

BORROWER: COLORADO PARKS AND WILDLIFE
CONTRACT NO. C150343
PROJECT AMOUNT \$10,000,000

AGENCY NAME: Water Conservation Board
AGENCY NUMBER: PDA
CWCB CMS #52672

INTERAGENCY LOAN CONTRACT

This Interagency Loan Contract (hereinafter called "CONTRACT") is entered into by and between the Department of Natural Resources, Colorado Water Conservation Board (hereinafter called "CWCB"), located at 1313 Sherman St., Room 721, Denver, CO 80203, and the Department of Natural Resources, Colorado Parks and Wildlife (hereinafter called "CPW"), located at 1313 Sherman Street, Room 618, Denver, CO 80203, who may collectively be called the "PARTIES" and individually a "PARTY", both of which are Agencies of the STATE OF COLORADO, hereinafter called the "State".

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 as follows: Fund Number 424, Organization YYYY, Program WTRC, Object Code 5570, Reporting Category 0343, Contract Encumbrance No. C150343; Appropriation Code L12, GBL P343 for \$10,000,000;
2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies;
3. Pursuant to the provisions of CRS §§37-60-119 and 37-60-120, the CWCB 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 CWCB approved a loan request from CPW for the permitting, engineering and construction costs related to the Beaver Park Dam Rehabilitation Project ("PROJECT");
5. 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); and
6. Board approval and legislative authorization
 - a. Pursuant to CRS §37-60-122(1)(b), the CWCB may loan moneys in an amount up to \$10,000,000 to CPW.
 - b. The General Assembly authorized a \$10,000,000 loan at 0% interest rate from the Colorado Water Conservation Board Construction Fund to CPW, for improvements associated with the Beaver Park Reservoir, pursuant to the 2012 Projects Bill, SB12S-002, Section 19(X) (A).
 - c. At its September 28, 2012, meeting, the CWCB approved a loan to CPW in an amount up to \$10,000,000 ("LOAN AMOUNT") at an interest rate of 0% for a repayment term of thirty (30) years. Additional Board Requirements are set forth in Section 3 of the PROJECT SUMMARY.

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

A. LOAN PROVISIONS - OBLIGATIONS OF CPW AND THE CWCB

- 1. Loan Provisions.** The CWCB agrees to loan to CPW an amount not to exceed the LOAN AMOUNT at an interest rate of 0% per annum for a repayment term of thirty years, and CPW agrees to repay the loan in accordance with the **Repayment Provisions pursuant to Paragraph A.6 of this CONTRACT.**
- 2. Loan Disbursements.** The CWCB shall disburse CPW'S loan funds directly to CPW in accordance with Section 9, (Disbursement Schedule) of the PROJECT SUMMARY.
- 3. CPW's Authority to Contract.** The CPW Director has submitted a **LETTER**, attached as **APPENDIX 2** and incorporated herein, committing CPW to perform in accordance with the terms of this CONTRACT and verifying the CPW Commission has been briefed on the PROJECT and this CONTRACT.
- 4. Attorney's Opinion Letter.** Prior to the execution of this CONTRACT by the CWCB, CPW shall submit to the CWCB a letter from its attorney stating that it is the attorney's opinion that:
 - a. the person signing for CPW was duly elected or appointed and has authority to sign such documents on behalf of CPW and to bind CPW;
 - b. there are no provisions in any state or local law that prevent this CONTRACT from binding CPW;
 - c. the CPW Commission has been briefed on the PROJECT and this CONTRACT;and
 - d. the CONTRACT will be valid and binding against CPW if entered into by the CWCB.
- 5. Pledge Of Account.** CPW maintains a WILDLIFE CASH FUND pursuant to CRS §33-1-112, whereby all moneys received from wildlife sources, pursuant to the articles of this title, shall be used for authorized expenditures. In coordination with the Department of Natural Resources Controller, CPW shall encumber from its WILDLIFE CASH FUND, an amount of \$333,333 to be transferred on September 1st of each year to CWCB's Construction Fund, until such time as its debt obligation is paid in full. In the event that the WILDLIFE CASH FUND does not contain sufficient funds for repayment of the LOAN PAYMENT then due on the loan, CPW shall repay said LOAN PAYMENT from any other funds legally available for that purpose. The CWCB does not have and will not have any interest in the assets or facilities of CPW for repayment of the LOAN AMOUNT.
- 6. Repayment Provisions.** CPW shall repay to the CWCB the principal sum of \$10,000,000 and no interest for a term of thirty (30) years. The principal shall be payable in 30 equal installments of \$333,333 with the first payment due and payable one year from the date that the CWCB determines that the project is substantially complete, and annually thereafter until all principal has been paid in full. One month prior to each payment due date, the CWCB shall provide a loan payment request form to CPW. CPW will initiate the transfer of funds from the WILDLIFE CASH FUND to the CWCB Construction Fund.
- 7. Indemnification By The Construction Firm.** CPW shall require all construction firms and their subcontractors to indemnify the PARTIES against all liability and loss, and against all claims and

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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.

8. Liability Insurance During Construction. During construction of the PROJECT, CPW shall require the construction firm(s) and any subcontractors to maintain the following insurance coverage in the limits shown with a company that is satisfactory to the CWCB during the term of their contracts for the construction of the PROJECT. **Said general liability insurance shall name CPW and the CWCB as additional insured.** An additional insured endorsement and a copy of a current certificate of said liability insurance must be provided to the CWCB prior to commencement of construction and maintained until construction is complete. No payments shall be made to CPW unless all insurance certificates are current. CPW shall file notices of renewals of said policies with the CWCB as renewals occur. Before or during the time of construction, the CWCB reserves the right to increase the above limits of insurance as may be warranted by the size of the PROJECT.

- 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.

B. GENERAL PROVISIONS

1. **Periodic Inspections.** Throughout the term of this CONTRACT, CPW shall permit a designated representative of the CWCB to make periodic inspections of the PROJECT. Said inspections shall cover the condition of the PROJECT, operating records, maintenance records, and financial records. These inspections are solely for the purpose of verifying compliance with the terms and conditions of this CONTRACT and shall not be construed nor interpreted as an approval of the actual design, construction or operation of any element of the PROJECT facilities.
2. **Adhere To Applicable Laws.** CPW 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 agents and employees are hereby designated as the agents of the CWCB for the purpose of this CONTRACT.
4. **CONTRACT Is Not Assignable.** CPW 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 CPW shall be, or shall be deemed to be, an employee, agent, or servant of the CWCB. CPW shall be solely and entirely responsible for their acts and the acts of their agents, employees, servants, engineering firms, construction firms, and subcontractors during the term of this CONTRACT.
6. **Complete Integration Of All Understandings.** This Contract is intended as the complete integration of all understandings between the PARTIES. No prior or contemporaneous addition,

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deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent 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. **In Event Of A Conflict.** In the event of conflict between the terms of this CONTRACT and conditions as set forth in any of the appendices, the provisions of this CONTRACT shall control.
8. **CWCB May Release CONTRACT.** In its sole discretion, the CWCB may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of CPW's obligations under this CONTRACT, with valuable consideration, upon such terms and conditions as the CWCB may determine to be advisable to further the purposes of this CONTRACT or to protect the CWCB's financial interest therein, and consistent with both the statutory purposes of this CONTRACT and the limitations of the statutory authority under which it is made.
9. **Casualty and Eminent Domain.** If, at any time, during the term of this CONTRACT, (a) CPW'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, CPW shall cause the net proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair and restoration of the PROJECT facilities or any portion thereof, or to repayment of this loan. Any net proceeds remaining after such work has been completed or this loan has been repaid, shall be retained by CPW. If the net insurance proceeds are insufficient to pay the full cost of the replacement, repair and restoration, CPW shall complete the work and pay any cost in excess of the net proceeds. In the event CPW opts to repay the loan, CPW shall remain responsible for the full loan amount outstanding regardless of the amount of such insurance proceeds or condemnation award.
10. **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.
11. **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 CPW'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 CPW by the CWCB on any such documents, CPW shall be solely responsible for the accuracy and completeness of such documents.
12. **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.
13. **Addresses for mailing.** All notices, correspondence, or other documents required by this CONTRACT shall be delivered or mailed to the addresses shown in the Section 1 of the PROJECT SUMMARY, for CPW and to the address below for the CWCB:



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

14. **Confidential Information-State Records.** Each PARTY shall treat the confidential information of the other PARTY with the same degree of care and protection it affords to its own confidential information, unless a different standard is set forth in this CONTRACT. Each PARTY shall notify the other PARTY immediately if it receives a request or demand from a third party for records or information of the other PARTY.
15. **Failure To Perform-Disputes** The failure of a PARTY to perform its respective obligations in accordance with the provisions of this CONTRACT is a breach of this CONTRACT. In the event of disputes concerning performance hereunder or otherwise related to this CONTRACT, the PARTIES shall attempt to resolve them at the divisional level. If this fails, disputes shall be referred to senior departmental management staff designated by each PARTY. If this fails, the executive director of each PARTY shall meet and attempt resolution. If this fails, the matter shall be submitted in writing by both PARTIES to the State Controller, whose decision shall be final.


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THE PARTIES HERETO HAVE EXECUTED THIS INTERAGENCY CONTRACT

*** Persons signing for PARTIES hereby swear and affirm that they are authorized to act on behalf of their respective PARTY and acknowledge that the other PARTY is relying on their representations to that effect.**

STATE OF COLORADO John W. Hickenlooper, Governor Department of Natural Resources Mike King, Executive Director	
<p>Colorado Water Conservation Board</p> <p>BY: <u></u> For Jennifer L. Gimbel, Director</p> <p>Name: <u>Kirk Russell, P.E., Chief</u> Finance & Administration Section</p> <p>DATE: <u>1/29/13</u></p>	<p>Colorado Parks and Wildlife</p> <p>BY: <u></u></p> <p>Name: <u>Rick D. Cables</u> Colorado Parks and Wildlife</p> <p>DATE: <u>Jan. 24, 2013</u></p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

STATE CONTROLLER David J. McDermott, CPA	
<p>By: <u></u></p> <p>Susan Borup, Controller, Department of Natural Resources</p> <p>Effective Date <u>2/12/13</u></p>	

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Project Summary- Colorado Parks and Wildlife- Contract No. C150343

SECTION 1 – BORROWER INFORMATION

Name: Colorado Parks and Wildlife
Address: 1313 Sherman Street, Room 618, Denver, CO 80203
Contact: Tony Gurzick
Phone Number: 970-375-6750
E-mail address: tony.gurzick@state.co.us
Type of Entity: Colorado State Agency

Section 2 – Project Description

- A. Description of PROJECT: CPW applied to the CWCB for a loan to be used for the construction of the Beaver Park Dam Rehabilitation Project, located in Rio Grande County, hereinafter referred to as the PROJECT, at an estimated total cost of \$10,000,000.
- B. Description of Feasibility Study: The CWCB has reviewed a feasibility study report on the PROJECT compiled by URS Consulting Engineers, 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 CRS §§37-60-119 and 37-60-120, 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 CPW assures repayment of that money.

SECTION 4 – BOARD APPROVAL AND LEGISLATIVE AUTHORIZATION

At its September 2012 meeting, the CWCB approved loan not to exceed \$10,000,000 from the Construction Fund to the Colorado Division of Parks and Wildlife, for permitting, engineering and construction costs related to the Beaver Park Dam Rehabilitation Project.

Pursuant to SB12S-002, the Colorado General Assembly authorized CWCB to loan CPW an amount up to \$10,000,000 for the PROJECT.

SECTION 5 – SCHEDULE OF EXISTING DEBT

In January of 2001, the CWCB approved CPW for a \$1,700,000 loan, at an interest rate of 0% for 30 years, to reconstruct the dam at Jackson Lake Reservoir. The current loan balance on the loan is \$1,133,333, with an annual payment of \$56,667. The annual payment of \$56,667 for this loan is encumbered by the Department Controller from CPW's Lottery Cash Fund, and is transferred on May 1st of each year to CWCB's Construction Fund.

SECTION 6 – Repayment

CPW, in coordination with the Department Controller, shall encumber from its WILDLIFE CASH FUND, an amount of \$333,333 to be transferred on September 1st of each year to CWCB's Construction Fund, until such time as its debt obligation is paid in full.

SECTION 7 – CONSTRUCTION Fund Program Procedures.

- a. CPW shall employ an engineer, registered in the state of Colorado to prepare plans and specifications for the PROJECT.
- b. Engineering contracts, plans and specifications must be submitted to the CWCB staff for verification of compliance with the terms of this CONTRACT when available prior to bidding. Any modifications to the plans and specifications must be approved in writing by the CWCB staff.
- c. For plans and specifications for all jurisdictional dams and reservoirs, as defined by CRS §37-87-105, CPW shall provide a letter of approval from the State Engineer's Office prior to construction.
- d. CPW staff shall extend an invitation to CWCB to be present at the bid opening.
- e. Pursuant to the State's Procurement Code, CPW shall contract for the construction of the work with responsible and capable Construction Firms, which said construction firms shall be selected by CPW, the bid tabulation will then be sent by CPW to CWCB.
- f. CPW must provide a copy of the executed construction contract documents consisting of the contractor's proposal, construction contract, performance bond, payment bond, notice of award, notice to proceed, sample change order, and sample field order, as well as the advertisement for bid and bid bond at bidding. After the CWCB staff verifies that these documents comply with the terms of this CONTRACT, CPW may issue the notice to proceed to the construction firms.
- g. CPW shall conduct a pre-construction conference at which time the CWCB staff shall have the opportunity to review and comment on the construction schedule.
- h. If the CWCB staff determines that the PROJECT requires a resident inspector during construction, CPW shall employ an inspector who has been approved by the CWCB staff.
- i. CPW shall construct the PROJECT in accordance with the approved plans and specifications.
- j. Upon completion of the PROJECT construction, CPW shall provide as-built drawings of the PROJECT to the CWCB staff, or, if required by CRS §37-87-105, CPW shall provide the as-built drawings to the State Engineer's Office for approval and filing.
- k. Upon completion of the PROJECT construction, CPW shall arrange a final inspection for the CWCB staff.
- l. CPW shall pay all of the expenses related to the PROJECT when such bills are due.

SECTION 8 – Eligible Expenses. Listed below are the PROJECT expenses eligible for reimbursement:

- 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 CWCB and CPW.
- g. Engineering services for construction management, including design and construction management for CWCB - 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.

SECTION 9 – DISBURSEMENT SCHEDULE

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

SECTION 10 – TIME FOR PERFORMANCE

Project Beginning: Upon effective date of this CONTRACT

Project Finish: 4 years from the effective date of this CONTRACT