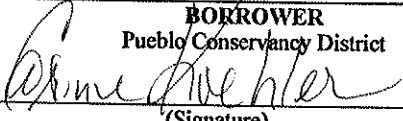

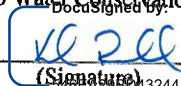
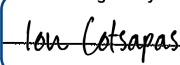


LOAN CONTRACT AMENDMENT NO. 1

State Agency Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	Amendment No. 1 Contract Number CMS 154504 CT2019-366
Borrower and Address Pueblo Conservancy District	Original Contract Number CMS 110587 CT2019-366
Current Contract Maximum Amount \$23,230,000.00 (includes 1% origination fee)	Contract Performance Beginning Date 09/18/2018
Project Name Arkansas River and Wildhorse Creek Levees	Contract Performance End Date 09/18/2023
Reason for Modification Increase the total loan amount due to replacement of additional lineal feet of the levee, to comply with the Federal Emergency Management Agency (FEMA).	Loan Contract Terms 2.45% for 30 years Loan Contract Repayment Schedule Loan not in repayment at this time

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

BORROWER Pueblo Conservancy District  (Signature) Name: <u>Corinne Koehler</u> Title: <u>President</u> Date: <u>August 26, 2020</u> ATTEST:  (Signature) Name: <u>Ron Serna</u> Title: <u>Secretary</u> Date: <u>August 26, 2020</u>	STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director Colorado Water Conservation Board  (Signature) Name: <u>Kirk Russell, P.E., Section Chief</u> Date: <u>September 8, 2020 6:45 PM PDT</u>
In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate STATE CONTROLLER Robert Jaros, CPA, MBA, JD DocuSigned by: By:  Name: <u>Ron Cotsapas</u> Title: <u>DNR Contracts Director</u> Amendment Effective Date: <u>September 10, 2020 8:23 AM PDT</u>	

1. PARTIES

This Amendment (the "Amendment") to the Original Contract (the "Contract") shown on the Signature and Cover Page for this Amendment is entered into by and between the Borrower ("Borrower" or "Authority"), and the State ("CWCB").

2. TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Contract shall be construed and interpreted in accordance with the Contract.

3. AMENDMENT EFFECTIVE DATE AND TERM**A. Amendment Effective Date**

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date.

The Parties' respective performances under this Amendment and the changes to the Contract contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment.

4. PURPOSE

The Borrower was approved for a CWCB loan contract, in September 2017, for the Arkansas River and Wildhorse Creek Levees Project. The parties have agreed to amend the contract to increase the total loan amount due to the replacement of additional lineal feet of the Levee to comply with the Federal Emergency Management Agency (FEMA). The Board approved the increase in November 2019, and the increase was then approved, through the legislature, in House Bill 20-1403 (Section 16, Page 7). The amount of the current loan contract amount is increased by \$6,060,000.00 from \$17,170,000.00 to \$23,230,000.00, which includes the 1% origination fee. The total loan amount is hereby modified accordingly.

MODIFICATIONS

The Contract and all prior amendments thereto, if any, are modified as follows:

- A. The original loan contract amount is hereby deleted and replaced with the Current Contract Maximum Amount of \$23,230,000.00, shown on the Signature and Cover Page for this Amendment. The loan term shall remain at 2.45% for 30 years.
- B. Amendment to Promissory Note, Appendix A, in the revised loan amount and incorporated herein, shall replace and supersede the Original Promissory Note attached to the Original Loan Contract as Appendix 3.
- C. Amendment to Security Agreement, Appendix B, in the revised loan amount and incorporated herein, shall supplement and operate in conjunction with the Original Security Agreement, attached to the Original Loan Contract as Appendix 5.
- D. Add the following condition:
Pueblo Conservancy District shall payoff the existing loan to Bank of the San Juans as referenced in the original loan contract and shall provide the CWCB with a pay request letter that includes the amount needed to pay in full the existing loan, including the loan number, name, and address of the lender. After CWCB review and acceptance of the request, the CWCB will pay the Pueblo Conservancy District the amount set forth in the request. Payment of said request shall be made at the time of disbursement of loan funds.
- E. The Colorado Special Provisions shown in Section 26 of the Original Contract is hereby replaced in its entirety with the following:

26. 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), 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.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor 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.

Contractor 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, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. 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 Contractor harmless; requires the State to agree to binding arbitration; limits Contractor'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. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract,

including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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 three 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 three 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.”

5. LIMITS OF EFFECT AND ORDER OF PRECEDENCE

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments or other modifications to the Contract, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract or any prior modification to the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Contract to the extent that this Amendment specifically modifies those Special Provisions.

6. RESOLUTION

The Borrower has adopted a Board of Director’s Resolution, irrevocable for the term of this loan, authorizing the Borrower to enter into this contract amendment to borrow the additional loan amount, to establish and collect assessments sufficient to pay the annual loan payments, to pledge said assessments for repayment of the loan, and to execute documents necessary to convey a security interest in said assessments and collateral, if necessary, to the CWCB, and attached as Appendix C.

7. BOND COUNSEL OPINION LETTER

Prior to the execution of this Amendment by the CWCB, the Borrower shall submit to the CWCB a letter from its bond counsel stating that it is the bond counsel’s opinion that (1) the person(s) signing for the Borrower was duly elected or appointed and has authority to sign such documents on behalf of the Borrower and to bind the Borrower; (2) the Borrower’s governing body has validly adopted a resolution approving this Amendment; (3) there are no provisions in the any state or local law that prevent this Amendment from binding the Borrower; and (4) this Amendment will be valid and binding against the Borrower if entered into by the CWCB.

**Appendix A, Amendment No. 1 to Loan Contract CT2019-366
Amendment to Promissory Note**

Date:	<u>August 26</u> , 2020
Borrower:	Pueblo Conservancy District
Total Loan Amount:	\$23,230,000.00
Interest Rate:	2.45% per annum
Term of Repayment:	30 years or until loan is paid in full
Loan Contract No.:	CT2019-366
Annual Loan Payment:	\$1,102,488.59
Payment Initiation Date:	<u>(to be filled in at Substantial Completion of Project)</u>
Maturity Date:	<u>(to be filled in at Substantial Completion of Project)</u>

For Value Received, the Borrower promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the Loan Contract and this promissory note.

1. This Amendment to Promissory Note, in the revised loan amount of **\$23,230,000.00**, *shall replace and supersede* the Original Promissory Note, attached as Appendix 3 to the Original Loan Contract, in the amount of 17,170,000.00, and incorporated by reference.
2. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from Payment Initiation Date, and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street Room 718, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within sixty (60) calendar days of the due date.
5. This Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
7. This Note is issued pursuant to the Loan Contract between the CWCB and the Borrower. The Loan Contract creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement ("Security Instrument") of even date and amount and cover certain revenues of the Borrower. The Loan Contract and Security Instruments grant additional rights to the CWCB, including the right to accelerate the maturity of this Note in certain events.
8. If any annual payment is not paid when due or any default under the Loan Contract or the Security Instruments securing this Note occurs, 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 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.

9. The Borrower and any co-signer or guarantor hereby agree that if this Note or interest thereon is not paid when due or if suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
10. This Note shall be governed in all respects by the laws of the State of Colorado.

Attest:

By Ron Serna

Signature

Name Ron Serna

Title Secretary

Date August 26, 2020

Pueblo Conservancy District

By Corinne Koehler

Signature

Name Corinne Koehler

Title President

Date August 26, 2020

**Appendix B, Amendment No.1 to Loan Contract CT2019-366
Amendment to Security Agreement**

Debtor: Pueblo Conservancy District
Secured Party: Colorado Water Conservation Board
Revised Loan Amount: \$23,230,000.00
Term of Repayment: 30 years or until loan is paid in full
Interest Rate: 2.45% per annum
Loan Contract Number: CT2019-366

1. The Parties have amended the Original Loan Contract and Promissory Note to increase the total loan amount due to replacement of additional lineal feet of the levee, to comply with the Federal Emergency Management Agency (FEMA) and hereby amend the original Security Agreement to document the change. The loan total amount will be increased by \$6,060,000.00 from \$17,170,000.00 to \$23,230,000.00.
2. The Parties expressly agree that this Appendix B to Loan Contract Amendment No. 1 is supplemental to the Security Agreement and all terms, conditions, and provisions thereof, unless specifically modified below, are to apply to this Amendment to Security Agreement as though they were expressly rewritten, incorporated, and included herein.
3. Collateral for the loan remains the same.

Attest:

By Ron Serna
Signature

Name Ron Serna

Title Secretary

Date August 26, 2020

Pueblo Conservancy District

By Corinne Koehler
Signature

Name Corinne Koehler

Title President

Date August 26, 2020

**RESOLUTIONS OF THE BOARD OF DIRECTORS
OF THE PUEBLO CONSERVANCY DISTRICT**

The Board of Directors of the Pueblo Conservancy District (hereinafter referred to as "District"), at a lawfully called meeting held August 26, 2020, at Pueblo, Colorado, adopted the following resolutions concerning Loan Contract Amendment No. 1 to a secured loan from the State of Colorado Water Conservation Board (CWCB), for the purpose of repairing the Arkansas River and Wildhorse Creek Levees which Contract Loan Amendment No. 1 increases the existing loan amount from \$17,170,000 to \$23,230,000 bearing interest at 2.45% over a 30 year term with a right to prepay in whole or in part without penalty.

At said meeting, the Board charged that these resolutions are irrevocable during the term of the loan and, pursuant to the District's bylaws, authorized the President and Secretary, as follows, RESOLVED:


1. to enter into and comply with the terms of a Loan Contract Amendment No. 1 with the Colorado Water Conservation Board increasing an existing loan from \$17,170,000.00 to a total loan of \$23,230,000.00 to finance the project costs and the CWCB loan origination fee, and
2. to levy and collect maintenance fund assessment revenues in an amount sufficient to pay the annual amounts due under Loan Contract Amendment No. 1, and to pledge said revenues and the District's right to receive said revenues for repayment of the loan, and
3. to place said pledged revenues in a special account separate and apart from other District revenues, and
4. to make the annual payments required by the Amendment to Promissory Note and to make annual deposits to a debt service reserve fund, and
5. to pledge the maintenance fund assessment revenues backed by a rate covenant and annual financial reporting as security for the loan, and
6. to execute all documents as required by the Loan Contract Amendment No. 1, including, but not limited to, a Amendment to Promissory Note and Amendment to Security Agreement, and
7. to take such other actions and to execute such other documents as may be necessary to consummate and implement the loan.

CERTIFICATION

THE UNDERSIGNED, THE PRESIDENT AND THE SECRETARY HEREBY CERTIFY THAT THE FOREGOING ARE TRUE AND CORRECT COPIES OF RESOLUTIONS DULY ADOPTED AT A MEETING OF THE DISTRICT'S BOARD OF DIRECTORS DULY CALLED AND HELD AS ABOVE RECITED, PURSUANT TO THE DISTRICT'S BYLAWS, AND THAT SAID RESOLUTIONS HAVE NOT BEEN AMENDED OR RESCINDED.

GIVEN UNDER OUR HANDS AND THE SEAL OF THE DISTRICT THE 26TH DAY OF AUGUST, 2020.

(S E A L)

By 
Corinne Koehler, President

ATTEST
By 
Ron Serna, Secretary

DATE: August 26, 2020

DATE: AUGUST 26, 2020