the Construction Fund to the BORROWER in an amount up to \$315,000 for PROJECT costs, not to exceed

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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 4.25% per annum for a repayment term of 20 years.

SECTION 5 – SCHEDULE OF EXISTING DEBT

Colorado Water Resources & Power Development Authority, remaining balance \$170,146, maturity date 2019.

Colorado Water Resources & Power Development Authority, remaining balance \$234,732, maturity date 2022.

SECTION 6 – ADDITIONAL CONDITIONS & CONTRACT REQUIREMENTS

- A. **Interest Prior to Project Completion.** With respect to the interest incurred prior to Substantial Completion of the Project as provided for under Section 4 of the Loan Contract, CWCB and BORROWER have agreed that such interest shall be due on the first scheduled payment date (October 27, 2012, which is one year after the Payment Initiation Date), and is reflected in the annual Loan Payment as set forth in the Promissory Note.
- B. **No Construction.** CWCB and BORROWER hereby acknowledge and agree that the Project does not include a construction component and that the distribution of loan proceeds will incur at a closing for the purchase of the Water Rights.
- C. **Special Provisions.** CWCB and BORROWER hereby acknowledge and agree that, for the purposes of such Special Provisions, (a) "Contractor" shall mean BORROWER and (b) this Loan Contract is and shall be considered an "Intergovernmental Contract."
- D. **Return of Funds.** If BORROWER fails to close on the acquisition of the Water Rights prior to the date which is six months following the date of this Loan Contract, BORROWER shall return any portion of the Loan Amount distributed to BORROWER under this Loan Contract in the form of a pre-payment as provided for under the Promissory Note.

SECTION 7 – CONSTRUCTION FUND PROGRAM PROCEDURES FOR WATER PURCHASE PROJECTS.

The BORROWER shall submit a written purchase and sales agreement for the Water Rights prior to disbursement of loan funds.

SECTION 8 – ELIGIBLE EXPENSES FOR WATER PURCHASE PROJECTS.

- A. Engineering associated with the feasibility report prepared as a requirement for this loan and associated with evaluating the suitability of the water rights for purchase by the BORROWER.
- B. Interest during completion of the PROJECT pursuant to Paragraph A.4 herein.
- C. Legal services for reviewing engineering services contracts and this Contract.
- D. Purchase of the water rights.

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Appendix 1 to Loan Contract C150320

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SECTION 9 – DISBURSEMENT SCHEDULE

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

SECTION 10 – TIME FOR PERFORMANCE

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

PROJECT Finish: Four (4) years from the Effective Date of this Contract.

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GENERAL OBLIGATION PROMISSORY NOTE

- Date: September 8, 2011
- Borrower: Thunderbird Water and Sanitation District
- Principal Amount: \$318,150
- Interest Rate: 4.25% per annum
- Term of Repayment: 20 years
- Loan Contract No.: C150320, dated September 8, 2011
- Loan Payment: \$23,931.19
- Payment Initiation Date: October 27, 2011
- Maturity Date: October 27, 2031
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 between BORROWER and CWCB and this promissory note ("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, and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
 3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 721, Denver, Colorado 80203.
 4. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within 15 calendar days of the due date.
 5. This PROMISSORY 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 PROMISSORY 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 of even date and amount. The LOAN CONTRACT and Security Agreement grant additional rights to the CWCB.

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Appendix 2 to Loan Contract C150320

Page 1 of 2

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 PROMISSORY 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. Pursuant to Section 11-57-209, C.R.S., if a member of the Board of Directors of the BORROWER, or any officer or agent of the District acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on this PROMISSORY NOTE. Such recourse shall not be available either directly or indirectly through the Board or the BORROWER or otherwise, or whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of this PROMISSORY NOTE and as part of the consideration of its sale or purchase, CWCB specifically waives any such recourse.
11. This PROMISSORY NOTE is issued by virtue of and in full conformity with the Constitution of the State of Colorado; Title 32, Article 1, Part 11, C.R.S.; Title 11, Article 57, Part 2, C.R.S., and all other laws of the State of Colorado thereunto enabling. Pursuant to Section 11-57-210, C.R.S., such recitals shall be conclusive evidence of the validity and the regularity of the issuance of this PROMISSORY NOTE after its delivery for value.
12. All of the terms, covenants, conditions, agreements, provisions, and stipulations contained in the Loan Contract which are to be kept and performed by BORROWER are hereby made a part of this PROMISSORY NOTE to the same extent and with the same force and effect as if they were fully set forth herein.
13. This PROMISSORY NOTE shall be governed in all respects by the laws of the State of Colorado.

BORROWER: Thunderbird Water and
Sanitation District

(SEAL)

By Larry Morris
Larry Morris, President

Attest:

By Gary Cammarata
Gary Cammarata, Secretary

RESOLUTION NO. 2011-9-1

THUNDERBIRD WATER AND SANITATION DISTRICT

DOUGLAS COUNTY, COLORADO

A RESOLUTION OF THE THUNDERBIRD WATER AND SANITATION DISTRICT AUTHORIZING A LOAN FROM THE COLORADO WATER CONSERVATION BOARD IN THE MAXIMUM AGGREGATE AMOUNT OF \$318,000 FOR THE PURPOSE OF PAYING PART OF THE COSTS OF ACQUIRING CERTAIN RIGHTS TO WATER; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN CONTRACT, A SECURITY AGREEMENT, AND A GENERAL OBLIGATION PROMISSORY NOTE TO EVIDENCE SUCH LOAN; DELEGATING TO CERTAIN AUTHORIZED OFFICERS THE AUTHORITY TO DETERMINE CERTAIN FINANCIAL MATTERS PERTAINING TO THE LOAN; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO, AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the Thunderbird Water and Sanitation District ("District"), Douglas 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 of the Colorado Revised Statutes (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Resolution); and

WHEREAS, the District is authorized by Title 32, Article 1, Part 10 and 11 to borrow money and incur general obligation indebtedness and evidence the same by bonds, certificates, warrants, notes, and debentures; and

WHEREAS, at an election of the qualified electors of the District, duly called and held on Tuesday, November 2, 2010 (the "2010 Election"), in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at the 2010 Election voted in favor of inter alia, the issuance of general obligation indebtedness and the imposition of taxes for the payment thereof, for the purpose of acquiring certain ground water rights, the question thereto be as follows:

Thunderbird Water and Sanitation District Ballot Issue 5A:

Shall Thunderbird Water and Sanitation District debt be increased up to \$375,000, with a maximum repayment cost of \$750,000 and shall District taxes be increased up to \$35,000 annually, for the purpose of purchasing or acquiring ground water and ground water rights by the issuance of general obligation bonds, loan agreements, or other forms of indebtedness, which debt shall bear interest at a maximum net effective interest rate not to exceed 6.5% per annum and to be issued, dated and sold at such time or times, at such prices (at, above, or below par) and in such manner and containing such terms, not inconsistent herewith, as

the Board of Directors may determine; and shall ad valorem property taxes be levied in any year, without limitation as to rate or amount, to pay the principal of, premium, if any, and interest on such bonds as the same shall become due; and shall any earnings from the investment of the proceeds of such taxes and bonds (regardless of amount) constitute a voter approved revenue changes?

WHEREAS, the returns of the 2010 Election were duly canvassed and the results thereof duly declared; and

WHEREAS, the District has not issued any bonds or other obligations using the authorization of the 2010 Election; and

WHEREAS, Board of Directors of the District (the "Board") finds and determines that it is in the best interest of the District to finance a portion of the cost of acquiring the groundwater and groundwater rights for which the debt was approved by the 2010 Election (the "Project"); and

WHEREAS, the District has made application to the Colorado Water Conservation Board (the "CWCB") for a loan to finance a portion of the cost of the Project; and

WHEREAS, the District has determined that in order to finance all or a portion of the cost of the Project, it is necessary and advisable and in the best interest of the District for the District to enter into a loan contract (the "Loan Contract") with the CWCB, pursuant to which CWCB shall loan the District a maximum amount of \$318,150 (the "Loan") for such purposes; and

WHEREAS, the repayment obligations under the Loan Contract shall be evidenced by a general obligation promissory note (the "Promissory Note") to be issued by the District to CWCB, and by a security agreement (the "Security Agreement") in the forms set forth in the Loan Contract; and

WHEREAS, the District's repayment obligations under the Loan Contract, the Security Agreement, and the Promissory Note (collectively referred to herein as the "Financing Documents") shall constitute general obligations of the District for the payment of which the District pledges its full faith and credit; and

WHEREAS, the forms of the Financing Documents are on file with the District's Secretary; and

WHEREAS, the Board desires to approve the form of the Financing Documents and other documents referenced therein; and

WHEREAS, none of the members of the Board have any financial interest or other potential conflicting interest in connection with the authorization or execution of the Financing Documents, or the use of the proceeds thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE THUNDERBIRD WATER AND SANITATION DISTRICT AS FOLLOWS:

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

“Acts” means Title 32, Article 1, C.R.S.; and Title 11, Article 57, Part 2, C.R.S.

“Board” means the Board of Directors of the District.

“Certified Valuation” means the assessed valuation of all taxable property within the District as determined annually by the County Assessor of Douglas County, Colorado in accordance with State law.

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

“Note Account” means the “2011 CWCB Note Account,” established by the provisions hereof and paragraph 8(a) of the Loan Contract for the purpose of paying the principal of and interest on the Promissory Note.

“Pledged Revenues” means the ad valorem property tax revenues resulting from the tax levy imposed by the District for the purpose of making the payments on the Promissory Note.

“Project Account” means the “2011 CWCB Note Project Account,” established by the provisions hereof for the purpose of paying the Project Costs.

“Project Costs” means the District’s costs properly attributable to the Project and permissible as “Eligible Expenses” as set forth in section B(2) of the Loan Contract.

“Reserve Account” means a special account of the District designated as the “2011 CWCB Note Reserve Account,” created by this Resolution and the Financing Documents for the purpose of paying, if necessary, the principal of and interest on the Promissory Note pursuant to paragraph 8(d) of the Loan Contract.

“Resolution” means this Resolution which authorizes the execution of the Financing Documents, including but not limited to the Loan Contract and the issuance of the Promissory Note, including any amendments properly made hereto.

“State” means the State of Colorado.

Section 2. Approvals, Authorizations and Amendments.

(a) The forms of the Financing Documents as are on file with the Secretary are hereby approved, and the presiding officer of the District (the “President”) and the Secretary are hereby authorized and directed to execute the Financing Documents in substantially the forms as are on file with the Secretary, with such changes as are not inconsistent herewith, and to authenticate and affix the seal of the District thereto. By way of explanation and not limitation and in accordance with the Constitution of the State; the Acts; and all other laws of the State thereto enabling, there is hereby authorized and approved the Loan Contract. There shall be issued by the District, a general

obligation promissory note in the aggregate principal amount not to exceed \$318,150 for the purpose of paying the Project Costs and other costs in connection with the Promissory Note. All covenants, statements, representations and agreements contained in the Loan Contract and the Promissory Note are hereby approved and adopted as the covenants, statements, representations, and agreements of the District.

(b) The President and the Secretary are further hereby authorized and directed to execute and authenticate such other documents, instruments or certifications as are deemed necessary or desirable in connection with the District's performance of its obligations under the Financing Documents.

Section 3. Accounts. The following accounts of the District are hereby established which shall be maintained by the District in accordance with the provisions of this Resolution and the Financing Documents: The Project Account, the Note Account, and the Reserve Account.

Section 4. Project Account. All moneys received from the CWCB under the Loan Contract shall be credited to the Project Account and shall be applied solely to the payment of the Project Costs. Upon the determination of the Board that all Project Costs have been paid or are determinable, any balance remaining in the Project Account (less any amounts necessary to pay Project Costs not then due and owing) shall be applied solely in accordance with the terms of the Loan Contract, including without limitation provision A(5) thereof.

Section 5. Note Account. Moneys in the Note Account shall be used solely for the purpose of paying the principal of and interest on the Promissory Note. All moneys derived from the Pledged Revenues shall be deposited into the Note Account as and when they are received.

Section 6. Reserve Accounts. Moneys in the Reserve Account shall be used, if necessary, only to prevent a default in the payment of the principal of or interest on the Promissory Note on any payment date and the Reserve Account is hereby pledged to the payment of the Promissory Note. In the event the moneys credited to the Note Account are insufficient to pay the principal of or interest on the Promissory Note when due, the District shall transfer from the Reserve Account to the Note Account an amount which, when combined with moneys in the Note Account will be sufficient to make such payments when due.

Section 7. Election to Apply Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the "Supplemental Act") provides that a public entity, including the District, may elect in an act of issuance to apply all or any of the provisions of the Supplement Act. The District hereby elects to apply all of the sections of the Supplemental Act to the Financing Documents.

Section 8. Delegation.

(a) Pursuant to Section 11-57-205 of the Supplement Act, the Board hereby delegates to the President or any member of the Board the Authority to make the following determinations relating to and contained in the Financing Documents, subject to the restrictions contained in paragraph (b) below:

- (i) The interest rate on the Loan;
 - (ii) The principal amount of the Loan;
 - (iii) The amount of principal on the Loan maturing in any given year and the final maturity date of the Loan;
 - (iv) The dates on which the principal of and interest on the Loan are paid; and
 - (v) The existence and amount of capitalized interest or reserve funds for the Loan, if any.
- (b) The delegation in paragraph (a) of this Section shall be subject to the following parameters and restrictions:
- (i) The interest rate on the Loan shall not exceed 4.5 percent per annum;
 - (ii) The principal amount of the Loan shall not exceed \$318,150; and
 - (iii) The final maturity date of the Loan shall not be later than December 31, 2032.

Section 9. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplement Act, the Promissory Note shall contain a recital that the Promissory Note is issued pursuant to the Supplement Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Promissory Note after its delivery for value.

Section 10. Pledge of Revenue; Lien. Pursuant to Section 11-57-208, C.R.S., the Pledged Revenues (as defined in this Resolution and the Financing Documents), as received by or otherwise credited to the District, shall immediately be subject to the lien of the pledge made herein and in the Loan Contract, without any physical delivery, filing or further act. The lien of such pledge and the obligation to perform the contractual obligations made in the Financing Documents shall have priority over any and all other obligations and liabilities of the District, except as may otherwise be provided in the Supplemental Public Securities Act, in this Resolution, or in any other instrument. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract or otherwise against the District irrespective of whether such persons have notice of liens.

Section 11. Limitation of Actions. Pursuant to Section 11-57-212, of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the Financing Documents shall be commenced more than 30 days after the adoption of this Resolution

Section 12. General Obligation Pledge. The obligation of the District to make the annual payments due under the Financing Documents including the Promissory Note, shall constitute a general obligation of the District, and the full faith and credit of the District is hereby pledged for the payment thereof. Pursuant to its statutory authority, the 2010 Election, and as permitted by law, the District shall cause to be levied on all the taxable property of the District, in addition to all other taxes, direct annual taxes in each of the years 2011 to 2030, inclusive (for collection in 2012 to 2031, inclusive), without limitation of rate and in amounts sufficient, when combined with any other legally available monies of the District, to pay when due the annual payment due under the Financing Documents. The foregoing provisions of this Resolution are hereby declared to be the Certificate of the Board to the County Commissioners of Douglas County, Colorado, showing the aggregate amount of taxes to be levied for the purposes aforesaid by said Board of County Commissioners from time to time, as required by law, the amounts necessary to pay all costs and expenses incidental to the execution of the Financing Documents, and to pay the amounts due thereunder are hereby appropriated for said purposes, and such amounts as appropriate for each year shall be included in the annual budget and the appropriation resolutions to be adopted and passed by the Board in the year, respectively, until all amounts due under the Financing Documents have been fully paid, satisfied and discharged.

Section 13. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the District acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of interest on the Promissory Note. Such recourse shall not be available either directly or indirectly through the Board or the District, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Promissory Note and as part of the consideration for its sale or purchase, CWCB specifically waives any such recourse.

Section 14. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied only to pay Project costs, including costs related thereto. Neither CWCB nor any subsequent owner(s) of the Loan Contract shall be responsible for the application or disposal by the District 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 15. 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 maximum maturity of the Loan authorized hereby.

Section 16. Direction to Take Authorizing Action. The President, the Secretary, and other appropriate officers of the District are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution, including but not limited to the execution and delivery of such certificates and affidavits as may reasonably be required by CWCB. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the District of such documents, instruments, or certificates in accordance with the terms thereof and this Resolution.

Section 17. Ratification and Approval of Prior Actions. All actions heretofore taken by the President, any member of the Board, the Secretary, and the other officers and employees of the District, if any, not inconsistent with the provisions of this Resolution, relating to the Financing Documents, or actions to be taken in respect thereto, are hereby ratified, approved, and confirmed.

Section 18. 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.

Section 19. Repealer. All orders, resolutions, bylaws, or regulations of the District, or parts thereof, inconsistent with this Resolution are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any resolution, bylaw, order or other instrument, or part thereof, heretofore repealed. Neither this repealer nor any other provision of this Resolution shall be construed to adversely affect or impair any contract entered into by the District or any enterprise thereof prior to the effective date of this Resolution.

Section 20. Resolution Irrepealable. After the Promissory Note is issued, this Resolution shall constitute an irrevocable contract between the District and CWCB, and shall be and remain irrepealable until the Promissory Note shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, resolution or other measure enacted after the issuance of the Promissory Note shall in any manner be construed as impairing the obligations of the District to keep and perform the covenants contained in this Resolution.

Section 21. Disposition. This Resolution, as soon as possible after adoption, shall be numbered and recorded by the Secretary on the official records of the District, and shall be authenticated by the signatures of the President and the Secretary.

Section 22. Effective Date. This Resolution shall take effect immediately upon its by the Board.

ADOPTED AND APPROVED this 8th day of September, 2011.

THUNDERBIRD WATER AND SANITATION
DISTRICT

By: Larry G. Morris
Larry G. Morris, President

Attest:

Gary Cammarata
Gary Cammarata, Secretary

SECURITY AGREEMENT

(PLEDGE OF REVENUES)

DATE: September 8, 2011

DEBTOR: THUNDERBIRD WATER AND SANITATION DISTRICT

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

PROMISSORY NOTE: \$318,150, DATED September 8, 2011

TERMS OF REPAYMENT: 4.25% PER ANNUM FOR 20 YEARS

LOAN CONTRACT: C150320, DATED September 8, 2011

COLLATERAL: The Pledged Revenues as defined in the Loan Contract and provided for under BORROWER's authorizing Resolution attached hereto as Appendix 3 and incorporated herein.

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

DEBTOR EXPRESSLY WARRANTS AND COVENANTS:

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

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

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Appendix 4 to Loan Contract C150320

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.

Pursuant to Section 11-57-208, C.R.S., the Pledged Revenues, as received by or otherwise credited to the Debtor, shall immediately be subject to the lien of the pledge made herein and in the Loan Contract, without any physical delivery, filing or further act. The lien of such pledge and the obligation to perform the contractual provisions made herein and in the Loan Contract shall have priority over any or all other obligations and liabilities of the Debtor, except as may be otherwise provided in the Supplement Public Securities Act, in the act of issuance set forth in Appendix 3, or in any other instrument. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Debtor irrespective of whether such persons have notice of such liens.

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.

S E A L

DEBTOR: Thunderbird Water and
Sanitation District

By Larry Morris
Larry Morris, President

ATTEST: Gary Cammarata
By Gary Cammarata
Gary Cammarata, Secretary