

BORROWER: TOWN OF GYPSUM, ACTING BY
AND THROUGH ITS WATER ACTIVITY
ENTERPRISE

Contract No. C150296
Project Amount \$2,663,100
Loan Service Fee \$26,631
Loan Amount \$2,689,731

Agency Name: Water Conservation Board
Agency Number PDA

LOAN CONTRACT

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

THIS CONTRACT, made this July 14, 2009, 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 Town of Gypsum, acting by and through its Water Activity Enterprise, PO Box 130, 50 Lundgren Blvd., Gypsum, CO 81637 ("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. C150296, Fund Number 424, Appropriation Code MC9, Organization YYYY, GBL G296, Program WTRC, Object Code 5510, Reporting Category 0296.
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

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 by the CWCB for this loan. 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 attorney's opinion that

- a. the contract has been duly executed by officers of the BORROWER who are duly elected or appointed and are authorized to execute the contract and to bind the BORROWER;
 - b. the resolutions or ordinances of the BORROWER authorizing the execution and delivery of the contract were duly adopted by the governing bodies of the BORROWER;
 - c. there are no provisions in the Colorado Constitution or any other state or local law that prevent this contract from binding the BORROWER;
 - d. the contract will be valid and binding against the BORROWER if entered into by the CWCB;
8. **Pledge of revenues.** The BORROWER irrevocably pledges to the CWCB, for purposes of repayment of this loan, revenues levied for that purpose as authorized in Appendix 3 and any other funds legally available to the BORROWER, in an amount sufficient to pay the annual payment due under this contract ("Pledged Revenues"). Further, the BORROWER agrees to:
- a. **Segregation of Pledged Revenues.** The BORROWER shall set aside and keep the Pledged Revenues in 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 revenues, except for the liens of the BORROWER's existing loans as listed in Section 5 (Schedule of Existing Debt), of the **Project Summary**, which sets forth the position of the lien created by this contract in relation to any existing lien(s).
 - c. **Rate Covenant.** Pursuant to its statutory authority and as permitted by law, the BORROWER shall take all necessary actions consistent therewith during the term of this contract to establish, levy and collect rates, charges and fees as described in Appendix 3, in amounts sufficient to pay this loan as required by the terms of this contract and the Promissory Note, to cover all expenditures for operation and maintenance and emergency repair services, and to maintain adequate debt service reserves, including obtaining voter approval, if necessary, of increases in the BORROWER's rate schedule or taxes, if applicable.
 - d. **Debt Service Reserve Account.** To establish and maintain the debt service reserve account, the BORROWER shall deposit an amount equal to one-tenth of an annual payment into its debt service reserve fund on the due date of its first annual loan payment and annually thereafter for the first ten years of repayment of this loan. In the event that the BORROWER applies funds from this account to repayment of the loan, the BORROWER shall replenish the account within ninety

(90) days of withdrawal of the funds.

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

- 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 under this contract.

13. **OPERATION OF PROJECT.** The BORROWER shall, without expense or legal liability to the CWCB, manage, operate and maintain the PROJECT continuously in an efficient and economical manner.

14. **BORROWER's Liability Insurance.**

- a. Because the BORROWER is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the BORROWER shall at all times maintain such liability insurance, by commercial policy or self-insurance as is necessary to meet its liabilities under the Act.
- b. Prior to the disbursement of any loan funds, the BORROWER shall provide the CWCB with an Acord Form 25 or other form satisfactory to the CWCB evidencing said insurance and shall provide the CWCB with documentation of renewals of said insurance.

15. **Additional Contract Requirements.** Any additional contract requirements are set forth in Additional Contract Requirement (Section 6) of the **Project Summary**.

B. PROJECT PROVISIONS

1. **Construction Fund Program Procedures.** During the completion of the PROJECT, the BORROWER shall adhere to the CWCB Construction Fund Program Procedures (Section 7) of the **Project Summary**.
2. **Eligible Expenses.** The PROJECT expenses for which the BORROWER is eligible for loan disbursements are listed in Eligible Expenses (Section 8) of the **Project Summary**.
3. **Loan Disbursements.** The CWCB shall disburse loan funds in accordance with the Disbursement Schedule (Section 9) of the **Project Summary**.
4. **Time for Performance.** The BORROWER recognizes that time is of the essence in the performance of all of its obligations under this contract. Therefore, the BORROWER shall complete the PROJECT within the time specified in Time for Performance (Section 10) of the **Project Summary**.
5. **Indemnification By The Construction Firm.** The BORROWER shall require all Construction Firms and their subcontractors to indemnify the STATE and the BORROWER against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of those parties or sustained in connection with the performance of any contract related to the PROJECT or by conditions created thereby, or based upon any violation of any statute, ordinance, or regulation, and the defense of any such claims or actions.
6. **Liability Insurance During Construction.** During construction of the PROJECT, the BORROWER shall require the construction firm(s) and any subcontractors to maintain the following insurance coverage in the limits shown during the term of their contracts for the construction of the PROJECT. The BORROWER shall provide the CWCB with an Acord Form 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. Builder's risk insurance for construction in progress for all perils of loss including fire, wind, hail, and vandalism in an amount equal to the completed value of the PROJECT.
- b. Worker's compensation and employer's liability insurance in the required statutory amounts.
- c. Automobile liability insurance that includes coverage for all owned, non-owned and hired vehicles with minimum limits of \$1,000,000 combined single limit for bodily injury and property damage.
- d. Commercial general liability insurance with minimum limits of \$1,000,000 combined single limit for each occurrence and \$2,000,000 general aggregate. This insurance coverage shall include products/completed operations and bodily injury/property damage.

C. GENERAL PROVISIONS

1. **Periodic Inspections.** Throughout the term of this contract, the BORROWER shall permit a designated representative of the CWCB to make periodic inspections of the PROJECT. Such inspections shall cover the condition of the PROJECT, operating records, maintenance records, and financial records. These inspections are solely for the purpose of verifying compliance with the terms and conditions of this contract and shall not be construed nor interpreted as an approval of the actual design, construction or operation of any element of the PROJECT facilities
2. **Applicable Laws.** The BORROWER shall strictly adhere to all applicable federal, state, and local laws and regulations that are in effect or may hereafter be established throughout the term of this contract.
3. **Designated Agent Of The CWCB.** The CWCB's employees are designated as the agents of the CWCB for the purpose of this contract.
4. **Assignment.** The BORROWER may not assign this contract except with the prior written approval of the CWCB.
5. **Contract Relationship.** The parties to this contract intend that the relationship between them under this contract is that of lender-borrower, not employer-employee. No agent, employee, or servant of the BORROWER shall be, or shall be deemed to be, an employee, agent, or servant of the CWCB. The BORROWER shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants, engineering firms, construction firms, and subcontractors during the term of this contract.
6. **Integration Of Terms.** This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other

amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to STATE fiscal rules, unless expressly provided for herein.

7. **Controlling Terms.** In the event of conflicts or inconsistencies between the terms of this contract and conditions as set forth in any of the appendices, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) Colorado Special Provisions, (2) the remainder of this contract, and (3) the Appendices.
8. **Casualty and Eminent Domain.** If, at any time, during the term of this contract, (a) the BORROWER'S PROJECT facilities including buildings or any portion thereof, are damaged or destroyed, in whole or in part, by fire or other casualty, or (b) title to or use of the PROJECT facilities or any part thereof shall be taken under the exercise of the power of eminent domain, the BORROWER shall cause the net proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair and restoration of the PROJECT facilities or any portion thereof, or to repayment of this loan. Any net proceeds remaining after such work has been completed or this loan has been repaid, shall be retained by the BORROWER. If the net insurance proceeds are insufficient to pay the full cost of the replacement, repair and restoration, the BORROWER shall complete the work and pay any cost in excess of the net proceeds. In the event BORROWER chooses to repay the loan, BORROWER shall remain responsible for the full loan amount outstanding regardless of the amount of such insurance proceeds or condemnation award.
9. **Captions.** The captions and headings contained in this contract are for convenience and reference only and shall not be construed so as to define or limit the terms or provisions contracted herein.
10. **CWCB's Approval.** This contract requires review and approval of plans, specifications, and various other technical and legal documents. The CWCB's review of these documents is only for the purpose of verifying BORROWER'S compliance with this contract and shall not be construed or interpreted as a technical review or approval of the actual design or construction of the PROJECT. Notwithstanding any consents or approvals given to the BORROWER by the CWCB on any such documents, BORROWER and any of its consultants, by preparing any such documents, shall be solely responsible for the accuracy and completeness of any of said documents.
11. **Waiver.** The waiver of any breach of a term of this contract shall not be construed as a waiver of any other term or of any subsequent breach of the same term.
12. **Addresses for mailing.** All notices, correspondence, or other documents required by this contract shall be delivered or mailed to the addresses shown in the **Project Summary**, Section 1 for the BORROWER and to the address below for the CWCB:

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

SPECIAL PROVISIONS

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

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
- 5. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
- 8. SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. State or other public

funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), 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

3315

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

BORROWER: Town of Gypsum, acting by
and through its Water Activity Enterprise

By [Signature]
Steve Carver, Mayor



Attest

By [Signature]
Danette Schlegel, Town Clerk

State of Colorado
Bill Ritter, Jr., Governor

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

Pre-Approved Form

By [Signature]
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 [Signature]

Effective Date 9-1-09

Project Summary – Town of Gypsum, acting by and through its Water Activity Enterprise – Contract No. C150296

SECTION 1 –BORROWER INFORMATION

Name: Town of Gypsum, acting by and through its Water Activity Enterprise
Address: 50 Lundgren Boulevard
PO Box 130
Gypsum, CO 81637
Phone: 970-524-7514
Fax: 970-524-7522
Contact: Mark Silverthorne, Finance Officer
Phone Number: (970) 524-1725
E-mail address: mark@townofgypsum.com
Type of Entity: The Town is a Colorado home rule municipality formed pursuant to and governed by Colorado Constitution, Article XX, the Town's Home Rule Charter effective October 21, 1982, and is located in Eagle County. The Town's Water Activity Enterprise is a water activity enterprise established by the Town by Ordinance No. 2, Series 1994 and Ordinance No. 06, Series 2001, codified in Chapter 13.14 of Gypsum Municipal Code, and adopted pursuant to Article 45.1, Title 37, C.R.S., which ordinances are incorporated herein by reference. The Enterprise was formed and is operated as an enterprise within the meaning of COLO. CONST. Art. X, Section 20.

Section 2 – Project Description

- A. Description of PROJECT: The BORROWER applied to the CWCB for a loan to be used for the construction of the L.E.D.E. Ditch & Reservoir Upgrade Project, located in Eagle County, hereinafter referred to as the PROJECT, at an estimated total cost of \$3,162,000.
- B. Description of Feasibility Study: The CWCB has reviewed a feasibility study report on the PROJECT compiled by Ramsey Kropf, of Patrick Miller Kropf, P.C. and Thomas Zancanella of Zancanella & Associates, P.C., 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.

Appendix 1 to Loan Contract C150296

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

At its May 2009 meeting, the CWCB approved a Small Project Loan from the Construction Fund to the BORROWER in an amount up to \$2,663,100 for PROJECT costs, not to exceed 90% of the cost of the PROJECT, with a loan origination fee of 1% in accordance with CWCB Policy No. 16, at an interest rate of 4.50% per annum for a repayment term of 30 years.

SECTION 5 – SCHEDULE OF EXISTING DEBT

Name of Lienholder	Colorado Water Resources and Power Development Authority ("CWRPDA")
Contract Date	April 1, 1994
Original Amount	\$715,000
Term of Repayment	20 yrs with interest ranging from 4.85% - 5.875% with last payment October 1, 2014

The parity certificate dated June 4, 2009, establishing that the lien created by this loan is on a parity with the lien of the CWRPDA described above, is incorporated herein by reference. The Loan Agreement between the CWRPDA and the Town of Gypsum, Acting By and Through the Town of Gypsum, Colorado Water Activity Enterprise dated April 1, 1994 and the Governmental Agency Bond in the original amount of \$715,000, payable monthly through October 1, 2014, as authorized by Ordinance 1994-3 of the Town, adopted by second reading on March 8, 1994, are both incorporated herein by reference (Loan Agreement and Ordinance).

SECTION 6 – ADDITIONAL CONDITIONS & CONTRACT REQUIREMENTS

No additional contract requirements.

SECTION 7 – CONSTRUCTION FUND PROGRAM PROCEDURES

- A. The BORROWER shall employ an engineer, registered in the state of Colorado to prepare plans and specifications for the PROJECT.
- B. The BORROWER's and the Engineering Consultant's 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 § 37-87-105 C.R.S., the BORROWER shall provide a letter of approval from the

State Engineer's Office prior to construction.

- D. CWCB staff must be present at bid opening and must approve the award of the construction contract.
- E. The BORROWER shall contract for the construction of the work with responsible and capable Construction Firms, which said Construction Firms shall be selected by the BORROWER and found acceptable by the CWCB staff.
- F. The BORROWER 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, the BORROWER may issue the notice to proceed to the Construction Firms.
- G. 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.
- H. 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.
- I. The BORROWER shall construct the PROJECT in accordance with the approved plans and specifications.
- J. Upon completion of the PROJECT construction, the BORROWER shall provide as-built drawings of the PROJECT to the CWCB staff, or, if required by § 37-87-105, C.R.S., the BORROWER shall provide the as-built drawings to the State Engineer's Office for approval and filing.
- K. Upon completion of the PROJECT construction, the BORROWER shall arrange a final inspection for the CWCB staff.
- L. The BORROWER shall pay all of the expenses related to the PROJECT when such bills are due.

SECTION 8 – ELIGIBLE EXPENSES. The following items are eligible for loan disbursements.

- 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.

Appendix 1 to Loan Contract C150296

- 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 the BORROWER.
- G. Engineering services for construction management, including design and construction management for CWCB-approved change orders.
- H. Interest during completion of the PROJECT pursuant to Paragraph A.4 of the Contract.
- I. 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.
- J. PROJECT-related expenses incurred prior to the Effective Date of this contract in accordance with the legislative approval of this loan.

SECTION 9 – DISBURSEMENT SCHEDULE

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

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.

ORDINANCE NO.12
(Series 2009)

**AN ORDINANCE AUTHORIZING EXECUTION OF LOAN CONTRACT
WITH COLORADO WATER CONSERVATION BOARD**

WHEREAS, the Town of Gypsum ("Town") is a home rule municipality duly organized and existing under Articles XX of the Colorado Constitution and the Town's Home Rule Charter effective October 21, 1982; and

WHEREAS, the Town is authorized pursuant to Section 10.1 of the Charter to have and exercise all municipal powers provided by the Colorado constitution and statutes with regard to all utilities, including the right to construct, purchase or condemn any public utility, work, or way; and

WHEREAS, pursuant to ordinance adopting Chapter 13.04 of the Gypsum Municipal Code ("Code") the Town Council has created the Gypsum Water Department for the purpose managing, maintaining and operating the Gypsum waterworks system and plant; and

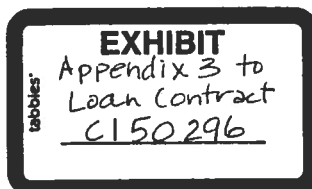
WHEREAS, pursuant to ordinance adopting Chapter 13.14 of the Code the Town Council has established the Water Activity Enterprise to provide all water activities, services and facilities of the Town Water Department as a "water activity enterprise" under Article X, Section 20 of the Colorado Constitution ("TABOR") and Article 45.1 of Title 37, C.R.S. (the "Act"); and

WHEREAS, the Town is authorized by Section 6.4 of the Charter to by ordinance borrow money, issue bonds, or otherwise extend its credit for purchasing, constructing, condemning, or otherwise acquiring, extending or improving a municipal utility system or other public facility or income producing project, or for any other capital improvement, provided that the obligations are made wholly payable from the net revenues derived from the operation of such utility system or other such project or capital improvement; and

WHEREAS, the Town, through its Water Activity Enterprise, applied for and has been approved for a loan from the Colorado Water Conservation Board ("CWCB"); and

WHEREAS, the Town seeks to enter into the Loan Contract C150296 in order to secure such loan; and

WHEREAS, the Town also seeks to enter into the related Promissory Note and Security Agreement required to disburse the loan proceeds;



WHEREAS, the total loan amount is for \$2,690,000, and the proceeds of such loan are to be used for construction of the LEDE Ditch and LEDE Reservoir, as more fully described in the CWCB Loan Application and Feasibility Study provided by Gypsum to the CWCB (the "Project").

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, acting in its capacity as the Governing Body of the Water Activity Enterprise, as follows:

Section 1 - Authorization of CWCB Loan. The Town, acting through the Gypsum Water Activity Enterprise, and in accordance with the Constitution of the State of Colorado, the Charter, the Code, Title 31, Article 35, C.R.S., Title 37, Article 45.1, C.R.S., and all other laws of the State of Colorado, hereby approves and authorizes the execution of Loan Contract C150296 with the CWCB, including the Promissory Note and Security Agreement, which documents are attached hereto as Exhibit A and incorporated by reference to this Ordinance ("Loan Documents"). The Mayor, the Mayor Pro Tem, the Town Clerk and the Town Manager, and other duly authorized officers of the Enterprise are hereby authorized and directed to execute and deliver the Loan Documents in substantially the forms attached hereto as Exhibit A, with such changes as recommended by legal counsel for the Enterprise and, not inconsistent herewith, as are approved by the persons executing the same; and the Enterprise is hereby authorized and directed to perform its obligations under the Loan Documents. The accomplishment of the Project is hereby authorized, approved, and ordered and it is hereby determined that the Loan Documents mature at such time not exceeding the estimated life of the Project. The Mayor, Mayor Pro Tem, Town Clerk and Town Manager, and any other duly authorized officers of the Enterprise, shall, and are hereby authorized and directed to, take all actions necessary or desirable to effectuate the provisions of this Ordinance, including, but not limited to, the execution of an such certificates and other documents as may be reasonably required by the CWCB or as are necessary and appropriate to effectuate the transactions described in this Ordinance. The execution by the Mayor, Mayor Pro Tem, Town Clerk and Town Manager, or any other duly authorized officer of the Enterprise of any document authorized herein shall be conclusive proof of the approval by the Enterprise of the terms thereof.

Section 2 - Pledge of Revenues; Rate Covenant; Limited Obligation.

(a) Pursuant to Section 8 of the Loan Contract, the Town hereby irrevocably pledges to the CWCB, for purposes of repayment of the obligation created by the Loan Documents (the "Loan"), revenues derived from operations and activities of the Enterprise, and any other funds legally available to the Town, in an amount sufficient to pay the annual payment due under Loan Documents ("Pledged Revenues"). The principal and interest due under the Loan Documents shall be payable solely from the Pledged Revenues. The Loan Documents shall constitute an irrevocable pledge and lien upon the

Pledged Revenues, and the Pledged Revenues are hereby pledged to the payment of the Loan. The CWCB may not look to any general or other fund of the Town for the payment of the principal and interest on the Loan.

(b) The Town shall take all necessary actions during the term of the Loan Contract consistent therewith to establish, levy and collect rates, charges and fees associated with the Enterprise operations and activities, in amounts sufficient to pay the loan as required by the terms of the Loan Documents, and to cover all expenditures for Enterprise operation and maintenance and emergency repair services, and to maintain adequate debt service reserves.

(c) The obligations of the Town under the Loan Documents shall not constitute or be held to be a debt or an indebtedness of the Town or any other governmental entity within the meaning of any provision or limitation of the Charter or the constitution or laws of the State of Colorado. The obligations of the Town under the Loan Documents are not secured by the full faith and credit or taxing powers of the Town or any federal, state, or local government or agency. In addition, no elected or appointed officers or agents of the Town shall be subject to any pecuniary liability in connection with any agreement, covenant, or undertaking by the Town, or by them, contained in any document executed in connection with the authorization, execution, and delivery of the Loan Documents or this Ordinance or with respect to any action taken or omitted to be taken in good faith with reference thereto.

Section 3 - Public Inspection. Copies of this ordinance and the Gypsum Municipal Code are available for public inspection at the office of the Gypsum Town Clerk.

Section 4 - Public Hearing: A public hearing on this Ordinance shall be held on the ____ day of ____, 2009, at 7:00 p.m. at the Town of Gypsum Town Hall, 50 Lundgren Boulevard, Gypsum, Colorado.

Section 5 - Effective Date. This Ordinance shall become effective as a permanent Ordinance five (5) days after publication, following final adoption after a public hearing held on the ____ day of ____, 2009, at 7:00 p.m., at the Gypsum Town Hall, 50 Lundgren Blvd., Gypsum, Colorado.

Section 6 — Ordinance Irrepealable. After the Loan Documents are executed and the proceeds therefrom received by the Town, this Ordinance shall be and remain irrepealable until the Loan and the interest thereon shall have been fully paid, satisfied and discharged.

Section 7 - Severability. If any portion of this Ordinance, or the International Codes amended hereby, is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

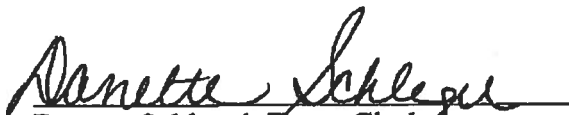
INTRODUCED, READ AND ORDERED PUBLISHED BY THE TOWN COUNCIL
OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE,
SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN
OF GYPSUM ON THE 23rd DAY OF JUNE, 2009, BY A VOTE OF 6 IN FAVOR
AND 0 AGAINST.

TOWN OF GYPSUM

By: 

Stephen M. Carver, Mayor

Attest:


Danette Schlegel, Town Clerk



FINALLY ADOPTED, PASSED AND APPROVED ON 7/14, 2009.

TOWN OF GYPSUM

By: 

Stephen M. Carver, Mayor

Attest:


Danette Schlegel, Town Clerk



EXHIBIT A

TOWN OF GYPSUM
P.O. Box 130
50 Lundgren Boulevard
Gypsum CO 81637

PUBLIC NOTICE

This is to give notice that the following Ordinance was approved on First Reading on June 23, 2009. It is scheduled to be adopted at a public hearing on July 14, 2009

**Ordinance No. 12
(Series 2009)**

**An Ordinance Authorizing Execution of Loan Contract with Colorado Water
Conservation Board**

The text of this Ordinance is available for public inspection at the office of the Town Clerk, 50 Lundgren Blvd., Gypsum, Colorado, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.



Danette Schlegel
Town Clerk

Published In: *Eagle Valley Enterprise*
Publish Dates: July 2, 2009

SECURITY AGREEMENT

(PLEDGE OF REVENUES)

DATE: JULY 14, 2009

DEBTOR: TOWN OF GYPSUM, ACTING BY AND THROUGH ITS WATER
ACTIVITY ENTERPRISE

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

PROMISSORY NOTE: \$2,689,731, DATED JULY 14, 2009

TERMS OF REPAYMENT: 4.50% PER ANNUM FOR 30 YEARS

LOAN CONTRACT: C150296, DATED JULY 14, 2009

COLLATERAL: All Enterprise revenues pledged to repay the loan as described in Pledge of Revenues provisions of the LOAN CONTRACT AND DEBTOR'S ORDINANCE NO. 2009-12 ADOPTED ON SECOND READING ON JULY 14, 2009.

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.

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

- a. default in the payment or performance of any obligation contained herein or in the Promissory Note or Loan Contract;
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against DEBTOR; or
- c. the making or furnishing of any warranty, representation or statement to SECURED PARTY by or on behalf of DEBTOR which proves to have been false in any material respect when made or furnished.

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

The SECURED PARTY shall give the DEBTOR written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the DEBTOR shall be considered in default for purposes of this Security Agreement. No default shall be waived by SECURED PARTY except in writing, and no waiver by SECURED PARTY of any default shall operate as a waiver of any other default or of the same default on a future occasion. The taking of this security agreement shall not waive or impair any other security SECURED PARTY may have or hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this security agreement; but SECURED PARTY shall retain its rights of set-off against DEBTOR. In the event court action is deemed necessary to enforce the terms and conditions set forth herein, said action shall only be brought in the District Court for the City and County of Denver, State of Colorado, and DEBTOR consents to venue and personal jurisdiction in said Court.

All rights of SECURED PARTY hereunder shall inure to the benefit of its successors and assigns; and all promises and duties of DEBTOR shall bind its successors or assigns.



DEBTOR: Town of Gypsum, acting by
and through its Water Activity Enterprise

By

Steve Carver, Mayor

Appendix 4 to Loan Contract C150296