



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 718
Denver, CO 80203

July 7, 2015

Ms. Jeanne Kinney, Treasurer
City of Fort Morgan
P.O. Box 100
Fort Morgan, CO 80701

Subject: Loan Contract No. C150004

Dear Ms. Kinney:

Attached for your records are the original documents relative to the agreement between the City of Fort Morgan and the Colorado Water Conservation Board, Loan Contract No. C150004, dated June 22, 1999. The documents have been stamped "PAID IN FULL" denoting that the terms of the agreement have been satisfied in full by the Company.

Also included are the following documents:

- The original Promissory Note dated June 29, 1999
- All Ordinances relating to contract
- All UCC filings

Should you have any questions, please contact Jodie Tavares at (303) 866-3441, ext. 3247. If we can be of any further assistance to you in the future, please let us know.

Sincerely,

Jodie Tavares
Loan Program Assistant



**PAID
IN FULL**

AGENCY NAME: Water Conservation Board

AGENCY NUMBER: PDA

ROUTING NUMBER: 00062

\$8,000,000

LOAN CONTRACT

THIS CONTRACT, made this 22nd day of June 1999, by and between the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board, hereinafter referred to as the CWCB and/or the STATE, and the **City of Fort Morgan, Colorado**, hereinafter referred to as the CITY, and the **City of Fort Morgan, Colorado, Water Works and Distribution Enterprise**, hereinafter referred to as the BORROWER and/or CONTRACTOR, 710 E. Railroad, P.O. Box 100, Fort Morgan, CO 80701.

FACTUAL RECITALS

1. Authority exists in the law, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number 424, Organization YYYY, (\$4,000,000: Appropriation S98, GBL FORT), (\$4,000,000: Appropriation L98, GBL FORT) Program WTRC, Object Code 5110, Contract Encumbrance Number **C150004**.
2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to the provisions of §§ 37-60-119 and 37-60-120, C.R.S., the STATE is authorized to loan money for the construction of water projects for the benefit of the people of the STATE, provided that the borrower assures repayment of that money.
4. The CITY is a duly constituted home rule city pursuant to Section 31-1-202, C.R.S. and Article XX of the Colorado Constitution, located in Morgan County, Colorado.
5. The BORROWER is an enterprise within the meaning of § 37-45.1-101 *et seq.*, C.R.S. and Article X, Section 20 of the Colorado Constitution, created pursuant to the CITY's plenary powers and recognized by the City Council's resolution dated November 2, 1993, and Ordinance No. 788 dated December 7, 1993, both of which are incorporated herein by reference.
6. The CITY and the BORROWER applied to the STATE for a loan to partially finance the CITY's share of the cost of constructing the Morgan Pipeline portion of the Northern Colorado Water Conservancy District Southern Water Supply Project, consisting of 42 miles of pipeline from the vicinity of Platteville to Fort Morgan, hereinafter referred to as the PROJECT, at an estimated total cost of \$15.1 million. The CITY/BORROWER proposed using the loan to refinance variable rate revenue bonds that the BORROWER issued in December 1997 to finance PROJECT costs. The BORROWER borrowed \$5,500,000 from the STATE under a Loan Contract and Promissory Note dated August 7, 1995, to finance the CITY's share of the costs of constructing the Carter Lake to Broomfield and Fort Lupton/Hudson Pipelines, which constituted the first portion of the Southern Water Supply Project.

7. The CITY, acting by and through the BORROWER, entered into three Allotment Contracts with the Northern Colorado Water Conservancy District ("District"), acting by and through the Southern Water Supply Project Water Activity Enterprise, under which, in return for paying its proportionate share of the Carter Lake to Broomfield Pipeline, the Fort Lupton/Hudson Pipeline and the Morgan Pipeline construction costs, the CITY/BORROWER is entitled to use a certain proportion of the capacity of said Pipelines to deliver water to the CITY'S/BORROWER'S facilities, and to assign, transfer or lease any part of the CITY'S/BORROWER'S allotment of capacity in said Pipelines. The three Allotment Contracts, dated January 14, 1994, August 4, 1995 and July 14, 1998, are incorporated herein by reference, and are hereinafter collectively referred to as the "Allotment Contracts." The CITY'S and BORROWER'S rights under the Allotment Contracts are hereinafter collectively referred to herein as "Allotment Contract Rights."
8. The STATE has reviewed a feasibility study report on the Morgan Pipeline compiled by Gronning Engineering, which is incorporated herein by reference, and, based upon the feasibility reports, the STATE determined the PROJECT to be technically and financially feasible.
9. At its November 1997 meeting, the CWCB approved a loan to the BORROWER in the amount of up to Eight Million Dollars (\$8,000,000) at an interest rate of 4% per annum for a term of thirty (30) years, to refinance a portion of the variable rate bonds used to finance PROJECT costs. The CWCB conditioned the loan approval on the City of Fort Morgan City Council adopting a schedule of rate increases that will be adequate to pay the costs of all debt service incurred and for system operation and maintenance for the PROJECT.
10. On November 18, 1997, the City of Fort Morgan City Council adopted an ordinance, incorporated herein by reference, raising water rates for 1998 and establishing a schedule for further raising water rates in 1999 and 2000.
11. In December 1997, the BORROWER issued the City of Fort Morgan, Colorado, Water Works and Distribution Enterprise Water Revenue Bonds, Series 1997 ("1997 Bonds") to cover PROJECT costs pending the CITY'S/BORROWER'S applications for and finalization of loans from various state and federal lenders, including the Colorado Water Resources and Power Development Authority ("CWRPDA") and the United States Department of Agriculture-Rural Development ("RD"). The parties acknowledge that this loan, the BORROWER'S 1995 loan from the STATE, the BORROWER'S Water Revenue Refunding and Improvement Bond, Series 1994, the 1997 Bonds, the BORROWER'S obligations under a Reimbursement Agreement with State Street Bank dated December 16, 1997 entered into in connection with the issuance of the 1997 Bonds, and the BORROWER'S loans from the CWRPDA and RD to finance the PROJECT all shall have a parity lien on the BORROWER'S water system revenues.
12. Pursuant to 1998 Colo. Sess. Laws, Ch. 175, Sections 1(1)(g) and Section 1(2)(b), the Colorado General Assembly authorized the CWCB to loan to the CITY or the BORROWER \$4,000,000 from the CWCB Construction Fund and \$4,000,000 from the Severance Tax Trust Fund Perpetual Base Account at an interest rate of 4% per annum for a term of thirty (30) years for refinancing PROJECT costs.
13. The STATE understands that the repayment of the funds loaned, including interest thereon, will come from revenues pledged for the repayment thereof from water system revenues and that this obligation does not constitute a debt or multiple-fiscal year financial obligation of the CITY within the meaning of any constitutional or statutory limitations.

14. The STATE now desires, by this contract, to loan money to the BORROWER for this PROJECT upon mutually agreeable terms and conditions, subject to the availability of funding for that purpose.

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

A. The CITY and the BORROWER agree as follows:

1. Time for PROJECT completion. The CITY/BORROWER recognize that time is of the essence in the performance of all of their obligations under this contract. Therefore, the CITY/BORROWER shall complete the PROJECT within two (2) years of the date of this contract. The time for completion of the PROJECT may be extended subject to the approval of the STATE. The CITY/BORROWER must provide, in writing, documented justification for any request for an extension within sixty (60) days prior to the end of the period for completion.

2. Indemnification By The CONSTRUCTION FIRM. The CITY/BORROWER shall require all CONSTRUCTION FIRMS and their subcontractors to indemnify the STATE and the CITY/BORROWER against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of those parties or sustained in connection with the performance of any contract related to the PROJECT or by conditions created thereby, or based upon any violation of any statute, ordinance, or regulation, and the defense of any such claims or actions.

3. Liability Insurance During Construction. The CITY/BORROWER shall require the CONSTRUCTION FIRM and its subcontractors to maintain, during the term of their contracts for construction of the PROJECT, the following insurance with a company that is satisfactory to the STATE:

- a. Worker's compensation and employer's liability insurance in the required statutory amounts.
- b. Automobile liability insurance which includes coverage for all owned, non-owned and hired vehicles with minimum limits of \$1,000,000 combined single limit for bodily injury and property damage.
- c. Commercial general liability insurance with minimum limits of \$1,000,000 combined single limit for each occurrence and \$2,000,000 general aggregate. This insurance coverage shall include products/completed operations and personal injury.
- d. Builder's risk insurance for construction in progress for all perils of loss including fire, wind, hail, vandalism, and flood in an amount equal to the completed value of the PROJECT.

Said general liability insurance shall name the CITY, the BORROWER and the STATE as additional insureds. An additional insured endorsement and a current copy of a certificate of said liability insurance must be provided to the STATE prior to commencement of construction and maintained until construction is complete. No payments shall be made to the BORROWER unless all insurance certificates are current. The CITY/BORROWER shall file notices of renewals of said policies with the STATE as renewals occur.

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

4. **CITY'S and BORROWER'S Indemnification Of The STATE.** The CITY and the BORROWER shall, without expense or legal liability to the STATE, manage, operate, and maintain the PROJECT continuously in an efficient and economical manner. The CITY and the BORROWER agree, to the extent authorized by law, to indemnify and hold the STATE harmless from any liability incurred by the STATE as a result of the STATE'S interest in the PROJECT facilities and any other property identified in the Collateral provision of this contract.

5. **CITY'S Liability Insurance.** Upon execution of this contract and continuing until complete repayment of the loan is made to the STATE, the CITY shall maintain commercial general liability insurance with a company that is satisfactory to the STATE covering the management, operation, and maintenance of the PROJECT with minimum limits of \$1,000,000 combined single limit for each occurrence and \$2,000,000 general aggregate, including products/completed operations and personal injury.

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

If the CITY is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the CITY shall at all times maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the STATE, the CITY shall provide proof of such insurance.

6. **CITY'S and BORROWER'S Authority To Contract.** The CITY and the BORROWER warrant that both the City Council of the CITY and the governing body of the BORROWER have complied with the CITY'S Charter and all statutory and other legal requirements and duly passed ordinances that constitute legislative measures of the CITY and the BORROWER and are irrevocable for the term of this loan contract, authorizing:

- a. The CITY and the BORROWER to enter into and comply with the applicable terms of this contract and the BORROWER to enter into and comply with the terms of the Promissory Note; and
- b. The CITY to establish and collect water user charges, rates and fees in amounts sufficient to repay the loan made to the BORROWER under this contract; and
- c. The BORROWER to make annual loan payments in accordance with the promissory note; and
- d. The BORROWER to pledge revenues from water user charges, rates and fees ("water system revenues") to repay this loan and to execute a Security Agreement to convey a security interest to the STATE in the pledged water system revenues; and
- e. The CITY to set aside sufficient water system revenues each year to pay the annual installment in a special account, separate and apart from other revenues of the CITY, in accordance with the Pledge of Revenues provisions of this contract; and
- f. The BORROWER to execute Security Agreements to convey security interests to the STATE in all revenues from any sale or lease of the CITY'S/BORROWER'S interest in the

Allotment Contracts, and in the CITY'S/BORROWER'S Allotment Contract Rights, in accordance with the Collateral provisions of this contract.

Said ordinances are attached hereto as **Appendix A** and incorporated herein.

7. **Attorney's opinion letter.** Prior to the execution of this contract by the STATE, the CITY and the BORROWER shall submit to the STATE an opinion from Red Book bond counsel that the contract has been duly executed by officers of the CITY and the BORROWER who are duly elected or appointed and are authorized to execute the contract and to bind the CITY and the BORROWER; that the ordinances of the CITY and the BORROWER authorizing the execution and delivery of the contract were duly adopted by the governing bodies of the CITY and the BORROWER; that there are no provisions in the Colorado Constitution or any other state or local law that prevent this contract from binding the CITY and the BORROWER; and that the contract will be valid and binding against the CITY and the BORROWER if entered into by the STATE.
8. **Promissory Note Provisions.** The Promissory Note setting forth the terms of repayment and evidencing this obligation in the amount of up to \$8,000,000 at an interest rate of 4% per annum for a term of thirty (30) years is attached as **Appendix B** and incorporated herein.
 - a. **Interest During Construction.** As the loan funds are disbursed by the STATE to the BORROWER during PROJECT completion, interest shall accrue at the rate of 4% per annum. The amount of the interest accrued during PROJECT completion shall be calculated by the STATE and the BORROWER shall repay that amount to the STATE either within ten (10) days after the date the STATE notifies the Borrower of the amount due, or, at the STATE'S discretion, the amount shall be deducted from the final disbursement of loan funds that the STATE makes to the BORROWER.
 - b. **Final loan amount.** In the event that the final loan amount is less than the authorized loan amount, the STATE shall apply the remaining loan funds to prepayment of the loan if the remaining funds equal less than 10% of the authorized loan amount. If the remaining loan funds equal more than 10% of the authorized loan amount, the STATE may apply those funds to prepayment of the loan with the BORROWER'S consent, or the parties may amend the contract to establish the final loan amount and reamortize the annual payment. When such remaining loan funds are applied to prepayment of the loan, the annual loan payment amount shall remain the same, resulting in a reduced term of repayment.
9. **Documentation of 1997 Bond retirement.** Within fifteen (15) working days of receipt of the loan funds, the BORROWER shall provide the STATE with documentation of the application of all loan funds to retire a portion of the 1997 Bonds.
10. **Warranties.** The BORROWER and the CITY warrant the following:
 - a. By acceptance of the loan money pursuant to the terms of this contract and by its representations herein, the BORROWER shall be estopped from asserting for any reason that the BORROWER is not authorized or obligated to repay the loan money to the STATE as required by this contract.
 - b. Both the BORROWER and the CITY have full power and authority to enter into this contract. The execution and delivery of this contract and the performance and observance of its terms, conditions and obligations have been duly authorized by all necessary actions of the BORROWER and the CITY.

- c. The BORROWER and the CITY have not employed or retained any company or person, other than a bona fide employee working solidly for the BORROWER and/or the CITY, to solicit or secure this contract. The BORROWER and the CITY have 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.
 - d. The BORROWER is an enterprise legally created and maintained in compliance with § 37-45.1-101, et seq., C.R.S., and Article X, Section 20 of the Colorado Constitution, and has authority to enter into this contract with the STATE. The BORROWER and/or the CITY shall immediately notify the STATE in writing if the circumstances which formulate the basis of this warranty change.
 - e. The collateral identified in the Collateral Provisions of this contract is not encumbered by any other liens or in any other manner, except for the STATE's lien created by the August 7, 1995 Loan Contract and Promissory Note entered into by the STATE, the CITY and the BORROWER.
 - f. The BORROWER and the CITY agree not to terminate or dissolve the BORROWER, nor adversely withdraw or deplete its assets, nor otherwise adversely affect the BORROWER's ability to perform during the term of this contract.
 - g. The specific revenues to be pledged to repay the STATE under this contract shall be water user rates, charges and fees ("water system revenues"), the establishment of which have been authorized by ordinance of the CITY. The BORROWER hereby pledges sufficient annual water system revenues to pay the annual installment amount pursuant to the Promissory Note attached to this contract, and hereby agrees to establish a separate account into which all such moneys shall be deposited.
- 11. Pledge of water system revenues.** The BORROWER hereby irrevocably pledges to the STATE, for purposes of repayment of this loan, water system revenues levied for that purpose as authorized by ordinances of the CITY ("pledged revenues"). Further, the CITY and the BORROWER agree to:
- a. **Keep pledged revenues separate.** The CITY and the BORROWER shall set aside and keep the pledged revenues in an account separate from other BORROWER revenues, and warrant that these revenues will not be used for any other purpose.
 - b. **Security interest in pledged revenues.** To provide a security interest to the STATE in the pledged revenues so that the STATE shall have priority over all other competing claims for said revenues, except for the BORROWER's 1995 loan from the STATE, the BORROWER's Water Revenue Refunding and Improvement Bond, Series 1994, the 1997 Bonds, the BORROWER's obligations under a Reimbursement Agreement with State Street Bank dated December 16, 1997 entered into in connection with the issuance of the 1997 Bonds, and the BORROWER's loans from the CWRPDA and RD to finance the PROJECT, all of with which this loan shall have parity status, the BORROWER has duly executed a Security Agreement, attached hereto as **Appendix C** and incorporated herein.
 - c. **Rate Covenant.** Pursuant to its authority, and as authorized by its ordinances, the CITY shall take all necessary actions consistent therewith during the term of this contract to establish, levy and collect water rates, charges and fees in amounts sufficient to pay this loan as required by this contract and the promissory note, to

cover all expenditures for operation and maintenance and emergency repair services, and to maintain adequate debt service reserves.

- d. **Debt Service Reserve Account.** BORROWER shall deposit an amount equal to one-tenth of an annual payment into its debt service reserve account on an annual basis for the first ten years 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 obligations payable from the pledged revenues and having a lien thereon which is superior to the lien of this loan. The BORROWER may issue parity bonds, other than this loan and the BORROWER'S loans from CWRPDA and RD, to which the STATE has previously consented, only with the prior written approval of the STATE, provided that:
- i. The BORROWER is currently and at the time of the issuance of the parity debt in substantial compliance with all of the obligations of this contract, including, but not limited to, being current on the annual payments due under this contract and in the accumulation of all amounts then required to be accumulated in the BORROWER'S debt service reserve fund;
 - ii. The BORROWER provides to the STATE a Parity Certificate from an independent certified public accountant certifying that, based on an analysis of the BORROWER'S revenues, excluding tap and/or connection fees, for 12 consecutive months out of the 18 months immediately preceding the date of issuance of such paritybonds, the BORROWER'S revenues are sufficient to pay at least the annual operating and maintenance expenses, annual debt service on all outstanding bonds having a lien on the pledged revenues, including this loan, the annual debt service on the proposed bonds to be issued, and all required deposits to any reserve funds required by this contract or by the lender(s) of any bonds having a lien on the pledged revenues. The analysis of revenues shall be based on the BORROWER'S current rate structure.

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

12. Collateral. Part of the security provided for this loan shall be an undivided one hundred percent (100%) interest in the following, hereinafter referred to as COLLATERAL:

- a. Pledge of revenues from any sale or lease of the CITY'S and/or BORROWER'S interest in the Allotment Contracts, evidenced by the executed Security Agreement attached hereto as **APPENDIX C** and incorporated herein. The CITY and the BORROWER acknowledge that the STATE shall perfect its security interest in said revenues by filing a UCC-1 Form with the Colorado Secretary of State.
- b. Pledge of the CITY'S and the BORROWER'S Allotment Contract Rights, as more fully described in the Remedies For Default provision of this contract and evidenced by the executed Security Agreement attached hereto as **APPENDIX C** and incorporated herein. The CITY and the BORROWER acknowledge that the STATE shall perfect its security interest in the Allotment Contract Rights by filing a UCC-1 Form with the Colorado Secretary of State.

13. Collateral during repayment. The CITY and the BORROWER shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the COLLATERAL for this loan or the water system revenues pledged herein to repay the loan, so long as any of the principal, accrued interest, and late charges, if any, on this loan remain unpaid, without the prior written concurrence of the STATE. In the event of any such sale, transfer or encumbrance without the STATE's written concurrence, the STATE may at any time thereafter declare all outstanding principal and interest on this loan immediately due and payable.

14. Remedies for default. Upon default in the payments herein set forth to be made by the BORROWER, or default in the performance by the CITY or the BORROWER of any covenant or agreement contained herein, the STATE, at its option, may:

- a. declare the entire principal amount and accrued interest then outstanding immediately due and payable;
- b. exercise its rights under the Security Agreements and/or Promissory Note;
- c. enforce its security interest in the Allotment Contract Rights by exercising or temporarily assigning the Allotment Contract Rights.
 - i. If the STATE enforces its security interest in the Allotment Contract Rights by exercising or temporarily assigning the Allotment Contract Rights, the STATE (or the party to whom the STATE lawfully leases or temporarily assigns the CITY's and/or BORROWER's interest therein) shall fully perform the obligations and receive the benefits thereunder, subject to the terms of the Allotment Contract. The STATE agrees to exercise the CITY's and/or BORROWER's Allotment Contract Rights in a manner that will ensure delivery of sufficient water to meet the actual needs of the CITY's customers. The STATE agrees to apply revenues received as a result of its exercise or temporary assignment of such Allotment Contract Rights to the payment of principal, interest, and late charges, if any, due hereunder with any excess payable to the BORROWER. The STATE agrees not to permanently transfer or assign all or any part of the CITY's and/or BORROWER's Allotment Contract Rights.
 - ii. The STATE further agrees to cease exercising and/or to return the CITY's and/or BORROWER's Allotment Contract Rights to the CITY and/or the BORROWER as soon as possible after the default has been cured and the CITY and/or the BORROWER reasonably demonstrates that it is able to comply with all the terms of this contract and the Allotment Contracts.
 - iii. The STATE will not enforce its security interest in the Allotment Contract Rights if default in payment is caused by an order of the Colorado State Engineer prohibiting storage and release of water from Carter Lake Reservoir.
- a. take any other appropriate action.

All remedies described herein may be simultaneously or selectively and successively enforced. The provisions of this contract may be enforced by the STATE at its option without regard to prior waivers of previous defaults by the CITY and/or the BORROWER, through judicial proceedings to require specific performance of this contract, or by such other proceedings in law or equity as may be deemed necessary by the STATE to ensure compliance with provisions of this contract and the laws and regulations under which this contract is executed. The STATE's exercise of any or all of the remedies described herein

shall not relieve the CITY or the BORROWER of any of their duties and obligations under this contract.

15. **In event of a conflict.** In the event of conflict between the terms and conditions as set forth in the any of the appendices, the provisions of this contract shall control.
16. **Periodic inspections.** Throughout the term of this contract, the CITY shall permit a designated representative of the STATE to make periodic inspections of the PROJECT. Such inspections are solely for the purpose of verifying compliance with the terms and conditions of this contract. Furthermore, such inspections shall cover the condition of the PROJECT, operating records, maintenance records, and financial records, and shall not be construed nor interpreted as an approval of the actual design and/or construction of any element of the PROJECT facilities.
17. **No dissolution of water enterprise.** The CITY and the BORROWER agree not to terminate or dissolve the BORROWER, nor adversely withdraw or deplete its assets, nor otherwise adversely affect the BORROWER's ability to perform during the term of this contract.
18. **Adhere to applicable laws.** The CITY and 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.

B. The STATE agrees as follows:

1. **Agreement to loan money.** The STATE agrees to loan to the BORROWER up to \$8,000,000 at an interest rate of 4% per annum for a term of thirty (30) years to refinance PROJECT costs.
2. **Disbursements.** Within thirty (30) days from receipt of a written request for loan funds from the CITY and/or the BORROWER, the STATE shall disburse the requested loan funds to the BORROWER by State Warrant.
3. **Release after loan is repaid.** Upon completion of repayment to the STATE of the entire principal, all accrued interest, and late charges, if any, as specified in the Promissory Note, the STATE agrees to execute releases of security agreements and, where necessary, UCC-3 forms to terminate all of the STATE's rights in and to the pledged revenues, the pledged proceeds of any sale of the CITY's and/or the BORROWER's interest in the Allotment Contracts, and the CITY's and/or the BORROWER's Allotment Contract Rights.

C. The STATE, the CITY and the BORROWER mutually agree as follows:

1. **Designated agent of the STATE.** The CWCB, which includes its agents and employees, is hereby designated as the agent of the STATE for the purpose of this contract.
2. **Contract is not assignable.** This contract is not assignable by the CITY or the BORROWER except with the prior written approval of the STATE.
3. **Contract relationship.** The STATE and the BORROWER intend that the relationship between them contemplated by this contract is that of lender-borrower, not employer-employee. No agent, employee, or servant of the CITY or the BORROWER shall be, or shall be deemed to be, an employee, agent, or servant of the STATE. The CITY and/or the BORROWER will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, engineering firms, construction firms, and subcontractors during the performance of this contract.
4. **Complete integration of all understandings.** This agreement is intended as the complete integration of all understandings between the parties. No prior or

contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to STATE fiscal rules.

5. **Waiver.** The waiver of any breach of a term of this contract shall not be construed as a waiver of any other term, or of any subsequent breach of the same term.
6. **Eligible expenses.** PROJECT costs eligible for refinancing by the STATE shall include, but not be limited to, the cost of planning, design, right-of-way acquisition, purchase of raw water rights, and construction of the Morgan Pipeline.
7. **STATE may release contract at its option.** In its sole discretion, the STATE may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of the CITY'S and/or BORROWER'S obligations under this contract, with valuable consideration, upon such terms and conditions as the STATE may determine to be:
 - a. advisable to further the purposes of this contract or to protect the STATE'S financial interest therein, and
 - b. consistent with both the statutory purposes of this contract and the limitations of the statutory authority under which it is made.
8. **Casualty and eminent domain.** If, at any time, during the term of this contract, (a) the CITY'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 CITY shall cause the net proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair and restoration of the PROJECT facilities or any portion thereof. Any net proceeds remaining after such work has been completed shall be paid to the BORROWER. If the net proceeds are insufficient to pay the full cost of the replacement, repair and restoration, the CITY shall complete the work and pay any cost in excess of the net proceeds.
9. **Services of PROJECT available without discrimination.** The CITY shall make the services of said PROJECT available within its capacity to all qualified persons in the CITY'S service area without discrimination as to race, color, religion, or natural origin at reasonable charges (including assessments, taxes, or fees), whether for one or more classes of service, in accordance with a schedule of such charges formally adopted by the CITY through its ordinances or resolutions.
10. **Captions.** That the captions and headings contained in this contract are for convenience and reference only and shall not be construed so as to define or limit the terms or provisions contracted herein.
11. **STATE'S approval.** This contract requires review and approval of plans, specifications, and various other technical and legal documents. The STATE'S review of these documents is only for the purpose of verifying the CITY'S and the BORROWER'S compliance with this contract and shall not be construed or interpreted as a technical review or approval of the actual design or construction of the PROJECT. Notwithstanding any consents or approvals given to the CITY and/or the BORROWER by the STATE on any such documents, the CITY, the BORROWER and their CONSULTANT, in preparing any such documents shall be solely responsible for the accuracy and completeness of any of said documents.

12. Addresses for mailing. All notices, correspondence, or other documents required by this contract shall be delivered or mailed to the following addresses:

For the STATE:

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

For the BORROWER:

City of Fort Morgan, Colorado, Water
Works and Distribution Enterprise
Attn: Utilities Director
P.O. Box 100, 710 E. Railroad
Fort Morgan, CO 80701

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

Controller's Approval

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

FUND AVAILABILITY

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

BOND REQUIREMENT

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

INDEMNIFICATION

4. To the extent authorized by law, the CONTRACTOR shall indemnify, save, and hold harmless the STATE, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the CONTRACTOR, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

DISCRIMINATION AND AFFIRMATIVE ACTION

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

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

- a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The CONTRACTOR will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer, recruitment or recruitment advertisings; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in

conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

- b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.
- c. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the CONTRACTOR's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and of the rules, regulations, and relevant Orders of the Governor.
- d. The CONTRACTOR and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- e. A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment of work opportunity because of race, creed, color, sex, national origin, or ancestry.
- f. A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this contract to be discriminatory or obstruct or prevent any person from complying with the provisions of this contract or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this contract to be discriminatory.
- g. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further STATE contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations, or orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.
- h. The CONTRACTOR will include the provisions of paragraphs (a) through (h) in every sub-contract and subcontractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any sub-contracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation, with the subcontractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

COLORADO LABOR PREFERENCE

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

GENERAL

- 7. The laws of the State of Colorado and rules and regulations adopted pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract whether or not

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

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

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

BORROWER/CONTRACTOR: City of Fort Morgan, Colorado, Water Works and Distribution Enterprise

State of Colorado
Bill Owens, Governor

By Leonard A. Steinke
Leonard A. Steinke, Chairman

By Peter H. Evans
For the Executive Director
DEPARTMENT OF NATURAL RESOURCES
COLORADO WATER CONSERVATION BOARD
Peter H. Evans, Director

Federal ID Number: 84-6000588
ENTERPRISE
Attest (Seal)

By Nancy J. Lockwood
Nancy J. Lockwood, Secretary

APPROVALS

ATTORNEY GENERAL
By James E. Martin
James E. Martin
Assistant Attorney General
State Services Section

CITY: City of Fort Morgan, Colorado

By Leonard A. Steinke
Leonard A. Steinke, Mayor

Federal ID Number: 84-6000588
SEAL
Attest (Seal)

By Nancy J. Lockwood
Nancy J. Lockwood, City Clerk

STATE CONTROLLER

APPROVALS:
STATE CONTROLLER
By ARTHUR L. BARNHART
BY Chrisa Dupuis

ORDINANCE NO. 882

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN CONTRACT BETWEEN THE STATE OF COLORADO FOR THE USE AND BENEFIT OF THE DEPARTMENT OF NATURAL RESOURCES, COLORADO WATER CONSERVATION BOARD, AND THE CITY OF FORT MORGAN, COLORADO, AND THE CITY OF FORT MORGAN, COLORADO, WATER WORKS AND DISTRIBUTION ENTERPRISE SETTING FORTH THE TERMS AND PROVISIONS OF A LOAN IN THE PRINCIPAL AMOUNT OF \$8,000,000.

WHEREAS, pursuant to a resolution passed, approved and adopted by the Council of the City of Fort Morgan, Colorado (the "City"), on November 2, 1993, the City has established the City of Fort Morgan, Colorado, Water Works and Distribution Enterprise (the "Enterprise") as an enterprise of the City within the meaning of art. X, § 20 of the Colorado Constitution; and

WHEREAS, the City has made application to the State of Colorado Water Conservation Board (the "State") for a loan in the amount of \$8,000,000, the proceeds of which are to be used for the redemption of a portion of the Enterprise's Water Revenue Bonds, Series 1997, dated December 16, 1997, in the aggregate principal amount of \$31,990,000 (the "Prior Bonds"), which were issued to finance the Enterprise's participation in the Southern Water Supply Project of the Northern Colorado Water Conservancy District; and

WHEREAS, the State has approved a loan not to exceed \$8,000,000 to enable the Enterprise to redeem a portion of the Prior Bonds.

BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN:

1. The form of the Loan Contract required by the State as security for repayment of borrowed funds and any changes thereto as may be necessary in the opinion of the attorney and the bond counsel for the Enterprise to effectuate the intentions of the parties or to comply with the provisions of applicable law is hereby approved.
2. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver the Loan Contract to the State.
3. This Ordinance is, and shall constitute, a legislative measure, and after the Loan Contract is executed and delivered, this Ordinance shall constitute an irrevocable contract between the City, the Enterprise and the State, and this Ordinance shall be and shall remain irrevocable until the loan shall be fully paid, satisfied or discharged.
4. All action not inconsistent with the provisions of this Ordinance heretofore taken by the City and the Enterprise or the officers thereof and directed toward the execution and delivery of the Loan Contract is hereby ratified, approved and confirmed.

Appendix A(1) to Loan Contract C150004

5. All ordinances, resolutions, orders and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, order or other instrument, or part thereof, heretofore repealed.

6. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

7. This Ordinance is necessary for the immediate preservation of the peace, health and safety.

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 1st day of June, 1999.



/s/ Nancy J. Lockwood
City Clerk

THE CITY COUNCIL OF FORT MORGAN,
COLORADO

By: /s/ Leonard A. Steinke
Mayor

**PAID
IN FULL**

PASSED, APPROVED AND ADOPTED ON FINAL READING this 15th day of June, 1999.



/s/ Nancy J. Lockwood
City Clerk

THE CITY COUNCIL OF FORT MORGAN,
COLORADO

By: /s/ Leonard A. Steinke
Mayor

ORDINANCE NO. 884-W

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN CONTRACT BETWEEN THE STATE OF COLORADO FOR THE USE AND BENEFIT OF THE DEPARTMENT OF NATURAL RESOURCES, COLORADO WATER CONSERVATION BOARD, AND THE CITY OF FORT MORGAN, COLORADO, AND THE CITY OF FORT MORGAN, COLORADO, WATER WORKS AND DISTRIBUTION ENTERPRISE SETTING FORTH THE TERMS AND PROVISIONS OF A LOAN IN THE PRINCIPAL AMOUNT OF \$8,000,000.

WHEREAS, pursuant to a resolution passed, approved and adopted by the Council of the City of Fort Morgan, Colorado (the "City"), on November 2, 1993, the City has established the City of Fort Morgan, Colorado, Water Works and Distribution Enterprise (the "Enterprise") as an enterprise of the City within the meaning of art. X, § 20 of the Colorado Constitution; and

WHEREAS, pursuant to Ordinance No. 788 the City has authorized the Enterprise to have and exercise the following powers: to hold meetings concurrently with regular or special meetings of the City Council, to adopt ordinances in the manner in which City ordinances may be adopted, to issue revenue bonds in the manner in which City revenue bonds may be issued without voter approval in advance, to pledge any revenues of the Enterprise to the payment of such revenue bonds and to pay such revenue bonds therefrom, to enter into contracts relating to the Enterprise in the manner in which City contracts may be entered into, to make representations, warranties and covenants on behalf of the City relating to the Enterprise and to bind the City to perform any obligation relating to the Enterprise other than any multiple fiscal year direct or indirect debt or other financial obligation whatever without adequate present cash reserves pledged irrevocably and held for payments in all future years; and

WHEREAS, the City, on behalf of the Enterprise, has made application to the State of Colorado Water Conservation Board (the "State") for a loan in the amount of \$8,000,000, the proceeds of which are to be used for the redemption of a portion of the Enterprise's Water Revenue Bonds, Series 1997, dated December 16, 1997, in the aggregate principal amount of \$3 1,000,000 (the "Prior Bonds"), which were issued to finance the Enterprise's participation in the Southern Water Supply Project of the Northern Colorado Water Conservancy District; and

WHEREAS, the State has approved a loan not to exceed \$8,000,000 to enable the Enterprise to redeem a portion of the Prior Bonds.

BE IT ORDAINED BY THE BOARD OF THE CITY OF FORT MORGAN, COLORADO, WATER WORKS AND DISTRIBUTION ENTERPRISE:

1. The forms of the Loan Contract, the Promissory Note and the Security Agreement required by the State as security for repayment of borrowed funds and any changes thereto as may be necessary in the opinion of the attorney and the bond counsel for the Enterprise to effectuate the intentions of the parties or to comply with the provisions of applicable law are hereby approved.

2. The Chairman of the Board and the Secretary of the Enterprise are hereby authorized and directed to execute and deliver the Loan Contract, the Promissory Note and the Security Agreement to the State.

3. The proceeds of the loan shall be used for the redemption of a portion of the Prior Bonds and, if necessary or desirable, the payment of costs incident to the execution and delivery of the Loan Contract, the Promissory Note and the Security Agreement. The Enterprise shall give written notice of its election to redeem a portion of the Prior Bonds, specifying the redemption date and the principal amount of Prior Bonds to be redeemed, at least 45 days prior to the redemption date to Bank One, Colorado, N.A., as trustee (the "Trustee"), under the Trust Indenture securing the Prior Bonds (the "Indenture") and to State Street Bank and Trust Company, as issuer of the letter of credit securing the Prior Bonds, and shall deposit with the Trustee the redemption price of 100% of the principal amount of the Prior Bonds to be redeemed plus accrued interest thereon to the redemption date. The Trustee shall deposit the redemption price as provided in the Indenture, shall give notice of redemption to the registered owners of the Prior Bonds to be redeemed and shall redeem such Prior Bonds as provided in the Indenture.

4. This Ordinance is, and shall constitute, a legislative measure, and after the Loan Contract, the Promissory Note and the Security Agreement are executed and delivered, this Ordinance shall constitute an irrevocable contract between the City, the Enterprise and the State, and this Ordinance shall be and shall remain irrevocable until the loan shall be fully paid, satisfied or discharged.

5. All action not inconsistent with the provisions of this Ordinance heretofore taken by the City and the Enterprise or the officers thereof and directed toward the execution and delivery of the Loan Contract, the Promissory Note and the Security Agreement is hereby ratified, approved and confirmed.

6. All ordinances, resolutions, orders and other instruments, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, order or other instrument, or part thereof, heretofore repealed.

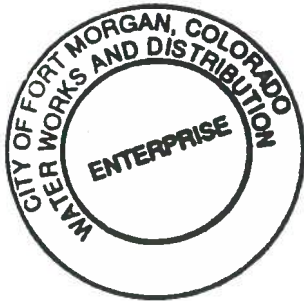
7. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

8. This Ordinance is necessary for the immediate preservation of the peace, health and safety.

**PAID
IN FULL**

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 1st day of June, 1999,

(SEAL)



CITY OF FORT MORGAN, COLORADO
WATER WORKS AND DISTRIBUTION
ENTERPRISE

By: /s/ Leonard A. Steinke
Chairman of the Board

ATTEST:

/s/ Nancy J. Lockwood
Secretary

PASSED, APPROVED AND ADOPTED ON FINAL READING this 15th day of June, 1999.



CITY OF FORT MORGAN, COLORADO
WATER WORKS AND DISTRIBUTION
ENTERPRISE

By: /s/ Leonard A. Steinke
Chairman of the Board

ATTEST:

/s/ Nancy J. Lockwood
Secretary

**PAID
IN FULL**

Promissory Note

Date June 22, 1999

Date of Project Completion JUNE 29, 1999

1. FOR VALUE RECEIVED, the City of Fort Morgan, Colorado, Water Works and Distribution Enterprise ("BORROWER") promises to pay the State of Colorado Water Conservation Board ("STATE"), the principal sum of Eight Million Dollars (\$8,000,000) plus interest at the rate of four percent (4%) per annum for a term of thirty (30) years, pursuant to Loan Contract No. C150004 ("LOAN CONTRACT").
2. The first payment of **\$462,640.79** shall be due one year from the date that the STATE determines that the project is complete, and annually thereafter until the entire principal sum, all accrued interest, and all late charges, if any, shall have been paid in full.
3. Payments shall be made payable to the Colorado Water Conservation Board and mailed to 1313 Sherman Street, Room 721, Denver, Colorado 80203.
4. If the STATE does not receive the annual payment within 15 calendar days of the due date, the State may impose a late charge in the amount of 5% of the annual payment.
5. This Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
7. This Note is issued pursuant to the LOAN CONTRACT between the STATE and the BORROWER. The LOAN CONTRACT creates security interests in favor of the STATE to secure the prompt payment of all amounts that may become due hereunder. The security interests, evidenced by a Security Agreement, cover certain revenues and contract rights of the BORROWER. The LOAN CONTRACT and Security Agreement grant additional rights to the STATE, including the right to accelerate the maturity of this Note in certain events.
8. If any annual payment is not paid when due or any default under the LOAN CONTRACT or Security Agreements securing this Note occurs, the STATE may declare the entire outstanding principal balance of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and all such amounts shall bear interest at the rate of 15% per annum from the date of default. The STATE shall give the BORROWER written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this Promissory Note.
9. The BORROWER, any guarantor, and any other person who is now or may hereafter become primarily or secondarily liable for the payment of this Note or any portion thereof hereby agree that if this Note or interest thereon is not paid when due or suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
10. This Note shall be governed in all respects by the laws of the State of Colorado.



Attest:

By Nancy J. Lockwood
Nancy J. Lockwood, Secretary

City of Fort Morgan, Colorado, Water Works and
Distribution Enterprise

By Leonard A. Steinke

Leonard A. Steinke, Chairman

**PAID
IN FULL**

SECURITY AGREEMENT

DEBTOR: City of Fort Morgan, Colorado Water Works and Distribution Enterprise
P.O. Box 100, 710 E. Railroad
Fort Morgan, CO 80701

FEDERAL TAX NUMBER: 84-6000588

COUNTY: MORGAN (CODE: 15)

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

DEBTOR, for consideration, hereby grants to SECURED PARTY a security interest in the following property and any and all additions, accessions and substitutions thereto or therefor, hereinafter called the COLLATERAL:

- A. Water system revenues derived from water rates, charges and fees levied to repay the principal and interest on the amount loaned to DEBTOR by SECURED PARTY, as described in pledge of revenues provisions in Loan Contract No. C150004 ("Contract");
- B. DEBTOR'S contract rights under and all revenues derived from any sale or lease of the DEBTOR'S interest in: (1) the Allotment Contract for Capacity in the Southern Water Supply Project Pipeline between the City of Fort Morgan, Colorado, acting by and through the City of Fort Morgan, Colorado Water Works and Distribution Enterprise and the Northern Colorado Water Conservancy District, acting by and through the Southern Water Supply Project Water Activity Enterprise, dated January 14, 1994; (2) the Allotment Contract for Capacity in the Fort Lupton/Hudson Pipeline between the City of Fort Morgan, Colorado, acting by and through the City of Fort Morgan, Colorado Water Works and Distribution Enterprise and the Northern Colorado Water Conservancy District, acting by and through the Southern Water Supply Project Water Activity Enterprise, dated August 4, 1995; and (3) the Allotment Contract for Capacity in the Morgan Pipeline between the City of Fort Morgan, Colorado, acting by and through the City of Fort Morgan, Colorado Water Works and Distribution Enterprise and the Northern Colorado Water Conservancy District, acting by and through the Southern Water Supply Project Water Activity Enterprise, dated July 14, 1998.

To secure payment of the obligations evidenced by a Promissory Note, which is a part of the Contract between the above named parties herewith, payable to the SECURED PARTY as follows: \$8,000,000 payable in thirty annual installments in accordance with the Promissory Note or until all principal, interest, and late charges, if any, are paid in full.

DEBTOR EXPRESSLY WARRANTS AND COVENANTS:

1. That except for the security interest granted hereby, DEBTOR is, or to the extent that this agreement states that the COLLATERAL is to be acquired after the date hereof, will be, the owner of the COLLATERAL free from any adverse lien, security interest or encumbrances, except as provided in the Contract, and that DEBTOR will defend the COLLATERAL against all claims and demands of all persons at anytime claiming the same or any interest therein by, through or under DEBTOR.
2. That the execution and delivery of this agreement by DEBTOR will not violate any law or agreement governing DEBTOR or to which DEBTOR is a party.
3. That, by its acceptance of the loan money pursuant to the terms of the CONTRACT and by its representations herein, DEBTOR shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the COLLATERAL pursuant to the terms of this agreement.
4. To pay all taxes and assessments of every nature which may be levied or assessed against the COLLATERAL.
5. 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.
6. That the DEBTOR will not use the COLLATERAL in violation of any applicable statutes, regulations or ordinances, articles of incorporation or by-laws.

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

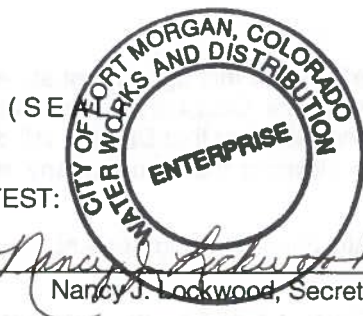
- a. default in the payment or performance of any obligation, covenant or liability contained or referred to herein or in the CONTRACT;
- b. the making or furnishing of any warranty, representation or statement to SECURED PARTY by or on behalf of DEBTOR which proves to have been false in any material respect when made or furnished;
- c. loss, theft, sale or encumbrance of any of the COLLATERAL, or the making of any levy, seizure or attachment thereof or thereon;
- d. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against DEBTOR or any guarantor or surety for DEBTOR.

UPON SUCH DEFAULT and at any time thereafter, SECURED PARTY may declare all Obligations secured hereby immediately due and payable and shall have the remedies of a secured party under Article 9 of the Colorado Uniform Commercial Code. In addition, upon default, SECURED PARTY shall have the right to transfer the COLLATERAL to and register the COLLATERAL in the name of SECURED PARTY, and, whether or not so transferred and registered, to receive the income, dividends and other distributions thereon and apply them to repayment of the loan. Expenses of retaking, holding, preparing for sale, selling or the like shall include SECURED PARTY'S reasonable attorney's fees and legal expenses. SECURED PARTY shall give DEBTOR written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before DEBTOR shall be considered in default for purposes of this agreement.

No default shall be waived by SECURED PARTY except in writing, and no waiver by SECURED PARTY of any default shall operate as a waiver of any other default or of the same default on a future occasion. The taking of this security agreement shall not waive or impair any other security said SECURED PARTY may have or hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this security agreement; but said SECURED PARTY shall retain its rights of set-off against DEBTOR. 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 heirs, executors or administrators or its successors or assigns. If there be more than one DEBTOR, their liabilities hereunder shall be joint and several.

Executed this 22nd day of June 1999.



DEBTOR: City of Fort Morgan, Colorado, Water Works and Distribution Enterprise

By Leonard A. Steinke
Leonard A. Steinke, Chairman

COLORADO UCC-1

Approved by Central Indexing System Board
Total Fee \$16 (\$15 Filing + \$1 Surcharge)

FILE COPY

19992039306 C

\$ 15.00

SECRETARY OF STATE

07-13-1999 10:57:54

For Filing Officer Only

1st DEBTOR

SSN/FED Tax ID:

NAME:

STREET:

CITY, STATE, ZIP:

Business X

84-6000588

CITY OF FORT MORGAN, COLORADO WATER
WORKS AND DISTRIBUTION ENTERPRISE
P. O. BOX 100, 710 RAILROAD
FORT MORGAN, CO 80701

County Where 1st Debtor Resides

(Use 2 Digit Code from Instruction Page)

15 MORGAN

2nd DEBTOR

SSN/FED Tax ID:

NAME:

STREET:

CITY, STATE, ZIP:

☐

additional debtor(s) on attachment

check one: ☐ Business ☐ Personal**Check if Applicable**☐ This statement is to be filed in the real estate records only.☐ This statement is to be filed in UCC and real estate records.☐ The debtor is a transmitting utility.**1st SECURED PARTY**

NAME:

STREET:

CITY, STATE, ZIP:

☐

additional secured party on attachment

STATE OF COLORADO
COLORADO WATER CONSERVATION BOARD
1313 SHERMAN STREET, ROOM 721
DENVER, COLORADO 80203

PAID**IN FULL****ASSIGNED PARTY**

NAME:

STREET:

CITY, STATE, ZIP:

☐

additional assigned party on attachment

EFS Filing? ☒ Yes ☐ No

(If non EFS filing, fill in collateral codes only)

(If EFS filing, enter County Code and effective dates)

(If EFS filing and all years covered, leave dates)

RETURN COPY TO:

NAME:

ATTN:

STREET:

CITY, STATE, ZIP:

STATE OF COLORADO

COLORADO WATER CONSERVATION BOARD

1313 SHERMAN STREET, ROOM 721

DENVER, COLORADO 80203

Collateral Code	County Code	From Date	To Date
030			
575			

COMPLETE DESCRIPTION OF COLLATERAL

Fold Here

(Description required only if collateral codes do not adequately describe collateral. Only first 250 characters will be entered into CIS data base)

CONTRACT NUMBER C150004. WATER SYSTEM REVENUES DERIVED FROM WATER RATES, CHARGES AND FEES LEVIED TO REPAY THE PRINCIPAL AND INTEREST ON THE AMOUNT LOANED TO DEBTOR BY SECURED PARTY, AS DESCRIBED IN PLEDGE OF REVENUES PROVISIONS IN LOAN CONTRACT NO. C150004, AND DEBTOR'S CONTRACT RIGHTS UNDER AND ALL REVENUES DERIVED FROM ANY SALE OR LEASE OF THE DEBTOR'S INTEREST IN: (1) THE ALLOTMENT CONTRACT FOR CAPACITY IN THE SOUTHERN WATER SUPPLY PROJECT PIPELINE BETWEEN THE CITY OF FORT MORGAN, COLORADO, ACTING BY AND THROUGH THE CITY OF FORT MORGAN, COLORADO WATER WORKS AND DISTRIBUTION ENTERPRISE AND THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, ACTING BY AND THROUGH THE SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, DATED JANUARY 14, 1994; (2) THE ALLOTMENT CONTRACT FOR CAPACITY IN THE FORT LUPTON/HUDSON PIPELINE BETWEEN THE CITY OF FORT MORGAN, COLORADO, ACTING BY AND THROUGH THE CITY OF FORT MORGAN, COLORADO WATER WORKS AND DISTRIBUTION ENTERPRISE AND THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, ACTING BY AND THROUGH THE SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, DATED AUGUST 4, 1995; AND (3) THE ALLOTMENT CONTRACT FOR CAPACITY IN THE MORGAN PIPELINE BETWEEN THE CITY OF FORT MORGAN, COLORADO, ACTING BY AND THROUGH THE CITY OF FORT MORGAN, COLORADO WATER WORKS AND DISTRIBUTION ENTERPRISE AND THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, ACTING BY AND THROUGH THE SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE, DATED JULY 14, 1998, TO SECURE PAYMENT OF \$8,000,000.00 LOAN EVIDENCED BY A PROMISSORY NOTE, DATED JUNE 22, 1999.

**PLANNING AND CONSTRUCTION SECTION
COLORADO WATER CONSERVATION BOARD**

1313 SHERMAN ST. ROOM 721 PH. 303-866-3441
DENVER, CO 80203

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Susan David
Morgan F. Stanton

MP

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