

**STATE OF COLORADO  
INTERGOVERNMENTAL LOAN CONTRACT  
COVER PAGE**

<b>State Agency</b> Colorado Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	<b>Loan Contract Number</b> CMS 148446 CT 2020-3122		
<b>Borrower's Name and Address</b> Dominion Water & Sanitation District, a Title 32 Special District  <b>Entity type</b> Governmental	<b>Loan Contract Project Performance Beginning Date</b> The Loan Effective Date <b>Loan Contract Project Performance End Date</b> 2 years from the Loan Effective Date or The Project Performance End Date stated in CWCB's "Notice of Project Substantial Completion"		
<b>Base Loan Amount (Amount in CORE)</b> \$4,150,485.00 <b>One Percent (1%) Loan Origination Fee</b> \$41,504.85 <b>Total Loan Amount (Includes One Percent (1%) Origination Fee)</b> \$4,191,989.85	<b>Loan Effective Date</b> The Effective Date (the date the State Controller or an authorized delegate signs this Loan Contract).  <b>Loan Contract Terms</b> 3.30% for 30 years		
	<b>Contract Authority</b> Authority to enter into this Contract exists in §37-60-119 (2), C.R.S., §37-60-120, C.R.S., and §37-60-121, C.R.S.  <b>Project Name</b> Chatfield Storage Reallocation Project Purchase		
<b>Contract Purpose</b> Dominion Water & Sanitation District is purchasing 500 units of the reallocated storage space made available by the Chatfield Storage Reallocation Project. The "Project" is the completion of the purchase described in the Project Summary attached hereto as Appendix 1.			
<b>Appendices and Order of Precedence</b> The following Appendices are included with this Contract: <ol style="list-style-type: none"> <li>1. Appendix 1, Project Summary</li> <li>2. Appendix 2, Intentionally Omitted</li> <li>3. Appendix 3, Promissory Note</li> <li>4. Appendix 4, Resolutions or Ordinance</li> <li>5. Appendix 5, Collateral Agreement</li> <li>6. Appendix 6, Form of Loan Estoppel Certificate</li> <li>7. Appendix 7, Form of Partial Lien Release Letter</li> </ol> In the event of a conflict or inconsistency between this Contract and any Appendices such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"> <li>1. Colorado Special Provisions in §24 of the main body of this Contract.</li> <li>2. The provisions of the other sections of the main body of this Contract.</li> <li>3. Appendix 3, Promissory Note</li> <li>4. Appendix 5, Collateral Agreement</li> <li>5. All other Appendices</li> </ol>			
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>Principal Representatives</b>            For the State:            Kirk Russell            Finance Section Chief, CWCB            1313 Sherman Street         </td> <td style="width: 50%; vertical-align: top;">           For Borrower:            Mary Kay Provaznik            District Manager            Dominion Water &amp; Sanitation District         </td> </tr> </table>		<b>Principal Representatives</b> For the State: Kirk Russell Finance Section Chief, CWCB 1313 Sherman Street	For Borrower: Mary Kay Provaznik District Manager Dominion Water & Sanitation District
<b>Principal Representatives</b> For the State: Kirk Russell Finance Section Chief, CWCB 1313 Sherman Street	For Borrower: Mary Kay Provaznik District Manager Dominion Water & Sanitation District		


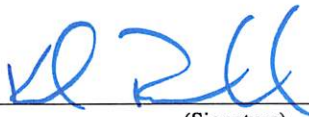

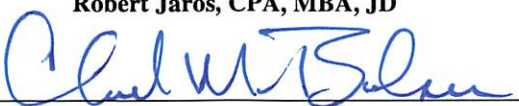
Denver, Colorado 80203  
[kirk.russell@state.co.us](mailto:kirk.russell@state.co.us)  
303-866-3441

9250 East Costilla, Suite 210  
Greenwood Village, Colorado 80112  
[maryk@dominionwsd.com](mailto:maryk@dominionwsd.com)  
720-531-4210

### SIGNATURE PAGE

#### THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p><b>BORROWER</b> Dominion Water &amp; Sanitation District, a Title 32 Special District</p> <p>By: <u></u> (Signature)</p> <p>Name: Jeff LaForte President</p> <p>Date: <u>12/17/19</u></p>	<p><b>STATE OF COLORADO</b> Jared Polis, Governor Colorado Department of Natural Resources Colorado Water Conservation Board (CWCB)</p> <p>By: <u></u> (Signature)</p> <p>Name: Kirk Russell, P.E., Section Chief CWCB Finance Section</p> <p>Date: <u>12/20/19</u></p>
<p><b>ATTEST:</b></p> <p>By: <u></u> (Signature)</p> <p>Name: <u>Tiffany Ramaekers</u></p> <p>Title: <u>Secretary</u></p> <p>Date: <u>12-17-19</u></p>	
<p>In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By: <u></u></p> <p>Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Effective Date: <u>12/26/19</u></p>	

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### 1. PARTIES

This Contract is entered into by and between Borrower named on the Cover Page for this Contract (the "Borrower"), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Contract (the "State" or "CWCB"). Borrower and the State agree to the terms and conditions in this Contract.

### 2. TERM AND EFFECTIVE DATE

#### A. Loan Effective Date

The Loan Effective Date means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the signature page for this Contract. This Contract shall not be valid or enforceable until the Loan Effective Date. The State shall not be bound by any provision of this Contract before the Loan Effective Date, and

shall have no obligation to pay the Borrower for any expense incurred before the Loan Effective Date or after the expiration or sooner termination of this Contract.

**B. Project Performance; Project Term**

Chatfield Reallocation Mitigation Company (“CRMC”) is performing all work related to the Chatfield Storage Reallocation Project. The Chatfield Storage Reallocation Project commenced prior to the Loan Effective Date.

The Parties’ respective performances under this Contract shall commence on the Loan Contract Project Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Loan Contract Project Performance End Date shown on the Cover Page for this Contract unless sooner terminated or further extended in accordance with the terms of this Contract. If the Loan Contract Project Performance End Date does not occur by the end of the 23<sup>rd</sup> month after the Loan Effective Date, the Loan Contract and any Appendices are terminated. This Project term does not include the full repayment period for the Loan or this Contract.

**C. Loan Expiration Date**

The Loan expiration date is the date on which this Contract expires, which is 30 years from the Loan Contract Project Performance End Date unless sooner terminated or extended in accordance with the terms of this Contract. The Loan expiration date is when the *full repayment period for the Loan ends*.

**D. Project Extension Term - State’s Option**

The State, at its discretion, shall have the option to extend the Project Performance End Date under this Contract under the same terms specified in the Contract (each such period a “Project Extension Term”). In order to exercise this option, the Borrower shall provide written justification to CWCB and CWCB will provide written authorization for the Project Extension Term.

**E. Early Termination in the Public Interest**

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Borrower, which shall be governed by §18.

**i. Method and Content**

The State shall notify Borrower of such termination in accordance with §21. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

**ii. Obligations and Rights**

Upon receipt of a termination notice for termination in the public interest, Borrower shall be subject to the rights and obligations set forth in §19.B.

**iii. Payments**

If the State terminates this Contract in the public interest, the State shall pay Borrower an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of the Project work satisfactorily completed and accepted, as determined by the State, less payments previously made.

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Base Loan Amount”** means the amount disbursed to the Borrower, which does not include the one percent (1%) Loan Origination Fee.
- B. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner, after the expiration of all applicable grace, notice and cure periods. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Borrower, or the appointment of a receiver or similar officer for Borrower or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Borrower is debarred or suspended under §24-109-105, C.R.S., at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- C. **“Business Day”** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.
- D. **“Collateral”** means the 500 acre-feet of storage space in Chatfield Reservoir purchased with the proceeds of the Loan represented by Borrower’s interests thereto in the Water Provider Agreement between Borrower and the Colorado Department of Natural Resources as secured by the Collateral Agreement.
- E. **“Contract”** means this Loan Contract, including all attached Appendices, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- F. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Project, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- I. **“Loan Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract.
- J. **“Loan Expiration Date”** means the date on which this Contract expires, which is 30 years from the Loan Contract Project Performance End Date unless sooner terminated or



extended in accordance with the terms of this Contract. The Loan expiration date is when the *full repayment period for the Loan ends*.

- K. **“Loan Origination Fee”** means CWCB’s Origination Fee of one percent (1%), added to the Base Loan Amount in accordance with CWCB Policy No. 16, resulting in the Total Loan Amount shown on the Cover Page of this Contract.
- L. **Intentionally Omitted.**
- M. **“Party”** means the State or Borrower, and **“Parties”** means both the State and Borrower.
- N. **“Project Extension Terms-State Option”** means the time period defined in §2.D.
- O. **“Project Term”** means the time period defined in §2.B.
- P. **“Promissory Note”** means the document issued to secure repayment of this Loan.
- Q. **“Resolution” or “Ordinance”** means the Borrower’s written authority to enter into this Contract.
- R. **“Collateral Agreement”** means the document that provides a security interest in the Collateral pledged to repay this Loan.
- S. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Borrower which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Borrower without restrictions at the time of its disclosure to Borrower; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Borrower to the State; (iv) is disclosed to Borrower, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- T. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- U. **“State Fiscal Year”** means a 12 -month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- V. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- W. **“Subcontractor”** means third-parties, if any, engaged by Borrower to aid in performance of any part of the work comprising the Project.
- X. **“Total Loan Amount”** means the total of the Base Loan Amount plus the Origination fee of one percent (1%).
- Y. **“Water Provider Agreement”** means that certain Water Provider Agreement between the Colorado Department of Natural Resources and the Borrower for the use of 500 acre-feet of storage space at Chatfield Reservoir.

Any other term used in this Contract that is defined in an Appendix shall be construed and interpreted as defined in that Appendix.

#### **4. AMENDMENTS**

An amendment to this Contract shall be executed for the following changes including, but not limited to, a change in Collateral, an increase in Total Loan Amount, and a decrease in Total Loan Amount with a change in the annual Loan payment. Upon substantial completion of the Project and determination of the Contract Project Performance End Date, if the Total Loan Amount is reduced, the parties will amend the Promissory Note accordingly.

#### **5. CONTRACT AMENDMENT SERVICE FEES**

Under certain circumstances, the Borrower may be assessed a service fee for amending the Contract.

- A.** A service fee may 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 the Borrower's name, assignment of Contract, substitution of Pledged Revenues, Loan payment deferrals in excess of three (3) per Loan, and Loan consolidation. Amendments in the course of CWCB business will be processed at no additional charge to the Borrower.
- B.** The amount charged shall be in accordance with the service 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 service fee for an amendment is one thousand and no/100 dollars (\$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.

#### **6. PROMISSORY NOTE PROVISIONS**

The Promissory Note shall identify the Total Loan Amount. The CWCB agrees to loan to the Borrower an amount not to exceed the Total Loan Amount and the Borrower agrees to repay the Loan in accordance with the terms as set forth in the Promissory Note, (attached as Appendix 3) and incorporated herein. Upon substantial completion of the Project the CWCB shall: (A) insert in the Promissory Note (i) the "Payment Initiation Date" one year from the substantial completion date and (ii) the "Maturity Date" thirty years from the substantial completion date; and (B) insert in the Collateral Agreement (attached as Appendix 5) the "Date" and the Date of the Water Provider Agreement referenced as part of the Collateral.

#### **7. INTEREST PRIOR TO PROJECT COMPLETION**

- A.** For all Loan funds disbursed by the CWCB to the Borrower prior to the Contract Project Performance End Date, interest shall accrue on the disbursed funds at the annual rate set forth on the Cover Page for this Contract on a simple non-compounding base. The CWCB shall calculate the amount of the interest that accrued prior to the Project's substantial completion (as set forth in CWCB's Notice of Project Substantial Completion) and notify the Borrower of such amount. The Borrower shall repay that amount to the CWCB either: (1) within thirty (30) days from the date of Borrower's receipt of the Notice of Project Substantial Completion; (2) at Borrower's request and the CWCB's discretion, said interest shall be deducted from the final disbursement of Loan funds that the CWCB makes to the Borrower, or (3) at Borrower's request and the CWCB's discretion, said interest shall be included in the Total Loan Amount due.
- B.** Notwithstanding the foregoing, if Borrower elects to pre-pay all or any portion of the principal amount of the Loan funds prior to the Contract Project Performance End Date

pursuant to §12.D below, Borrower shall be required to pay all interest prior to project completion accrued to the date of such pre-payment calculated on a per diem basis.

#### **8. 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 thirty (30) calendar days from notification from the CWCB of either (1) the Project's substantial completion or (2) determination by the CWCB that the Project will not be completed. Any such Loan funds so remitted to CWCB shall be applied to the principal payment of amounts due on the Loan.

#### **9. BORROWER'S AUTHORITY TO CONTRACT**

The Borrower warrants that it has full power and authority to enter into this Loan 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 (attached as Appendix 4), include the authority to enter into this Loan Contract.

#### **10. BOND COUNSEL'S OPINION LETTER**

Prior to the final execution of this Contract the Borrower shall submit to the CWCB a letter from its bond 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; and
- 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; and
- C. There are no provisions in the Borrower's articles of incorporation or bylaws or any state or local law that prevent this Contract from binding the Borrower; and
- D. The Contract will be valid and binding against the Borrower if entered into by the CWCB subject to typical limitations related to bankruptcy, police power and creditor's rights generally.
- E. The Borrower was formed as a special district pursuant to the provisions of Title 32, Article 1, C.R.S.

#### **11. COLLATERAL**

The Borrower pledges the Collateral to CWCB as security for this Loan. Borrower shall not further encumber the Collateral.

- A. **Establish Security Interest.** The Borrower has duly executed a Collateral Agreement, (attached as Appendix 5) and incorporated herein, to provide a security interest to the CWCB in the Collateral. Borrower shall not provide the Collateral as security for any other indebtedness until the lien of this Contract is released by the CWCB.
- B. **Notice of Collateral.** The lien established by the Collateral Agreement (attached as Appendix 5) shall be filed with the Department of Natural Resources along with the Water Provider Agreement between Borrower and the Department of Natural Resources, which represents the 500 acre-feet of storage space in Chatfield Reservoir.
- C. **Debt Service Reserve Account or Fund.** Borrower shall establish and maintain a debt service reserve account or fund, into which Borrower shall deposit an amount equal to one-tenth (0.1) of an annual payment on the due date of its first annual Loan payment and



annually thereafter for the first ten years of repayment of this Loan. Borrower may establish and maintain its reserve account or fund as part of its general funds provided such amounts are separately identified and tracked by an accounting ledger in which case Borrower need not establish a separate account in a banking institution. 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. The debt service reserve account or fund requirement is in effect until the Loan is paid in full.

- D. Additional Debts or Bonds.** The Borrower shall not issue any indebtedness payable from sale of the Collateral or secured by the Collateral.
- E. Annual Statement of Debt Coverage.** Each year during the term of this Contract, the Borrower shall promptly submit, to CWCB, a copy of the annual audit report of an audit performed on Borrower's records that relates to this Contract or the Project.
- F. Collateral During Loan Repayment.** The Borrower shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the Collateral, 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.

## **12. RELEASE AFTER LOAN IS REPAID; PARTIAL RELEASES**

- A.** 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 Collateral.
- B.** At Borrower's request, from time to time during the term of this Contract, CWCB shall deliver to Borrower a duly executed estoppel stating the aggregate amount of Borrower's Released Collateral Amount as defined in the Collateral Agreement substantially in the form of the Loan Estoppel Certificate attached hereto as Appendix 6.
- C.** Upon each payment towards the Loan Amount and upon Borrower's request, CWCB shall provide to Borrower a duly executed Lien Release Letter evidencing the aggregate amount of Borrower's payment to date and the aggregate amount of Borrower's Released Collateral Amount as defined in the Collateral Agreement substantially in the form of the Partial Lien Release Letter attached hereto as Appendix 7.
- D.** Borrower may, but shall not be required to, pay all or any portion of the Loan Amount either prior to or after the Project substantial completion date upon prior written notice to CWCB. Any such pre-payments shall be applied to interest prior to substantial completion and then to the principal Loan Amount and shall not postpone the due date of any subsequent payments or change the amount of such payments as provided for under the Note.

## **13. 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 Collateral for this Loan is not encumbered by any other deeds of trust or liens of any party other than the CWCB or in any other manner.

#### **14. OPERATION OF PROJECT**

The Parties acknowledge and agree that the CRMC will manage, operate, and maintain the Chatfield Storage Reallocation Project.

#### **15. CONFIDENTIAL INFORMATION-STATE RECORDS**

##### **A. Confidentiality**

To the extent allowable by law, Borrower shall keep confidential, and cause its employees, agents, assigns, and contractors (collectively, the "**Borrower Parties**") to keep confidential, all State Records, unless those State Records are publicly available. Borrower shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or court order, or approved in Writing by the State, and except to Borrower's attorneys, accountants and other consultants as reasonably necessary to assist Borrower in performing its obligations under this Contract. Borrower shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Borrower or any of the Borrower Parties will receive the following types of data, Borrower or such Borrower Parties shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Borrower shall immediately forward any request or demand for State Records to the State's principal representative.

##### **B. Other Entity Access and Nondisclosure Agreements**

Borrower may provide State Records to the Borrower Parties as necessary to perform its obligations under this Contract. Borrower shall ensure all such Borrower Parties sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the Borrower Parties have access to any State Confidential Information. Borrower shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

##### **C. Use, Security, and Retention**

Borrower shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Borrower shall provide the State with access, subject to Borrower's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Borrower shall return

State Records provided to Borrower or destroy such State Records and certify to the State that it has done so, as directed by the State. If Borrower is prevented by law or regulation from returning or destroying State Confidential Information, Borrower warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

**D. Incident Notice and Remediation**

If Borrower becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. If Borrower or any Borrower Parties are the cause or source of the Incident, Borrower shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Borrower shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Borrower's sole expense, require Borrower to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Borrower shall provide the State with the results of such audit and evidence of Borrower's planned remediation in response to any negative findings.

**E. Data Protection and Handling**

Borrower shall ensure that all State Records in the possession of Borrower or any Borrower Parties are protected and handled in accordance with the requirements of this Contract, including the requirements of any Appendices hereto, at all times.

**16. CONFLICTS OF INTEREST**

**A. Actual Conflicts of Interest**

Borrower shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Borrower under this Contract. Such a conflict of interest would arise when a Borrower's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

**B. Apparent Conflicts of Interest**

Borrower acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Borrower shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Borrower's obligations under this Contract.

**C. Disclosure to the State**

If Borrower becomes aware that a conflict or the appearance of a conflict has arisen, Borrower shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regards to the actual or apparent conflict constitutes a breach of this Contract.

**17. INSURANCE**

The Borrower is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., (the "GIA") and shall maintain at all times during the term of this Loan Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Borrower shall ensure that any subcontractors maintain all insurance customary for the completion of the work done by that subcontractor and as required by the State Risk Manager, Department of Personnel and Administration or the GIA.

## **18. BREACH OF CONTRACT**

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within sixty (60) days after the delivery of written notice, the Party may exercise any of the remedies as described in §19, for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Borrower is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

## **19. REMEDIES**

### **A. State's Remedies**

#### **i. Loan Default Remedies**

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 do any of the following:

- 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. Declare the entire unpaid principal amount of the Promissory Note, accrued interest, and late charges, if any, then outstanding immediately due and payable.
  - c. Exercise its rights under any appendices to this Contract, including, but not limited to, the Promissory Note, Collateral Agreement, and/or any instrument securing Collateral.
  - d. Take any other action available to the CWCB under law or in equity.
- ii. The CWCB shall provide written notice to the Borrower of any Loan default and shall give the Borrower an opportunity to cure within sixty (60) days of receipt of such notice. The CWCB may declare Loan default without deeming such default to be breach of this Contract. 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.

**B. Borrower's Remedies**

If the State is in breach of any provision of this Contract and does not cure such breach within sixty (60) days of written notice from Borrower to the State of any such default, Borrower shall have all remedies available at law and equity.

**20. DISPUTE RESOLUTION**

**A. Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to the CWCB board for review, who will determine a resolution to the dispute.

**B. Resolution of Controversies, Not Involving Loan Default**

If the initial resolution described in §20.A., fails to resolve the dispute within twenty (20) Business Days, Borrower shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-102-202 (3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Borrower wishes to challenge any decision rendered by the Procurement Official, Borrower's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Borrower pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

**21. NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below, or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

**22. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Borrower under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Borrower agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-

106-107, C.R.S., regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Borrower's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

## **23. GENERAL PROVISIONS**

### **A. Assignment**

Borrower's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Borrower's rights and obligations approved by the State shall be subject to the provisions of this Contract.

### **B. Binding Effect**

Except as otherwise provided in §23.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

### **C. Authority**

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

### **D. Captions and References**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

### **E. Counterparts**

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

### **F. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties with respect to the subject matter contained herein, and all prior representations and understandings, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

### **G. Digital Signatures**

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

### **H. Modification**



Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than Contract amendments, shall conform to the policies issued by the Colorado State Controller.

**I. Statutes, Regulations, Fiscal Rules, and Other Authority.**

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

**J. External Terms and Conditions**

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Borrower's website or any provision incorporated into any click-through or online agreements related to the subject matter of this Contract unless that provision is specifically referenced in this Contract.

**K. Severability**

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of this Contract.

**L. Survival of Certain Contract Terms**

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract shall survive the termination or expiration of this Contract and shall be enforceable by the other Party.

**M. Third Party Beneficiaries**

Except for the Parties' respective successors and assigns described in §23.A., this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

**N. Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

**O. CORA Disclosure**

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

**P. Indemnification**

**i. General Indemnification**

To the extent permitted by law, Borrower shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Borrower or the Borrower Parties in connection with this Contract.

ii. **Confidential Information Indemnification**

To the extent allowable by law, Disclosure or use of State Confidential Information by Borrower in violation of §15, may be cause for legal action by third parties against Borrower, the State, or their respective agents. Borrower shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Borrower or the Borrower Parties in violation of §15.

**24. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

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

**A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

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

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions, committees, bureaus, offices, employees, and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. 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, contained in these statutes.

**D. INDEPENDENT CONTRACTOR**

Borrower shall perform its duties hereunder as an independent contractor and not as an employee. Neither Borrower nor any agent or employee of Borrower shall be deemed to be an agent or employee of the State. Borrower shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Borrower 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 Borrower or any of its agents or employees. Borrower shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Borrower**

shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

**E. COMPLIANCE WITH LAW.**

Borrower shall 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.

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, 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. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Borrower harmless; requires the State to agree to binding arbitration; limits Borrower's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109, C.R.S.

**H. SOFTWARE PIRACY PROHIBITION.**

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. Borrower hereby certifies and warrants that, during the term of this Contract and any extensions, Borrower has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Borrower 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.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

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. Borrower has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Borrower's services and Borrower shall not employ any person having such known interests.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support

arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.**

**[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 State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., 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 (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., 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 §§8-17.5-101, et seq., C.R.S., 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.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.



## **APPENDIX 1, PROJECT SUMMARY**

**Loan Contract Number ~~CT2020-3122~~**

### **Section 1 –Borrower’s Name**

Dominion Water & Sanitation District, a Title 32 Special District

### **Section 2 – Project Description**

- A. Description of Project: The Borrower applied to the CWCB for a loan to be used to purchase storage space in the Chatfield Storage Reallocation Project (“CSRP”), located in Douglas County, at a total estimated cost of \$8,300.97 per acre-foot, to be performed by Chatfield Reservoir Mitigation Company (“CRMC”). The purpose of the CSRP is to make additional water supply storage in Chatfield Reservoir possible by reallocating 20,600 acre-feet of storage from the flood control pool into a multipurpose pool. The Borrower is purchasing 500 acre-feet of the reallocated storage space and will be responsible for its pro rata share of CSRP costs, currently estimated to be \$4,150,485. The “Project” for the Loan Contract is Borrower’s purchase of 500 acre-feet of storage space in CSRP, not the CSRP itself.
- B. Description of Feasibility Study: Ryan Edwards, P.E., District Project Manager, Centennial Water and Sanitation District, prepared the Loan Feasibility Study titled, CWSD Participation in the Chatfield Reservoir Reallocation Project dated August 2013, which Borrower adopted and incorporated in its January 2019 feasibility study titled Dominion Water and Sanitation District’s Participation in the Chatfield Reservoir Reallocation Project. The feasibility study was prepared in accordance with CWCB guidelines and includes an analysis of alternatives, preliminary engineering design, and construction cost estimates and is incorporated herein by this reference. Based upon the feasibility report, the CWCB determined the CSRP to be technically and financially feasible.

### **Section 3 – CWCB’s Authority**

**Severance Tax Perpetual Base Fund:** This Loan is made pursuant to the provisions of §§39-29-109(1)(a)(I), 37-60-119 and 37-60-120, C.R.S., which authorize the CWCB to Loan money for water projects from the CWCB Severance Tax Perpetual Base Fund for the benefit of the people of the state, provided that the Borrower assures repayment of that money.

Section 37-60-122(1)(b), C.R.S., authorizes the CWCB to make loans of up to \$10,000,000 from the CWCB’s the Severance Tax Perpetual Base Fund without prior approval from the General Assembly.

### **Section 4 - Board Approval**

At its March 2019 meeting the CWCB approved a Project Loan from the Severance Tax Perpetual Base Fund, to the Borrower, in an amount up to \$4,150,485 for acquisition of the Collateral. CWCB’s Origination Fee of 1% in the amount of \$41,504.85, in accordance with CWCB Policy No. 16, added to the Base Loan Amount results in a Total Loan Amount of **\$4,191,989.85**, at an interest rate of 3.3% per annum for a repayment term of 30 years.



Loan funds will not be disbursed until the Borrower successfully enters into a Water Provider Agreement with the Colorado Department of Natural Resources for the use of the storage space in Chatfield Reservoir.

#### **Section 5 – Schedule of Existing Debt**

As of the date of the CWCB loan approval, approval, no other debt, backed by the Loan security described in Section 6 below, exists.

#### **Section 6 – Loan Security**

The Security for this Loan, as evidenced by the executed Collateral Agreement (Appendix 5) and incorporated herein, shall be the 500 acre-feet of storage space in Chatfield Reservoir to be purchased with this Loan represented by the Water Provider Agreement between the Colorado Department of Natural Resources and the Borrower for the use of storage space at Chatfield Reservoir. All Loan Security shall be in accordance with CWCB Policy No. 5.

#### **Section 7 – Additional Conditions and Requirements**

None.

#### **Section 8 – “Construction Fund Program” Procedures for Projects**

- A. CRMC has employed an engineer, registered in the State of Colorado, who has prepared plans and specifications for the CSRP, and has contracted with a contractor for the construction of the CSRP.
- B. CWCB acknowledges that it has approved the engineering contracts, the plans and specifications and the construction contract for the CSRP.

#### **Section 9 – Eligible Expenses**

*No disbursements will be made prior to the execution of this Contract by the State.* The following items are eligible for Loan disbursements:

- A. Borrower’s pro-rata share of the amount that is repaid to the United States Treasury for the proposition of the joint cost of CSRP construction related to the 20,600 acre-feet of reallocated water storage, as computed by the Assistant Secretary of the Army (Civil Works), and documented in the Record of Decision, Chatfield Reservoir Colorado Storage Reallocation Project, Dated May 29, 2014.
- B. Borrower’s funding obligations under the Water Provider Agreement pursuant to the escrow agreement provided for under the Water Provider Agreement.
- C. Borrower’s cost of storage expense incurred prior to the Effective Date of this Contract in accordance with the approval of this Loan.
- D. Preparing final designs and specifications for the CSRP.
- E. Preparing bid and construction contract documents.
- F. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
- G. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.
- H. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.

- I. Actual construction as called for in the design documents and in change orders approved by the CWCB and the Chatfield Reservoir Mitigation Company, Inc. ("Mitigation Company").
- J. Engineering services for construction management, including design and construction management for CWCB approved change orders.
- K. Interest incurred prior to completion of the Project pursuant to Section 7, of the Contract.
- L. 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.
- M. CSRP related expenses incurred prior to the Effective Date of this Contract in accordance with the approval of this Loan.

#### **Section 10 – Disbursement Schedule**

For Project expenses: Borrower shall prepare a written request for funds which shall describe the upcoming closing on the storage space purchase including, but not limited to the purchase agreement, the assignment, the assumption, the Water Provider Agreement, the escrow agreement, and all other related and supporting documentation. After receipt of the written request from the Borrower and review and acceptance of the items therein as eligible expenses, as described above by the CWCB, the CWCB will pay to the escrow agent designated by Borrower on its behalf into its "Individual Escrow Account" (as defined in the escrow agreement between the escrow agent, Borrower, and the CRMC) the amount set forth in the request or such portion as has been approved by the CWCB. Such payment shall be made within thirty (30) days from the CWCB's approval of each request.

#### **Section 11 – Time for Performance**

Project To Begin: Loan Effective Date.

Project To End: Two (2) years from the Effective Date of this Contract or the date established as the date of the Project's substantial completion as set forth in CWCB's notice establishing the same (the "Notice of Project Substantial Completion") which date shall be the date that all conditions for closing Borrower's purchase of 500 acre-feet of storage space in CSRP are satisfied.

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**APPENDIX 2, INTENTIONALLY OMITTED**

### APPENDIX 3, PROMISSORY NOTE

Date: 12/17/19

Borrower: Dominion Water & Sanitation District, a Title 32 Special District

Total Loan Amount: \$4,191,989.85

Interest Rate: 3.3% per annum

Term of Repayment: 30 years

Loan Contract Number: CT2020-3122

Annual Loan Payment: \$222,249

Payment Initiation Date: \_\_\_\_\_ The Payment Initiation Date shall be the date of Project substantial completion as stated in CWCB's "Notice of Project Substantial Completion." CWCB shall insert the Payment Initiation Date upon determination of it pursuant to the Contract.

Maturity Date: \_\_\_\_\_ The Maturity Date shall be the date that is thirty (30) years after the date of Project substantial completion. CWCB shall insert the Maturity Date upon determination of it pursuant to the Contract.

For Value Received, the Borrower promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the Contract and this Promissory Note. The Principal Amount shall not exceed the amount of funds actually disbursed to Borrower pursuant to the Contract.

1. Principal and interest shall be payable in annual equal payments as set forth in "Annual Loan Payment" above, with the first payment due and payable one year from the Payment Initiation Date, and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
2. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 718, Denver, Colorado 80203.
3. The CWCB may impose a late charge in the amount of five percent (5%) of the annual payment if the CWCB does not receive the annual payment within sixty (60) calendar days of the due date. At the discretion of the CWCB, and if the Borrower requests in writing with sufficient justification, the late fee may be waived by the CWCB. CWCB will review the request from the Borrower, and may, in its sole discretion, choose to waive the late fee.
4. This Promissory Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
5. This Promissory Note is issued pursuant to the State of Colorado Intergovernmental Loan Contract between the CWCB and the Borrower of even date herewith (the "Contract"). The Contract creates security interests in in favor of the CWCB in the Collateral (as defined in the Contract) to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by the Collateral Agreement of even date and amount herewith, which covers the Collateral. The Contract and Collateral Agreement grant

additional rights to the CWCB, including the right to accelerate the maturity of this Promissory Note in certain events.

6. If any annual payment is not paid when due or any default under the Contract or the Collateral Agreement securing this Promissory Note occurs, in all cases after the expiration of all applicable grace, notice or cure periods, the CWCB may declare the entire outstanding principal balance of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of seven percent (7%) per annum from the date of default. The CWCB shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Borrower shall be considered in default for purposes of this Promissory Note. The Borrower hereby agrees that if this Promissory Note or interest thereon is not paid when due or if suit is brought due to Borrower's default under this Promissory Note, in all cases after the expiration of all applicable grace, notice or cure periods, 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.
7. This Promissory Note is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State thereunto enabling. Specifically, but not by way of limitation, the Contract and this Promissory Note are authorized pursuant to and under the authority of Title 31, Article 35; Title 37, Article 45.1; and Title 11, Article 57, Part 2, C.R.S., and in full conformity therewith. Pursuant to Section 11-57-210, C.R.S., and Section 31-35-413, C.R.S., this recital shall be conclusive evidence of the validity and the regularity of the issuance of this Promissory Note and the Promissory Note shall be incontestable for any cause whatsoever after its delivery for value.

Borrower:

By: Jeffrey LaForte  
Signature

Attest:

Name: JEFFREY LAFORTE

Title: PRESIDENT

Date: 12-17-19

By: Tiffany Ramaekers  
Signature

Name: Tiffany Ramaekers

Title: Secretary

Date: 12-17-19

**APPENDIX 4, RESOLUTION OR ORDINANCE**  
**(TO BE PROVIDED BY BORROWER)**



**CERTIFIED RECORD  
OF  
PROCEEDINGS OF  
THE BOARD OF DIRECTORS  
OF  
DOMINION WATER & SANITATION DISTRICT**

Relating to a resolution authorizing the incurrence of a

**LOAN FROM THE COLORADO WATER CONSERVATION BOARD  
AND MATTERS RELATED THERETO**

Adopted on December 17, 2019

*This cover page is not part of the following resolution and is included solely for the convenience of the reader.*

STATE OF COLORADO )  
 )  
 DOUGLAS COUNTY ) ss.  
 )  
 DOMINION WATER & )  
 SANITATION DISTRICT )

The Board of Directors (the “**Board**”) of Dominion Water & Sanitation District (the “**District**”), Douglas County and State of Colorado, held a special meeting at 9250 E. Costilla Ave., 2<sup>nd</sup> Floor, Greenwood Village, Colorado at 1:00 p.m. on Tuesday, the 17<sup>th</sup> day of December, 2019, and at which a quorum was present. There were present at said meeting either in person or by telephone the following Directors:

**Present:**

<u>Name</u>	<u>Title</u>
Jeffrey C. LaForte	President
Harold R. Smethills, Jr.	Treasurer
John K. Ostermiller	Assistant Secretary
Brock Smethills	Assistant Secretary

**Absent: Jack Hilbert, Assistant Secretary**

constituting all the members of the Board.

Upon motion by Director Harold Smethills, Jr. which was duly seconded by Director John K. Ostermiller the following resolution was then introduced:

## RESOLUTION

A RESOLUTION OF DOMINION WATER & SANITATION DISTRICT AUTHORIZING THE INCURRENCE OF A LOAN IN A PRINCIPAL AMOUNT NOT TO EXCEED \$4,200,000; APPROVING AN INTERGOVERNMENTAL LOAN CONTRACT, A COLLATERAL AGREEMENT, A PROMISSORY NOTE, AND OTHER DOCUMENTS IN CONNECTION THEREWITH; PROVIDING DETAILS CONCERNING THE LOAN AND FUNDS APPERTAINING THERETO; RATIFYING ACTS PREVIOUSLY TAKEN CONCERNING SAID LOAN; REPEALING ALL RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR OTHER MATTERS RELATING THERETO.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF DOMINION WATER & SANITATION DISTRICT:

Section 1. Definitions. The terms defined in this section shall have the designated meanings for all purposes of this resolution and of any amendatory or supplemental resolution, except where the context by clear implication requires otherwise.

**"Board"** means the Board of Directors of the District.

**"Collateral Agreement"** means the Collateral Agreement from the District securing repayment of the Loan.

**"CWCB"** means the Colorado Water Conservation Board.

**"District"** means Dominion Water & Sanitation District, a quasi-municipal corporation and political subdivision of the State, and its successors.

**"District Act"** means Title 32, Article 1, Colorado Revised Statutes, as amended from time to time.

**"Documents"** means, collectively, the Loan Agreement, the Collateral Agreement, the Promissory Note and the Storage Acquisition Agreements.

**"Loan"** means the loan from the Colorado Water Conservation Board to the District in a principal amount not to exceed of \$4,200,000.

**"Loan Agreement"** means the Intergovernmental Loan Contract by and between the District and CWCB with respect to the Loan.

**"Project"** means the purchase of 500 units of reallocated storage space in connection with the Chatfield Storage Reallocation Project.

**“Promissory Note”** means the Promissory Note from the District to CWCB in the principal amount not to exceed \$4,200,000.

**“Service Plan”** means the service plan for the District, dated October 27, 2004, as approved by Board of County Commissioners of Douglas County, Colorado.

**“Storage Acquisition Agreements”** means, collectively, the Agreement for Acquisition of Chatfield Reservoir Reallocation Project Shares by and between the District and CWCB, the Escrow Agreement by and between the District and U.S. Bank National Association, the Assumption Agreement by the District, the Dominion Water Provider Agreement by and between the District and the Colorado Department of Natural Resources, the Second Amendment to Chatfield Reservoir Management Agreement by the District, an Escrow Agreement by and among the District, U.S. Bank National Association and Chatfield Reservoir Mitigation Company and the Chatfield Reservoir Management Agreement by the District.

**“Supplemental Act”** means Title 11, Article 57, Sections 201, et seq. of the Colorado Revised Statutes, as amended from time to time.

**“State”** means the State of Colorado.

Section 2. Recitals and Determinations.

(a) The District is a quasi-municipal corporation and political subdivision of the State duly organized and existing as a metropolitan district pursuant to the provisions of the District Act.

(b) The members of the Board have been duly elected or appointed and qualified.

(c) At a special election of the eligible electors of the District, duly called and held on May 6, 2014 (the **“Election”**), in accordance with the law and pursuant to due notice, a majority of those qualified to vote and voting at the Election voted in favor of certain ballot questions authorizing the issuance of indebtedness payable from legally available revenues, for the purpose of providing a potable and nonpotable water supply, storage, transmission and distribution system, and a sanitary sewer system.

(d) The returns of the Election were duly canvassed and the results thereof duly declared.

(e) Pursuant to § 32-1-1101.5(1), the results of the Election were certified by the District by certified mail to the board of county commissioners of each county in which the District is located or to the governing body of a municipality that has adopted a resolution of approval of the special district pursuant to § 32-1-204.5, C.R.S within 45 days after the Election, and with the division of securities created by § 11-51-701, C.R.S.

(f) The District is empowered by (i) the District Act, to issue bonds and other obligations for the public purposes of the District and (ii) the Supplemental Public Securities Act to issue bonds and other obligations with certain maturity dates and interest rates.

(g) The Board deems it necessary at this time to authorize the incurrence of the Loan in an aggregate principal amount not to exceed \$4,200,000, pursuant to the District Act, the Supplemental Act and the Loan Agreement.

(h) The Board hereby determines that it is in the best interests of the District to undertake the Project pursuant to the Storage Acquisition Agreements and to use the proceeds of the Loan authorized by this resolution to (i) finance the Project and (ii) pay an origination fee to CWCB.

(i) The Board has determined, and does hereby determine, that the limitations of the District Act and the Supplemental Act imposed upon the incurrence of the Loan have been met and that the Project serves a valid and governmental purpose and is necessary, expedient and in the best interests of the District and its customers.

(j) There have been presented to the Board the proposed forms of the Documents.

Section 3. Ratification. All actions not inconsistent with the provisions of this resolution heretofore taken by the Board and the officers of the District directed toward effecting the Project, the incurrence of the Loan, and the same are hereby ratified, approved and confirmed.

Section 4. Authorization; Parameters. For the purpose of providing funds to defray a portion of the costs of the Project, and to pay for or fund any other costs as set forth herein, the Board, on behalf of the District, in accordance with the District Act and the Supplemental Act, shall incur the Loan in an aggregate principal amount not to exceed \$4,200,000, and with a per annum interest rate not to exceed 3.30%.

Section 5. Loan Details. The Loan shall be secured, shall mature, shall pay principal, shall bear and pay interest, and shall be subject to prepayment prior to maturity, all as set forth in the Documents.

Section 11-57-204 of the Supplemental Act provides that a public entity, including the District, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board hereby elects to apply all of the Supplemental Act provisions to the Loan, including the provisions regarding delegation of authority.

Section 6. Execution of Promissory Note. The Promissory Note shall be executed on behalf of the District by the manual signature of the President or Treasurer of the District, sealed with the corporate seal of the District or a facsimile thereof, and attested by the manual signature of the Treasurer or any Assistant Secretary of the District. In case any officer who shall have signed the Promissory Note shall cease to be such officer of the District before the Promissory Note has been delivered, such Promissory Note with the signatures thereto affixed may, nevertheless, be delivered, as though the person or persons who signed such Promissory Note had remained in office.

Section 7. Form of Promissory Note. The Promissory Note in the form set forth in the Loan Agreement and herein incorporated by reference are hereby approved with only such changes therein as are not inconsistent herewith.

Section 8. Approvals, Authorizations, and Amendments. The forms of the Documents are hereby approved. The District shall enter into and perform its obligations under the Documents in the form of such documents presented at this meeting with such changes and additions therein as shall be approved as provided below; the President or the Treasurer are each hereby authorized to execute the Documents, and the Treasurer or any Assistant Secretary are

each hereby authorized to execute and to affix the seal of the District thereto, and the President and Treasurer or any Assistant Secretary are each further authorized to execute and authenticate such other documents, instruments or certificates as are deemed necessary or desirable by bond counsel in order to incur and secure the Loan, or in connection with the Project. Such documents are to be executed in the forms hereinabove approved, provided that such documents may be completed, corrected or revised as provided below in order to carry out the purposes of this resolution. Copies of all of the documents shall be delivered, filed and recorded as provided therein.

The proper officers of the District are hereby authorized and directed to prepare and furnish to bond counsel certified copies of all proceedings and records of the District relating to the Loan and such other affidavits and certificates as may be required to show the facts relating to the authorization and issuance thereof as such facts appear from the books and records in such officers' custody and control or as otherwise known to them.

The President or the Treasurer are each hereby authorized and directed to approve such additions, deletions, changes and completions to the Documents as necessary to effectuate the purposes of this resolution. The execution of any instrument by the appropriate officers of the District herein authorized shall be conclusive evidence of the approval by the District of such instrument in accordance with the terms hereof.

Section 9. Limitation of Actions. In accordance with the Supplemental Act, no legal or equitable action may be commenced with respect to this resolution authorizing the incurrence of the Loan more than thirty (30) days after the date set forth below which is the date of adoption and approval of this resolution.

Section 10. Contract with CWCB. After the Loan has been incurred, this resolution shall constitute a contract between the District and the CWCB and shall be and remain irrevocable until the Loan and the interest thereon shall have been fully paid, satisfied and discharged.

Section 11. Severability. If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or

unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

Section 12. Repealer. All acts and resolutions in conflict with this resolution are hereby rescinded, annulled and repealed. This repealer shall not be construed to revive any act or resolution, or part thereof, heretofore repealed.

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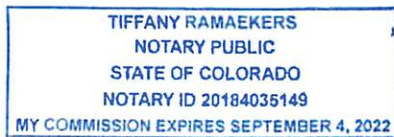


ADOPTED AND APPROVED this 17<sup>th</sup> day of December, 2019.

*[Signature]*  
President

(SEAL)

*Tiffany Ramaekers*  
Secretary



Adoption of the Resolution was then duly and seconded, and, upon being put to a vote, was passed and adopted on the following vote:

Those Voting Yes: Jeffrey C. LaForte  
Harold R. Smethills, Jr.  
John K. Ostermiller  
Brock Smethills

Those Voting No:

None

Absent: Jack Hilbert

A majority of the members of the Board having voted in favor thereof, the presiding officer declared said motion carried and said minutes are approved and official. The Secretary was directed to enter the foregoing proceedings and resolution upon the records of the minutes of the Board.

Thereupon, the Board of Directors considered other matters unrelated to the resolution.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting adjourned.

  
\_\_\_\_\_  
President

(SEAL)

  
\_\_\_\_\_  
Secretary

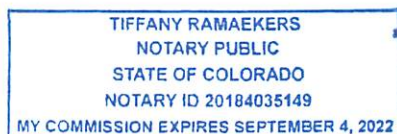
STATE OF COLORADO )  
 )  
DOUGLAS COUNTY ) ss.  
 )  
DOMINION WATER & )  
SANITATION DISTRICT )

I, Tiffany Ramaekers, Secretary of Dominion Water & Sanitation District, Colorado (the "**District**"), do hereby certify that the attached resolution, is a true, perfect and complete copy of the record of the proceedings of the Board of the District, had and taken at an open, special meeting of the Board held at 9250 E. Costilla Ave., 2<sup>nd</sup> Floor, Greenwood Village, Colorado at 1:00 p.m. on Tuesday, the 17<sup>th</sup> day of December, 2019, as recorded in the regular book of official records of the proceedings of said District kept in the office of the District's general legal counsel, insofar as such proceedings related to the adoption of a resolution authorizing the incurrence of a loan, and that (i) said proceedings were duly had and taken as therein shown, and the meeting therein shown was duly held, and the persons therein named were present at said meeting as therein shown; (ii) the minutes contained on the foregoing pages insofar as they relate to the adoption of such resolution have been duly adopted by the Board and are official; (iii) there exist no rules or regulations of the Board which might prohibit the immediate adoption of said resolution; (iv) notice of the special meeting, a copy of which is attached hereto as Exhibit A, was posted in advance of the meeting at the three public places within the District, and at the office of the Douglas County Clerk and Recorder, in accordance with law; and (v) such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof.

WITNESS my hand and the seal of said District affixed this 17<sup>th</sup> day of December, 2019.

(SEAL)

*Danny Ramackers*  
Secretary



**EXHIBIT A**  
**NOTICE OF MEETING**

**PUBLIC NOTICE OF A REGULAR MEETING OF THE  
BOARD OF DIRECTORS OF THE  
DOMINION WATER & SANITATION DISTRICT**

NOTICE IS HEREBY GIVEN that the Board of Directors (the "Board") of the Dominion Water & Sanitation District ("District"), Douglas County, Colorado, will meet in regular session on Tuesday, December 17, 2019, at 1:00 p.m., at the offices of the District, 9250 E. Costilla Ave., 2<sup>nd</sup> Floor Conference Room, Greenwood Village, Colorado, at which meeting it is anticipated that the Board will make a final determination to issue debt in the form of a revenue obligation. Specifically, the Board intends to adopt a Resolution authorizing the incurrence of a loan in a principal amount not to exceed \$4,200,000; approving an Intergovernmental Loan Contract, a Collateral Agreement, a Promissory Note, and other documents in connection therewith; providing details concerning the loan and funds appertaining thereto; ratifying acts previously taken concerning said loan; repealing all resolutions in conflict herewith; and providing for other matters relating thereto.

At this meeting, the Board also expects to authorize the execution of all documents, instruments and certificates in connection therewith, ratify prior actions, authorize incidental actions, repeal prior inconsistent actions and take up such other business as may come before the Board. The meeting is open to the public.

This notice is given by order of the Board of Directors of the District.

DOMINION WATER & SANITATION  
DISTRICT, DOUGLAS COUNTY, COLORADO

By: /s/ Tiffany Ramaekers  
Secretary

## APPENDIX 5, COLLATERAL AGREEMENT

Date: \_\_\_\_\_, 2019  
Borrower: Dominion Water & Sanitation District, a Title 32 Special District  
Secured Party: Colorado Water Conservation Board ("CWCB")  
Promissory Note: \$4,191,989.85  
Terms of Repayment: 3.3% per annum interest for 30 years  
Loan Contract Number: CT2020-3122  
Collateral: Right to use 500 acre-feet of reallocated storage space in Chatfield Reservoir represented by Water Provider Agreement between Borrower and Colorado Department of Natural Resources dated [\_\_\_\_\_, 2019] and Unit Certificate of the Chatfield Reservoir Mitigation Company, Inc.

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 Borrower grants to Secured Party a security interest in the above described Collateral.

### 1. BORROWER EXPRESSLY WARRANTS AND COVENANTS:

- a. That except for the security interest granted hereby, the Borrower is the owner of the Collateral free from any adverse lien, security interest or encumbrances; and that the Borrower will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.
- b. That the execution and delivery of this agreement by the Borrower will not violate any law or agreement governing the Borrower or to which the Borrower is a party.
- c. That Borrower shall not permit or allow any adverse lien, security interest, or encumbrance whatsoever upon the Collateral and shall not permit the same to be attached or replevined.
- d. That by its acceptance of the Loan money pursuant to the terms of the Contract and by its representations herein, the Borrower 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.
- e. To pay all taxes and assessments of every nature that may be levied or assessed against the Collateral.
- f. That the Borrower's articles of incorporation and by-laws do not prohibit any term or condition of this agreement.

### 2. POSSESSION AND USE OF COLLATERAL

- a. Possession: At CWCB's request, Borrower shall provide written notice of this Collateral Agreement to the Colorado Department of Natural Resources to be maintained with the Water Provider Agreement between the Colorado Department of Natural Resources and Borrower representing Borrower's right to use the 500 acre-feet of storage space in Chatfield Reservoir.

- b. Use: Borrower may use all of the Collateral as authorized by and in accordance with the Water Provider Agreement between Borrower and the Colorado Department of Natural Resources.
- c. Released Collateral: At any time prior to the complete repayment to the CWCB of the entire principal, all accrued interest, and late charges, if any, as specified in the Promissory Note; the security interest created under this Collateral Agreement shall be partially released with respect to a portion of the Collateral equal to the number of acre-feet of storage determined as 90% of the total amount of payments towards principal less \$41,504.85, at the rate of \$8,300.97 for each acre-foot of storage which amount, as determined as of any given date is the "Released Collateral Amount".

**3. RELEASE OF COLLATERAL AND ESTOPPELS:**

- a. 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 Collateral.
- b. At Borrower's request, from time to time during the term of this Contract, CWCB shall deliver to Borrower a duly executed estoppel stating the aggregate amount of Borrower's Released Collateral Amount (as defined below) substantially in the form of the Loan Estoppel Certificate attached as Appendix 6 to the Contract.
- c. Upon each payment towards the Loan Amount, Borrower may submit a Partial Lien Release Letter, substantially in the form attached as Appendix 7, and CWCB shall provide to Borrower a duly executed Lien Release Letter evidencing the aggregate amount of Borrower's payment to date and the aggregate amount of Borrower's Released Collateral Amount substantially in the form of the Partial Lien Release Letter attached as Appendix 7 to the Contract.

**4. BORROWER SHALL BE IN DEFAULT UNDER THIS AGREEMENT UPON ANY OF THE FOLLOWING EVENTS OR CONDITIONS:**

- d. Default in the payment or performance of any obligation contained herein, provided that CWCB shall give Borrower written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Borrower shall be considered in default for purposes of this Collateral Agreement; or
- e. Default in the payment or performance of any obligation contained in the Promissory Note or Contract, after the expiration of all applicable grace, notice and cure periods; or
- f. 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 the Borrower.

**5. REMEDIES**

Upon such default and at any time thereafter, the Parties shall have the remedies below:

- a. Borrower shall be entitled to retain an amount of the Collateral equal to Released Collateral Amount.
- b. The CWCB may require the Borrower to deliver the Collateral, other than the Released Collateral Amount, to the Secured Party in a form that vests all rights of use and ownership in the CWCB including, but not limited to: (1) amendment to Borrower's



Water Provider Agreement with the Colorado Department of Natural Resources to reflect reduction in ownership of Collateral; and (2) reissuance of Unit Certificate reflecting reduction in ownership of Collateral.

- c. The CWCB shall be entitled to initiate any processes necessary to secure the Collateral, other than the Released Collateral Amount, in its ownership in order to re-sell the Collateral at market value.
- d. Each acre-foot of Collateral returned to the CWCB's full ownership shall equal a reduction in the Total Loan Amount of \$8,300.97 per acre-foot. Any amount of the Total Loan Amount, including principal, interest, the service fee, any late fees, or any penalties in excess of the Collateral restored to the CWCB's full ownership, if any, shall remain the obligation of Borrower to repay to the CWCB.
- e. Secured Party shall be entitled to any other remedies at law.

## 6. NOTICE AND WAIVER

- a. Notice: The Secured Party shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Borrower shall be considered in default for purposes of this Collateral Agreement.
- b. Waiver: 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 Collateral 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 Collateral Agreement; but Secured Party shall retain its rights of set-off against the Borrower.
- c. 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 the Borrower 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 the Borrower shall bind its successors or assigns.

Borrower:

By: Jeffrey LaForte  
Signature

Name: Jeffrey LaForte

Title: PRESIDENT

Date: 12/17/19

Attest: Tiffany Ramaekers  
By: Tiffany Ramaekers  
Signature

Name: Tiffany Ramaekers

Title: Secretary

Date: 12-17-19



## APPENDIX 6, LOAN ESTOPPEL CERTIFICATE

### LOAN ESTOPPEL CERTIFICATE

To: Dominion Water & Sanitation District, a Title 32 Special District ("Dominion")  
Date: \_\_\_\_\_, 20\_\_\_\_  
From: The State of Colorado, acting by and through the Department of Natural Resources, Colorado Water Conservation Board ("CWCB")  
Re: (i) that certain Intergovernmental Loan Contract (Loan Contract Number CT2020-3122) dated [\_\_\_\_\_, 2019] (the "Loan") by and between CWCB and Dominion; (ii) that certain Collateral Agreement of even date therewith between Dominion and CWCB (as the secured party) (the "Collateral Agreement"); (iii) that certain Promissory Note referenced in the Loan Agreement (the "Promissory Note"); and (iv) that certain Water Provider Agreement between the State of Colorado, acting by and through the Department of Natural Resources and Dominion for the Use of Storage Space at Chatfield Reservoir Contract (Contract Number CT201[\_\_\_\_]) dated [\_\_\_\_\_, 2019] (the "WPA").

In accordance with section 3.b. of the Collateral Agreement, Dominion has requested this estoppel statement. CWCB hereby certifies and confirms to Dominion and acknowledges and agrees as follows:

1. The Loan is in full force and effect.
2. To CWCB's knowledge, there exists no default under, violation of, or failure to comply with the Loan, Promissory Note, or Collateral Agreement by Dominion, and no event has occurred that with the giving of notice or the passage of time, or both, would constitute a default under, violation of, or failure to comply by Dominion thereunder.
3. CWCB has released and holds no security interest or lien in or on [\_\_\_\_\_] \* acre-feet of the 500 acre-feet of reallocated storage space in Chatfield Reservoir represented by the WPA and associated interests in the Chatfield Reservoir Mitigation Company, Inc.

*\*Insert Released Collateral Amount as defined in the Collateral Agreement*

4. This Estoppel Certificate shall inure to the benefit of Dominion and shall be binding upon CWCB and its successors and assigns.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be executed as of the day and year first written above.

STATE OF COLORADO, ACTING BY AND THROUGH THE DEPARTMENT OF NATURAL RESOURCES, COLORADO WATER CONSERVATION BOARD

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPENDIX 7, PARTIAL LIEN RELEASE LETTER**

**PARTIAL LIEN RELEASE LETTER  
("Letter")**

[\_\_\_\_\_, 20\_\_]

Reference is made to (i) that certain Intergovernmental Loan Contract (Loan Contract Number CT2020-3122) dated [\_\_\_\_\_, 2019] (the "Loan") by and between the State of Colorado, acting by and through the Department of Natural Resources, Colorado Water Conservation Board ("Lender") and Dominion Water & Sanitation District, a Title 32 Special District ("Borrower"); (ii) that certain Collateral Agreement of even date therewith between Borrower and Lender (as the secured party) (the "Collateral Agreement"); (iii) that certain Promissory Note referenced in the Loan Agreement (the "Promissory Note"); and (iv) that certain Water Provider Agreement between the State of Colorado, acting by and through the Department of Natural Resources and Borrower for the Use of Storage Space at Chatfield Reservoir Contract (Contract Number CT201[\_\_\_\_]) dated [\_\_\_\_\_, 2019] (the "WPA").

The Borrower hereby requests, pursuant to Section [ ] of the Collateral Agreement and Lender hereby confirms and agrees that, as of the date of this Letter, Borrower has paid a total of \$[\_\_\_\_\_] towards the indebtedness evidenced by the Promissory Note of which amount \$[\_\_\_\_\_] is allocated to the principal of such indebtedness and, in accordance with the terms of the Collateral Agreement, any and all security interests and liens of Lender in and on a total amount of [\_\_\_\_\_] \* acre-feet of the 500 acre-feet of reallocated storage space in Chatfield Reservoir represented by the WPA and associated interests in the Chatfield Reservoir Mitigation Company, Inc. (the "Released Collateral") granted to the Lender in connection with the obligations under the Loan are and shall be automatically released without further notice or action and that the Lender will thereafter have no lien on the Released Collateral.

*\*Insert Released Collateral Amount as defined in the Collateral Agreement*

\*\*\*\*\*

Very truly yours,

**DOMINION WATER & SANITATION DISTRICT**, a Title 32  
Special District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_