

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

State Agency Colorado Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	Loan Contract Number CMS 149229 CT2021-2039
Borrower's Name and Address Windy Gap Firing Project Water Activity Enterprise	Loan Contract Project Performance Beginning Date The Loan Effective Date Loan Contract Project Performance End Date One (1) year from the Project Performance Beginning Date or upon the Project Performance End Date stated within CWCB's "Notice of Project Substantial Completion."
Base Loan Amount (Amount in CORE) \$89,108,910.89 One Percent (1%) Loan Origination Fee \$891,089.11 Total Loan Amount (Includes One Percent (1%) Origination Fee) \$90,000,000.00	Loan Effective Date The date the State Controller or an authorized delegate signs this Loan Contract Loan Contract Terms 2.08% for 30 years
Project Name Windy Gap Firing Project	Contract Authority Authority to enter into this Contract exists in House Bill 17-1248, Windy Gap Firing Project-Authorization, Section 12, Page 5
Contract Purpose The Project is to increase the firm yield of the existing Windy Gap project by constructing Chimney Hollow Reservoir.	
Appendices and Order of Precedence The following Appendices are included with this Contract: <ol style="list-style-type: none"> 1. Appendix 1, Project Summary 2. Appendix 2, Sample Option Letter 3. Appendix 3, Promissory Note 4. Appendix 4, Resolutions or Ordinance 5. Appendix 5, Security Agreement 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"> 1. Colorado Special Provisions in §24 of the main body of this Contract. 2. The provisions of the other sections of the main body of this Contract. 3. Appendix 3, Promissory Note 4. Appendix 5, Security Agreement 5. All other Appendices 	
Principal Representatives For the State: Cole Bedford Colorado Water Conservation Board 1313 Sherman St., Room 718 Denver, CO 80203 cole.bedford@state.co.us 303-866-3441 ext. 3234	For Borrower: Jeff Drager Windy Gap Firing Project Water Activity Enterprise 220 Water Ave. Berthoud, CO 80513 jdrager@northernwater.org 800-369-7246

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.


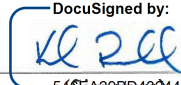
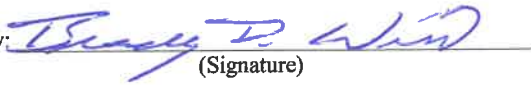

<p align="center">BORROWER</p> <p align="center">Windy Gap Firing Project Water Activity Enterprise</p> <p>By: <u></u> (Signature)</p> <p>Name: <u>Dennis Yanchunas</u></p> <p>Title: <u>President, Muni-Sust. Dist.</u></p> <p>Date: <u>18th Nov 2020</u></p>	<p align="center">STATE OF COLORADO</p> <p align="center">Jared Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director Colorado Water Conservation Board (CWCB)</p> <p>DocuSigned by: <u></u> 546A20BD44294E... (Signature)</p> <p>By: _____</p> <p>Name: Kirk Russell, P.E., Section Chief CWCB Finance Section</p> <p>Date: <u>February 2, 2021 8:29 PM MST</u></p>
<p align="center">ATTEST:</p> <p>By: <u></u> (Signature)</p> <p>Name: <u>Bradley D. Wind</u></p> <p>Title: <u>General Manager</u></p> <p>Date: <u>11/18/2020</u></p>	<p align="center">LEGAL REVIEW</p> <p align="center">Phil Weiser, Attorney General</p> <p>By: <u>N/A</u> Assistant Attorney General</p> <p>Date: _____</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 align="center">STATE CONTROLLER Robert Jarvis, CPA, MBA, JD</p> <p>DocuSigned by: By: <u></u> 70E3DF1B09EE4E8... Name: <u>Ion Cotsapas</u></p> <p>Title: <u>DNR Contracts Director</u></p> <p>Effective Date: <u>February 3, 2021 11:15 AM MST</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 "CWCBS"). 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 Term

The Parties' respective performances, of the Project, under this Contract shall commence on the 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, specifically Appendix 1, Section 7.

If during the Project one-year period, the Borrower has issued a WGFP Financing in the form of senior lien indebtedness, then the Time of Performance shall be adjusted as necessary to cover the expected complete construction duration. If at the end of the one-year period a WGFP Financing has not been issued, the loan contract shall be substantially completed (closed out) at the disbursed amount (plus the 1% service fee).

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. 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 CWCBC and CWCBC 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 §20.

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 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. **"Allotment Contracts"** means the Allotment Contracts entered into between the Borrower and each of the Windy Gap Farming Project (WGFP) Allottees.
- B. **"Base Loan Amount"** means the amount disbursed to the Borrower, which does not include the one percent (1%) Loan Origination Fee.
- C. **"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. 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.
- D. **"Business Day"** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.
- E. **"Contract"** means this agreement, 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 Work, 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 Allottee”** means a WGFP Allottee that, under its Allotment Contract, satisfies all or a portion of its Capital C&E Funding Obligation (as defined in the Allotment Contracts) through participation in a WGFP Financing pursuant to its Allotment Contract. A WGFP Allottee is a Loan Allottee to the extent that it satisfies its Capital C&E Funding Obligation through participation in WGFP Financing, and then only during the term of such WGFP Financing.
- J. **“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.
- 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. **“Party”** means the State or Borrower, and **“Parties”** means both the State and Borrower.
- M. **“Pledged Revenues”** means the annual payments received by the Borrower from the Loan Allottees under the Allotment Contracts, net of any Operating C&E (as defined in the Allotment Contracts) which are pledged for repayment of this loan, as defined in the Resolution and set forth in the Security Agreement.
- 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. **“Security Agreement”** means the document that provides a security interest in a specified revenue 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 that 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 the Work.
- X. **“Total Loan Amount”** means the total of the Base Loan Amount plus the Origination fee of one percent (1%).
- Y. **“WGFP Allottee”** means each entity that holds a WGFP Allotment pursuant to a WGFP Allotment Contract.
- Z. **“WGFP Financing”** means a financing by the Borrower of Capital C&E (as defined in the Storage Allotment Contracts) through one or more loans, lines of credit, notes, bond issues, or other forms of indebtedness, and any refinancing of the same, on behalf of the pooled financing participants participating in such WGFP Financing. WGFP Financing includes this Loan and any other lien borrowings that may be subordinated to other financing.

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

4. AMENDMENTS AND OPTION LETTERS

In the event that the Borrower does not use the full amount authorized, the Parties shall amend this Contract or the State may exercise an Option Letter (attached as Appendix 2) and incorporated herein, to decrease the Total Loan Amount including an adjustment of the Origination Fee to reflect 1% of the actual amount disbursed to the Borrower. An amendment to this Contract shall be executed for the following changes including, but not limited to, a change in Pledged Revenues, an increase in Total Loan Amount, and a decrease in Total Loan Amount with a change in the annual loan payment. Additionally, upon substantial completion of the Project, the following applies:

- A. **Upon substantial completion of the Project** with a decrease in the Total Loan Amount and if the Borrower requests a change in the annual loan payment; the Parties may amend this Contract to modify the annual loan payment accordingly.
- B. **Upon substantial completion of the Project** with a decrease in the Total Loan Amount but no change in the annual payment, which then results in a shortened term of the loan, the State may exercise an option and shall provide written notice to the Borrower in form substantially equivalent to Appendix 2 to decrease the term of the loan. If exercised, the provisions of the Option Letter and supporting documentation shall become part of and be incorporated into this Contract for the total duration of this Contract.

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 deferments 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.

7. INTEREST PRIOR TO PROJECT COMPLETION

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 rate set by the CWCB for this loan. The CWCB shall calculate the amount of the interest that accrued prior to the Project's substantial completion (as determined by the CWCB) 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 notification from the CWCB, (2) at 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 the CWCB's discretion, said interest shall be rolled into the Total Loan Amount due.

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) completion of the Project 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) and incorporated herein, 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 water activity enterprise pursuant to the provisions of C.R.S. 37-45.1-101, et. seq., and is operated as a water activity enterprise pursuant to the provisions of C.R.S. 37-45.1-101, et. seq., and is a government-owned business authorized to issue its own revenue bonds and receiving fewer than 10% of annual revenue in grants from all Colorado state and local governments combined within the meaning of Article X, Section 20 of the Colorado Constitution.

11. PLEDGE OF REVENUES

The Borrower irrevocably (but not exclusively) pledges to the CWCB, for the purpose of repaying the Total Loan Amount, the Pledged Revenues, in such amount as is necessary to make each annual payment due under this Contract. Such pledge of the Pledged Revenues is on parity with outstanding and subsequently issued WGFP Financings issued as subordinated lien indebtedness but expressly subordinate and junior to WGFP Financings issued as senior lien indebtedness.

- A. **Segregation of Pledged Revenues.** The Pledged Revenues shall be accounted for and maintained in accounts separate from other Borrower revenues at all times. The Pledged Revenues shall be used first to pay debt service on WGFP Financings issued as senior lien indebtedness and second to pay debt service on the Total Loan Amount and all other WGFP Financings issued as subordinated lien indebtedness on an equal basis. Thereafter, the Pledged Revenues may be used for any and all other expenses.
- B. **Establish Security Interest.** The Borrower has duly executed a Security Agreement, attached as Appendix 5 and incorporated herein, to provide a security interest to the CWCB in the Pledged Revenues. The lien of this Contract on the Pledged Revenues shall have priority over all other competing claims with respect to the Pledged Revenues, except for the senior lien on the Pledged Revenues of any WGFP Financings issued as senior lien indebtedness and the parity lien on the Pledged Revenues of any WGFP Financings issued as subordinated lien indebtedness.
- C. **Allotment Contracts Covenant.** Pursuant to its statutory authority and as permitted by law, the Borrower shall take all necessary actions consistent therewith during the term of this Contract to enforce the obligations of the Loan Allottees under the Allotment Contracts, to establish, levy and collect rates, charges and fees in amounts sufficient to make their annual payments under the Allotment Contracts and the obligations of the Loan Allottees to make such payments under the Allotment Contracts, which such annual payments will be in amounts sufficient to pay any WGFP Financings issued as senior lien indebtedness and any WGFP Financings issued as subordinated lien indebtedness, including to pay this loan as required by the terms of this Contract and the Promissory Note, to cover all expenditures for operation and maintenance and emergency repair services for the Project,, and to maintain adequate debt service reserves.
- D. **Debt Service Reserve Account or Fund.** To establish and maintain the debt service reserve account or fund, the Borrower shall deposit an amount equal to one-tenth (0.1) of an annual payment into its debt service reserve account or fund on the due date of its first annual loan payment and annually thereafter for the first ten years of repayment of this loan. In the event that the Borrower applies funds from this account to repayment of the loan, the Borrower shall replenish the account within ninety (90) days of withdrawal of the

funds. The debt service reserve account or fund requirement is in effect until the loan is paid in full.

- E. **Additional Debts.** The Borrower may issue WGFP Financings issued as senior lien indebtedness senior to this loan and WGFP Financings issued as subordinated lien indebtedness on a parity with this loan provided that:
 - i. The Borrower is currently and at the time of the issuance of the WGFP Financings in substantial compliance with all of the obligations of this Contract, including, but not limited to, being current on the annual payments due under this Contract; and
 - ii. The Borrower certifies to the CWCB that all Loan Allottees are current with respect to their annual payments under the Allotment Contracts.
- F. **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.
- G. **Pledged Revenues During Loan Repayment.** Other than as set forth above, the Borrower shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the Pledged Revenues, so long as any of the principal, accrued interest, and late charges, if any, on this loan remain unpaid, without the prior written concurrence of the CWCB.

12. RELEASE AFTER LOAN IS REPAYED

Upon complete repayment to the CWCB of the entire principal, all accrued interest, and late charges, if any, as specified in the Promissory Note, the CWCB agrees to release and terminate any and all of the CWCB's right, title, and interest in and to the Pledged Revenues.

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 Pledged Revenues for this loan are not encumbered by any other deeds of trust or liens of any party other than the CWCB or in any other manner, except for any existing or subsequently issued WGFP Financings as described in Section 11 hereof, which sets forth the position of the lien created by this Contract in relation to any existing lien(s). Documentation establishing the relative priorities of said liens, if necessary, is attached to the Project Summary and incorporated herein.

14. OPERATION OF PROJECT

The Borrower shall, without expense or legal liability to the CWCB, manage, operate, and maintain the Project continuously in an efficient and economical manner.

15. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Borrower shall keep confidential, and cause all Subcontractors 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 approved in Writing by the State. 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 its Subcontractors will or may receive the following types of data, Borrower or its Subcontractors 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 its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Borrower shall ensure all such agents, employees, assigns, and Subcontractors 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 agent, employee, assign or Subcontractor has 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. Unless Borrower can establish that none of Borrower or any of its agents, employees, assigns or Subcontractors 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 and Work Product in the possession of Borrower or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits 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 a conflict or the appearance of a conflict arises, or if Borrower is uncertain whether 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 regard 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 thirty (30) 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 and Security Agreement securing Pledged Revenues.
- d. Take any other action deemed appropriate by the CWCB.

The CWCB shall provide written notice to the Borrower of any such default and shall give the Borrower an opportunity to cure within sixty (60) days of receipt of such notice. All remedies described herein may be simultaneously or selectively and successively enforced. The CWCB may enforce the provisions of this Contract at its option without regard to prior waivers of previous defaults by the Borrower, through judicial proceedings to require specific performance of this Contract, or by such other proceedings in law or equity as may be deemed necessary by the CWCB to ensure compliance with provisions of this Contract and the laws and regulations under which this Contract is executed. The CWCB's exercise of any or all of the remedies described herein shall not relieve the Borrower of any of its duties and obligations under this Contract.

B. Borrower's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Borrower, following the notice and cure period in §19.A.i.d., and the dispute resolution process in §20., 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 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 ten (10) 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 §24-101-301(30), 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 related to the Work, and all prior representations and understandings related to the Work, 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 Work 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. Standard and Manner of Performance

Borrower shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Borrower's industry, trade, or profession.

Q. Licenses, Permits, and Other Authorizations.

Borrower shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

R. Indemnification

i. General Indemnification

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 its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

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 its employees, agents, assigns, or Subcontractors in violation of §15.

iii. Intellectual Property Indemnification

Borrower shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

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), 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. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

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 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.

Special Provisions
Version 0919

APPENDIX 1, PROJECT SUMMARY

Loan Contract Number CT2021-2039

Section 1 –Borrower's Name

Windy Gap Firming Project Water Activity Enterprise

Section 2 – Project Description

- A. Description of Project: The Borrower applied to the CWCB for a loan to be used for the Windy Gap Firming Project, located in Larimer County, at a total estimated Project cost of \$660 million. The Project is to increase the firm yield of the existing Windy Gap project by constructing Chimney Hollow Reservoir.
- B. Description of Feasibility Report: John Budde, CPA, Financial Services Manager for Northern Water, prepared the Loan Feasibility Study titled, "Windy Gap Firming Project Loan Feasibility Study," dated October 1, 2017. The Feasibility Study relied on the extensive engineering and environmental studies performed including the April 1997 Feasibility Study by GEI Consultants, the March 2014 Preliminary Design Report by AECOM, the Final EIS and the Bureau of Reclamation's December 2014 Record of Decision. The feasibility report was prepared in accordance with CWCB guidelines and includes an alternative analysis and construction cost estimates and is incorporated herein by this reference. Based upon the feasibility report, the CWCB determined the Project to be technically and financially feasible.

Section 3 – Authority

This loan is made pursuant to the provisions of §§37-60-119 and 37-60-120, C.R.S., which authorizes the CWCB to loan money for water projects from the CWCB Construction Fund for the benefit of the people of the state, provided that the Borrower assures repayment of that money.

Pursuant to House Bill 17-1248, Section 12. Windy Gap firming project-authorization, Page 5, the Colorado General Assembly authorized CWCB to loan to the Borrower an amount up to \$90,000,000.00 for the Project.

Section 4 - CWCB Approval

At its November, 2017 meeting the CWCB approved a Project Loan, from the CWCB Construction Fund, to the Borrower in an amount up to \$89,108,910.89 for Project Costs. CWCB's Origination Fee of 1% in the amount of \$891,089.11, in accordance with CWCB Policy No. 16, added to the Base Loan Amount results in a Total Loan Amount of **\$90,000,000.00**, at an interest rate of 3.10% per annum for a repayment term of thirty (30) years. At its March 2020 meeting, the CWCB approved an updated interest rate of 2.08% per annum for a repayment term of thirty (30) years.

Section 5 – Schedule of Existing Debt

As of the date of the CWCB loan 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 Security Agreement (Appendix 5) and incorporated herein, shall be: (i) an irrevocable (but not exclusive) pledge, to the CWCB, of water activity enterprise revenues from the Loan Allottees under the Allotment Contracts, net of any Operating C&E (as defined in the Allotment Contracts) in such amount as is necessary to make each annual payment due under this Contract; and (ii) an assessment covenant as evidenced by annual financial reporting. Such pledge of the Pledged Revenues is on parity with outstanding and subsequently issued WGFP Financings issued as subordinated lien indebtedness but expressly subordinate and junior to WGFP Financings issued as senior lien indebtedness. This security is a variance from CWCB Policy No. 5.

Section 7 – Additional Conditions and Requirements

The loan contract's Time of Performance shall be one year. If during that one-year period, the Borrower has issued a WGFP Financing in the form of senior lien indebtedness, then the Time of Performance

shall be adjusted as necessary to cover the expected complete construction duration. If at the end of the one-year period a WGFP Financing has not been issued, the loan contract shall be substantially completed (closed out) at the disbursed amount (plus the 1% service fee). The loan funds (not disbursed) will remain eligible for a new and separate loan contract at a new CWCB Board approved rate. The rate shall be based on the market rate for a 30-year AA Bond at the time of a subsequent request.

The CWCB shall be provided the executed Allotment Contracts (12 in total) of each WGFP participant. The contracts shall include, but not be limited to, the following requirements:

- 1) Each Loan Allottee shall to the fullest extent permitted by law, fix rates, charges or assessments so that such Loan Allottee will at all times have sufficient money to meet its obligations under its Allotment Contract and confirms that payment of its obligations under its Allotment Contract constitutes an operation and maintenance expense of such Loan Allottee and that as an operation and maintenance expense there are no liens, charges or encumbrances thereon, or priority of payments with respect thereto, prior to the payment of amounts under its Allotment Contract.
- 2) All payments owed to the Borrower under the Allotment Contracts shall be subject to take-or-pay and step-up provisions.

This loan will be subordinate to the payments of the revenue bonds issued as senior lien indebtedness for the Windy Gap Firing Project's "Capital C&E." as that term is defined in the Allotment Contract.

Section 8 – "Construction Fund Program" Procedures for Projects

- A. The Borrower shall employ an engineer, registered in the State of Colorado to prepare plans and specifications for the Project.
- B. Engineering contracts and the plans and specifications must be submitted to the CWCB staff for verification of compliance with the terms of this Contract when requested by CWCB. Any modifications, to the plans and specifications that effect changes to the construction costs must be approved in writing by CWCB.
- C. For plans and specifications for all jurisdictional dams and reservoirs, as defined by §37-87-105 C.R.S., the Borrower shall provide a letter of approval from the State Engineer's Office prior to construction.
- D. The Borrower shall notify CWCB of bid opening dates, times and locations. CWCB staff may elect to attend future bid openings.
- E. The Borrower shall contract for the construction of the work with responsible and capable Construction Firms, selected by the Borrower and found acceptable by the CWCB staff. CWCB must approve the award of the construction contract prior to disbursement of funds for construction.
- F. The Borrower must provide a copy of the following construction contract documents: executed contractor's proposal, executed construction contract, executed performance bond, executed payment bond, executed notice of award, proposed notice to proceed, sample change order, and sample field order, as well as the advertisement for bid. CWCB staff must verify that these documents comply with the terms of this Contract prior to disbursement of funds for construction.
- G. The Borrower shall conduct a pre-construction conference at which time the CWCB staff shall have the opportunity to review and approve the construction schedule.
- H. If the CWCB staff determines that the Project requires a resident inspector during construction, the Borrower shall employ an inspector who has been approved by the CWCB staff.
- I. The Borrower shall construct the Project in accordance with the approved plans and specifications.

- J. Upon completion of the Project construction, the Borrower shall provide as-built drawings of the Project to
- K. the CWCB staff, or, if required by §37-87-105, C.R.S., the Borrower shall provide the as-built drawings to the State Engineer's Office for approval and filing.
- L. Upon completion of the Project construction, the Borrower shall arrange a final inspection for the CWCB staff.
- M. The Borrower shall pay all of the expenses related to the Project when such bills are due.

Section 9 – Eligible Expenses

The Borrower shall initiate disbursement requests by invoice to CWCB, in a form and manner approved by CWCB. The following items are eligible for loan disbursements:

- A. Engineering associated with the feasibility report prepared as a requirement for this loan.
- B. Preparing final designs and specifications for the Project.
- C. Preparing bid and construction contract documents.
- D. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
- E. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.
- F. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.
- G. Actual construction as called for in the design documents and in change orders approved by the CWCB and the Borrower.
- H. Engineering services for construction management, including design and construction management for CWCB approved change orders.
- I. Interest prior to completion of the Project pursuant to Section 7., of the Contract.
- J. 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.
- K. Project 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: The Borrower shall prepare a periodic progress report that sets forth a statement of the Project costs expended for that period and shall forward said statement to the CWCB. After receipt of the periodic progress report from the Borrower, and review and acceptance of the items therein as eligible expenses, as described above, the CWCB will pay to the Borrower the amount set forth in the report 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 progress report.

Section 11 – Time for Performance

Project To Begin: Loan Effective Date.

Project To End: One (1) year from the Effective Date of this Contract or based upon the date stated within the CWCB Notice of Project Substantial Completion.

**APPENDIX 2, SAMPLE OPTION LETTER
(TO BE USED AT SUBSTANTIAL COMPLETION OF PROJECT)**

State Agency Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	Option Letter Number
Borrower	Original Contract Number CMS CT
	Option Contract Number
	Loan Contract Effective Date
	Loan Contract Expiration Date

1. OPTIONS:

- a. Option to decrease total Contract amount and revise Contract expiration date upon CWCB *Notice of Project Substantial Completion*.

2. REQUIRED PROVISIONS:

- a. The amount of the current Loan Contract Amount is decreased by (\$ amount of change) from \$_____ to \$_____ in consideration of substantial completion of the Project. The Total Loan Amount is hereby modified accordingly.
- b. This change does not include a change to the annual payment and interest rate.
- c. This Option Letter and supporting documentation shall become part of and be incorporated into this Contract for the total duration of the Loan Contract.
- d. This Option Letter shall include the written *Notice of Project Substantial Completion*.
- e. The Contract Maximum Amount table on the Contract Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

- a. The effective date of this Option Letter is upon approval of the State Controller or an authorized delegate.

<p align="center">STATE OF COLORADO Jared Polis, Governor Department of Natural Resources Dan Gibbs, Executive Director Colorado Water Conservation Board</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Option Effective Date: _____</p>
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APPENDIX 3, PROMISSORY NOTE

Date: November 18 2020

Borrower: Windy Gap Firing Project Water Activity Enterprise

Total Loan Amount: \$90,000,000.00

Interest Rate: 2.08% per annum

Term of Repayment: Thirty (30) years

Loan Contract Number: CT2021-2039

Annual Loan Payment: \$4,062,831.42

Payment Initiation Date*: (To be filled in at Substantial Completion of Project)

Maturity Date*: (To be filled in at Substantial Completion of Project)

* Payment Initiation Date and Maturity Date fields are filled in *after* the Project has been substantially completed.

1. 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.
2. 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 (the date the CWCB determines that the Project is substantially complete), 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 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.
5. 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.
6. This Promissory Note is issued pursuant to the Contract between the CWCB and the Borrower. The 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 of even date and amount herewith and cover the Pledged Revenues. The Contract and Security Agreement grant additional rights to the CWCB, including the right to accelerate the maturity of this Promissory Note in certain events.
7. If any annual payment is not paid when due or any default under the Contract or the Security Agreement securing this Promissory 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 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.

8. The Borrower hereby agrees 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.
9. 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.

Windy Gap Firing Project Water Activity Enterprise

By: Dennis Yachurus
Signature

Attest:

Name: Dennis Yachurus

Title: President

Date: 18th Nov 2020

By: Bradley D. Wind
Signature

Name: Bradley D. Wind

Title: General Manager

Date: 11/18/2020

Appendix 4

WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE, MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS

RESOLUTION NO. MS-389-11-20

REGARDING SUBORDINATE CWCB LOAN TO FUND A PORTION OF THE COSTS OF WINDY GAP FIRING PROJECT

WHEREAS, the Windy Gap Firing Project Water Activity Enterprise (the “WGFP Enterprise”) is a government-owned business within the meaning of Article X, § 20(2)(d), of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District (the “Subdistrict”); and

WHEREAS, in accordance with its statutory duties and powers granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, the WGFP Enterprise has pursued the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project (the “Project”), a project designed to, among other things, deliver a firm annual yield of about 30,000 acre feet of water from the existing Windy Gap project to meet a portion of the existing and future demands of the participants in the Project (the “Allottees”) by construction of approximately 90,000 acre feet of usable water storage capacity; and

WHEREAS, the staff and counsel of the WGFP Enterprise have made a presentation regarding the status of and planning for the Project, including the proposed financing of the costs of the Project, such financing to consist of (a) a publicly-offered issue of senior lien revenue bonds (the “Senior Revenue Bonds”) and (b) a subordinate lien loan (the “Subordinate CWCB Loan”) being made by the Colorado Water Conservation Board (the “CWCB”); and

WHEREAS, the Board hereby finds, determines and adjudicates, as follows:

1. Staff and counsel of the WGFP Enterprise have presented to the Board estimates of (a) the initial cost for the planning, financing, acquisition, construction, and improvement of the Project, (b) the annual operation and maintenance expenses of the Project, and (c) the annual revenues received by the WGFP Enterprise from the Allottees under the terms of the proposed Allotment Contracts by and between the Enterprise and each of the Allottees, which such Allotment Contracts will, among other things, allot and confirm to each Allottee a portion of the usable water storage and conveyance capacity of the Project pursuant to C.R.S. § 37-45-131 and C.R.S. §§ 37-45.1-103(4), -106(4); set out the Allottees’ respective obligations to pay for the Project; and provide details about operation of the Project upon completion of construction; and

2. Staff and counsel of the WGFP Enterprise have discussed fully with the Board the basis for and assumptions underlying such estimates; and

3. Such estimates are reasonable and demonstrate that such annual revenues exceed the sum of the annual operation and maintenance expenses in each calendar year and the combined annual principal of and interest on the Senior Revenue Bonds and the Subordinate CWCB Loan; and

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November 12, 2020

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4. The Subdistrict's and the WGFP Enterprise's bond counsel will provide the CWCB with an opinion letter, in a form required by the proposed Loan Contract with the CWCB, to the effect that:

- a. the Loan Contract with the CWCB has been duly executed by officers of the WGFP Enterprise who are duly elected or appointed and are authorized to execute the Loan Contract with the CWCB and to bind the WGFP Enterprise; and
- b. the resolutions of the WGFP Enterprise authorizing the execution and delivery of the Loan Contract with the CWCB were duly adopted by the governing body of the WGFP Enterprise; and
- c. there are no provisions in the Colorado Constitution or any other state or local law that prevent the Loan Contract from binding the WGFP Enterprise; and
- d. the WGFP Enterprise is a water activity enterprise in accordance with C.R.S. §§ 37-45.1-101 *et seq.* for the purpose of pursuing the Project; and
- e. the Loan Contract will be valid and binding against the WGFP Enterprise if entered into by the CWCB.

5. Staff and counsel have further discussed with the Board that the WGFP Enterprise will irrevocably pledge to the CWCB, for purposes of repayment of the Subordinate CWCB Loan, the net revenues from the Project, as defined below in Section 2 as Pledged Revenues; provided, however, that such pledge of the Pledged Revenues is on parity with outstanding and subsequently issued debt obligations of the WGFP Enterprise issued as subordinated lien indebtedness, but such pledge is expressly subordinate and junior to outstanding and subsequently issued debt obligations of the WGFP Enterprise issued as senior lien indebtedness, including the Senior Revenue Bonds.

6. Staff and counsel have further discussed with the Board that, under the terms of the Loan Contract, if during the one-year period following the execution of the Loan Contract by the CWCB, the WGFP Enterprise has issued the Senior Revenue Bonds, then the period during which the CWCB is obligated to fund the Subordinate CWCB Loan shall be adjusted as necessary to cover the expected construction period for the Project, and that if at the end of such one-year period, the WGFP Enterprise has not issued the Senior Revenue Bonds, then the Subordinate CWCB Loan shall be closed out in the amount disbursed as of such date (plus a one percent (1%) service fee), and the CWCB shall no longer be obligated to fund any remaining amounts under the Subordinate CWCB Loan unless such period is extended by the CWCB.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Windy Gap Firming Project Water Activity Enterprise, Municipal Subdistrict, Northern Colorado Water Conservancy District, as follows:

SECTION 1. The Loan Contract between The Department of Natural Resources, Colorado Water Conservation Board and Windy Gap Firming Project Water Activity Enterprise, in substantially

the form presented in this meeting, with such changes and amendments as hereinafter provided for, is hereby authorized and approved. Said form may be changed and amended by mutual agreement of the General Manager and General Counsel of the WGFP Enterprise, provided that: the principal amount of the loan provided therein shall not exceed \$90 million dollars; the term of the loan shall not be less than 30 years or greater than 30 years; the interest rate on said loan shall not be greater than 2.08%; the amortization of such loan shall result in substantially level annual payments of aggregate principal and interest in each year in which principal shall be payable; and the covenants therein shall not be materially more burdensome to the WGFP Enterprise.

SECTION 2. For purposes of repayment of the Subordinate CWCB Loan, "Pledged Revenues" means the annual payments received by the WGFP Enterprise from the Loan Allottees under the Allotment Contracts, net of any Operating C&E (as defined in the Allotment Contracts). A "Loan Allottee" is an Allottee that elects to satisfy all or a portion of its obligations under its Allotment Contract through participation in a WGFP Financing (as defined in the Allotment Contracts).

SECTION 3. The President of the Board and the General Manager and Secretary of the WGFP Enterprise are each hereby authorized and directed to execute said Loan Contract for and on behalf of the WGFP Enterprise, with such execution being conclusive evidence of their respective approval of and agreement to the aforesaid changes and amendments, and they shall deliver the same to the CWCB. The WGFP Enterprise is hereby authorized to enter into said Loan Contract, to perform and observe all of the contractual terms, conditions and obligations set forth in said Loan Contract, and to pledge the Pledged Revenues to assure repayment of the Subordinate CWCB Loan, subject to the senior lien of the Senior Revenue Bonds.

SECTION 4. The Board of Directors hereby elects to apply to the issuance of the Loan Contract, the Promissory Note (as defined in the Loan Contract) and the Security Agreement (as defined in the Loan Contract) all of the provisions of Part 2 of Article 57 of Title 11 of the Colorado Revised Statutes.

SECTION 5. This resolution shall take effect immediately upon its adoption.

CERTIFICATE

I, Bradley D. Wind, do hereby certify that the above is a true and correct copy of a Resolution adopted by the Board of Directors of the Windy Gap Firming Project Water Activity Enterprise at a regular meeting of the Board of Directors held in Berthoud, Colorado, on November 12, 2020.

Dated: 11/12/2020


Secretary

APPENDIX 5, SECURITY AGREEMENT

Date: November 18, 2020

Borrower: Windy Gap Firing Project Water Activity Enterprise

Secured Party: Colorado Water Conservation Board

Promissory Note: \$90,000,000.00

Terms of Repayment: 2.08% per annum interest for thirty (30) years

Loan Contract Number: CT2021-2039

Pledged Revenues: All pledged revenues from the Allotment Contract revenues, net of any Operating C&E (as defined in the Allotment Contracts) in such amount as is necessary to make each annual payment due under this Contract and all of Borrower's right to receive said revenues to repay the loan as described in Pledged Revenues provisions of the Contract and Borrower's Resolutions adopted November 12, 2020.

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 Pledged Revenues.

BORROWER EXPRESSLY WARRANTS AND COVENANTS:

1. That except for the security interest granted hereby and any other security interests granted in respect of WGFP Financings issued as senior lien indebtedness and WGFP Financings issued as subordinate lien indebtedness described in Section 11 of the Loan Contract and Appendix 1, Project Summary, Section 6 and 7, the Borrower is the owner of the Pledged Revenues free from any adverse lien, security interest or encumbrances; and that the Borrower will defend the Pledged Revenues against all claims and demands of all persons at any time claiming the same or any interest therein.
2. That the execution and delivery of this agreement by the Borrower will not violate any law or agreement governing the Borrower or to which the Borrower is a party.
3. Except in accordance with Section 11.E., of the Loan Contract, to not permit or allow any adverse lien, security interest or encumbrance whatsoever upon the Pledged Revenues and not to permit the same to be attached or replevined.
4. That by its acceptance of the loan money pursuant to the terms of the Contract and by its representations herein, the Borrower shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the Pledged Revenues pursuant to the terms of this agreement.
5. To pay all taxes and assessments of every nature that may be levied or assessed against the Pledged Revenues.
6. That the Borrower's articles of incorporation and by-laws do not prohibit any term or condition of this agreement.

UNTIL DEFAULT Borrower may have possession of the Pledged Revenues, provided that Borrower keeps the Pledged Revenues in an account separate from other revenues of Borrower and does not use Pledged Revenues for any purpose not permitted by the Contract. Upon default, subject to the terms of any financing documents executed in connection with any WGFP Financings, Secured Party shall have the immediate right to the possession of the Pledged Revenues.

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

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

Upon such default and at any time thereafter, subject to the terms of any financing documents executed in connection with any WGFP Financings, Secured Party shall have the remedies of a secured party under Section 11-57-208, Colorado Revised Statutes. Subject to the terms of any financing documents executed in connection with any WGFP Financings, Secured Party may require the Borrower to deliver or make the Pledged Revenues available to Secured Party at a place to be designated by Secured Party, which is reasonably convenient to both parties. Expenses of retaking, holding, preparing for sale, selling or the like shall include Secured Party's reasonable attorney's fees and legal expenses.

The Secured Party shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) Business Days of receipt of such notice before the Borrower shall be considered in default for purposes of this Security Agreement. No default shall be waived by Secured Party except in writing, and no waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion. The taking of this Security Agreement shall not waive or impair any other security Secured Party may have or hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this Security Agreement; but Secured Party shall retain its rights of set-off against the Borrower. 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.

Windy Gap Farming Project Water Activity Enterprise

By: Dennis Yanchuenas
Signature

Attest:

By: Bradley D. Wind
Signature

Name: Dennis Yanchuenas
Title: President

Name: Bradley D. Wind
Title: General Manager

Date: 18th Nov 2020

Date: 11/18/2020

CMS 149229
Contract Number: CT2021-2039
Appendix 5