

STATE OF  
COLORADO

Mason - DNR, Peg &lt;peg.mason@state.co.us&gt;

---

**Fwd: Cancellation Loan Contract - LWIC**

1 message

---

**Russell - DNR, Kirk** <kirk.russell@state.co.us>  
To: Peg Mason - DNR <peg.mason@state.co.us>

Fri, Sep 17, 2021 at 6:30 PM

----- Forwarded message -----

From: **Kim Nelson** <knelson@eatonditch.com>  
Date: Fri, Sep 17, 2021, 5:29 PM  
Subject: Cancellation Loan Contract - LWIC  
To: Russell - DNR, Kirk <kirk.russell@state.co.us>

Kirk:

Attached you will find executed documents for Cancellation of CWCB Loan Contract – CMS 93929 CT2017-2253. As mentioned previously, the original loan was deauthorized with Jonathan Hernandez a couple of years ago now. An email to you in late 2020 also confirmed our request to cancel.

Please accept the attached documentation to close the matter.

Thank you,

Kimberly Nelson

 *Logo\_Artwork\_001*

Larimer & Weld Irrigation Companies

**Kimberly Nelson**

106 Elm Avenue • Eaton, CO 80615

970.454.3377 (office) • 970.454.0154 (fax)

[www.eatonditch.com](http://www.eatonditch.com)

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**3 attachments****image001.jpg**

48K



image001.jpg

48K



SKM\_C364e21091613180.pdf

3086K



STATE OF  
COLORADO

Russell - DNR, Kirk <kirk.russell@state.co.us>

## RE: Headgate Structure Replacement CT2017-2253

1 message

**Kim Nelson** <knelson@eatonditch.com>

Mon, Nov 2, 2020 at 11:46 AM

To: "Russell - DNR, Kirk" <kirk.russell@state.co.us>

Kirk,

Per our telephone conversation late last week. Please continue with deauthorization of the loan for Headgate Structure Replacement (CT2017-2253). As per our previous instruction, we do not require the funds.

Thank you,

Kimberly Nelson



Larimer & Weld Irrigation Companies

**Kimberly Nelson**

106 Elm Avenue • Eaton, CO 80615

970.454.3377 (office) • 970.454.0154 (fax)

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**From:** Russell - DNR, Kirk <kirk.russell@state.co.us>

**Sent:** Friday, October 30, 2020 1:14 PM

**To:** Kim Nelson <knelson@eatonditch.com>

**Subject:** Headgate Structure Replacement CT2017-2253

Kim

11/6/2020

State.co.us Executive Branch Mail - RE: Headgate Structure Replacement CT2017-2253

The CWCB will be deauthorizing your loan Headgate Structure Replacement CT2017-2253 for \$675,000 at the November 2020 Board Meeting. This will be done via a consent agenda item so no need to attend.

Would you please reply to the email by Wednesday 11/4/20, so we have a record of your affirmation?

Feel free to contact me if you have any questions.

Thank You

Kirk Russell

Kirk G. Russell, P.E.

**Finance Section Chief**

[Redacted]

O 303.866.3441 x3232 | C 303.956.5653

**1313 Sherman St., Rm. 718, Denver, CO 80203**

[kirk.russell@state.co.us](mailto:kirk.russell@state.co.us) | [www.cwcb.colorado.gov](http://www.cwcb.colorado.gov)

[Redacted]



STATE OF  
COLORADO

Halvorsen - DNR, Jessica &lt;jessica.halvorsen@state.co.us&gt;

**Approved Contract Amendment No.1-Larimer and Weld-CT2017-2253**

1 message

**Mason - DNR, Peg** <peg.mason@state.co.us>

Fri, Sep 24, 2021 at 11:28 AM

To: Jessica Halvorsen - DNR &lt;jessica.halvorsen@state.co.us&gt;

Hi Jessica-

Attached is an approved amendment for Larimer and Weld- CT2017-2253. This is a loan *Close-Out*. We have reduced the contract total amount to zero. They never started the Project. Attached you will find the Amendment No.1 with all original appendices "canceled" and the supporting documents for deauthorization. The deauthorization, by the Board, took place on November 18, 2020.

Would you please check in the hard file and laserfiche to see if the Deed of Trust was ever recorded? I do not have anything that shows that it was. But it is a 2017 doc so it could have been. If it was, the Deed of Trust will need to be released. If it wasn't then no action needs to be taken.

Thanks!

Peg

Thank you,

**Peg Mason, Contracts Manager****Colorado Water Conservation Board****1313 Sherman St., Room 718, Denver, CO 80203****303-866-3441 ext.3227**[peg.mason@state.co.us](mailto:peg.mason@state.co.us)

Release DOT  
Larimer County  
\$ 28.00

**3 attachments****Deauthorization email.pdf**

179K

**Email-Cancellation Loan Contract.pdf**

213K

**AMEND1-SIGNED-CT2017-2253.pdf**

3245K

# SECURITY AGREEMENT

DATE: NOVEMBER 10, 2016

BORROWER: LARIMER AND WELD IRRIGATION COMPANY, A COLORADO NONPROFIT CORPORATION

SECURED PARTY: COLORADO WATER CONSERVATION BOARD

PROMISSORY NOTE: \$681,750.00

TERMS OF REPAYMENT: 1.50% INTEREST FOR 30 YEARS

LOAN CONTRACT NUMBER: CT2017-2253

PLEDGED REVENUES: All assessment revenues and all of DEBTOR's right to receive said revenues to repay the loan as described in PLEDGED REVENUES provisions of the LOAN CONTRACT and DEBTOR's Resolutions adopted September 8, 2016.

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 described in Section 5 of the LOAN CONTRACT, PROJECT SUMMARY, 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. 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, 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 LOAN CONTRACT;
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against the BORROWER; or

Appendix 5

Page 1 of 2

- 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, SECURED PARTY shall have the remedies of a secured party under Article 9 of the Colorado Uniform Commercial Code. 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 thirty (30) 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.

BORROWER: Larimer and Weld Irrigation Company, a Colorado nonprofit corporation

(SEAL)

Attest:

BY: [Signature]  
Signature

NAME: Lynn Fagerberg

TITLE: President

DATE: 11/10/16

BY: [Signature]  
Signature

NAME: Russ Leffler

TITLE: Director

DATE: 11/10/16

VOID



# UCC Financing Statement

## Colorado Secretary of State

Date and Time: 02/03/2017 02:12:50 PM

Master ID: 20172011285

Validation Number: 20172011285

Amount: \$8.00

### Debtor: (Organization)

Name: Larimer and Weld Irrigation Company

Address1: 106 Elm Avenue

Address2:

City: Eaton

State: CO

ZIP/Postal Code: 80615

Province:

Country: United States

### Secured Party: (Organization)

Name: STATE OF COLORADO - COLORADO WATER CONSERVATION BOARD

Address1: 1313 Sherman Street Room 718

Address2:

City: Denver

State: CO

ZIP/Postal Code: 80203

Province:

Country: United States

### Collateral

#### Description:

SECURED PARTY'S REVENUES PLEDGED TO REPAY LOAN OF \$681,750.00 IN ACCORDANCE WITH LOAN CONTRACT NO. CT2017-2253 AND PROMISSORY NOTE, DATED NOVEMBER 10, 2016.

VOID

**THE DOW LAW FIRM, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

TIMOTHY J. DOW, MBA, JD  
PATRICIA T. DOW, CPA, JD, LL.M.\*

MAYO SOMMERMEYER, LLC  
OF COUNSEL

P.O. BOX 1578  
FORT COLLINS, COLORADO 80522-1578  
(970) 498-9900

FAX: (970) 498-9966  
E-MAIL: dow@dowlawfirm.com

# 5 CLOCK TOWER SQUARE  
323 SOUTH COLLEGE AVENUE  
FORT COLLINS, COLORADO 80524

\* ALSO ADMITTED TO PRACTICE LAW IN NEBRASKA

November 10, 2016

Peg Mason  
Contract Administrator  
Colorado Water Conservation Board  
1212 Sherman Street, Room 718  
Denver, CO 80203

Re: Larimer & Weld Irrigation Company  
CWCB Contract: CT2017-2253  
Opinion of Counsel

Dear Ms. Mason:

Please be advised that this firm serves as general legal counsel for Larimer & Weld Irrigation Company ("LWIC"). We have reviewed your email memo of September 26, 2016 regarding the referenced loan matter along with copies of the loan documents. In connection with this matter, we have reviewed the following:

1. Your email dated September 26, 2016;
2. Loan Contract No. CT2017-2253;
3. Resolution of the Board of Directors of LWIC dated September 8, 2016 approving the referenced loan and authorizing the Officers to proceed with execution of the Loan Contract and all loan documents reasonably necessary to complete the closing of this loan;
4. Project Summary for the referenced loan;
5. Promissory Note dated November 10, 2016;
6. Security Agreement dated November 10, 2016; and
7. Deed of Trust dated November 10, 2016.

In addition, we are familiar with LWIC's ditch company operations generally and have reviewed LWIC's general corporate organizational documents, including Articles of



Incorporation and Bylaws. We have also discussed this proposed transaction with the appropriate company officers and directors, and we are familiar with the proposed project.

Based on our review of the documents described above and our familiarity with LWIC, its officers and its operations, we are providing CWCB with the following Opinion of Counsel as required by section B.8 of the Loan Contract. It is our considered legal opinion:

1. That the Loan Contract has been duly executed by officers of LWIC who are duly elected or appointed and are authorized to execute the Loan Contract and to bind LWIC;
2. LWIC's directors have validly adopted the Resolutions of the Board of Directors approving the Loan Contract and authorizing the officers to execute and deliver the Loan Contract and all related loan documents to CWCB.
3. There are no provisions in LWIC's Articles of Organization, Bylaws or any state or local law which prevent the Loan Contract from being fully binding and legally enforceable as against LWIC.
4. That the Loan Contract and all associated loan documents will be valid and binding against LWIC if entered into by the CWCB.

Please let me know if you have any questions or need anything further to complete this transaction. When the loan documents and the Contract have been fully executed, please return copies to me.

Thank you.

Yours very truly,

THE DOW LAW FIRM, LLC



Timothy J. Dow

TJD/sjm

cc: Kim Nelson, Secretary, LWIC

VOID



## COLORADO

### Colorado Water Conservation Board

Department of Natural Resources  
1313 Sherman Street, Room 718  
Denver, CO 80203

Dear Mr. Dow,

In your letter, dated November 15, 2016, you state, "In the past, various companies in the Larimer & Weld system have secured loans from the CWCB. None of these loans have required shareholder approval. Thus, it is our opinion that shareholder approval is not required in order to close the loan." However, please find attached to the email two *Resolutions of the Shareholders of the Larimer and Weld Irrigation Company*, (CWCB Loan Contract C150109 and C150189), which show that CWCB was provided with proof that the shareholders approved the loans with CWCB.

You also state that the "bylaws do not require that loans be approved of by the shareholders." A review of those bylaws shows that the Board of Directors "shall have control and general management of the affairs, property and business of the corporation..." However, obligating and contracting funds totaling \$681,750.00 does not seem to qualify as a general business matter. Furthermore, while the President does have the authority to sign all contract and other instruments on behalf of the corporation, the President's authority seems to be limited to the general and active control of the corporation's affairs and business. Finally, because the bylaws specifically grant the Board of Directors the authority to lend money but do not include a specific provision allowing the Board to borrow money, the bylaws seem to limit such actions under the theory that when one or more things of a class are expressly mentioned, others of the same class are excluded (*inclusio unius est exclusio alterius*). In summary, and in accordance with CWCB policy, as well as a with a review of past contracts, the bylaws and the articles of incorporation, CWCB has a fiduciary duty to the State and the shareholders to require a shareholder's resolution from Larimer and Weld Irrigation Company.

Case law shows that shareholders in mutual ditch companies have special rights because they are not organized under the general Colorado corporation statutes, but under special legislation for ditch and reservoir companies. Section 7-42-101 *et seq.*, C.R.S. (2016). The Colorado Supreme Court has held that "the unique character of these corporations mandates different treatment which is not fully in accord with the principles applicable to corporations in general." *Jacobucci v. District Court*, 541 P.2d 667, 673 (Colo. 1975). The shares of stock held by the consumers in a mutual ditch corporation represent a specific property interest in a water right and cannot be "defeated or altered by any action of the ditch company or its other shareholders." *Id.* The interests of the shareholder are not identical to the corporation. *Id.*

CWCB will require a resolution showing shareholder consent similar to the samples attached to the email, in addition to the Board of Director's Resolution. Please don't hesitate to contact me if you have any contract questions or concerns.

Sincerely,

Peg Mason  
Contracts Manager  
Office: 303-866-3441 ext.3227  
1313 Sherman St., Room, 718, Denver, CO 80203  
[peg.mason@state.co.us](mailto:peg.mason@state.co.us)

VOID





## DEED OF TRUST

DATE: November 10, 2016  
GRANTOR: LARIMER AND WELD IRRIGATION COMPANY, A COLORADO NONPROFIT CORPORATION  
BENEFICIARY: COLORADO WATER CONSERVATION BOARD  
COUNTY: LARIMER  
TOTAL LOAN AMOUNT: \$681,750.00  
LOAN CONTRACT NUMBER: CT2017-2253  
TERMS OF REPAYMENT: 1.50% INTEREST FOR 30 YEARS  
PLEDGED PROPERTY: AN UNDIVIDED ONE-HUNDRED PERCENT INTEREST IN THE HEADGATE STRUCTURE LOCATED IN THE SE 1/4 OF THE SE 1/4 OF THE SW 1/4, SECTION 34, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6TH P.M., LARIMER COUNTY

This indenture is between the Grantor, and the Public Trustee of the above referenced COUNTY, State of Colorado ("PUBLIC TRUSTEE").

### FACTUAL RECITALS

1. The GRANTOR has executed a PROMISSORY NOTE of even date and amount, set forth in the LOAN CONTRACT, for a loan in the TOTAL LOAN AMOUNT to be repaid to the BENEFICIARY, with TERMS OF REPAYMENT and in accordance with the PROMISSORY NOTE or until loan is paid in full.
2. The GRANTOR is desirous of securing payment of the TOTAL LOAN AMOUNT and interest of said PROMISSORY NOTE to the BENEFICIARY.

The GRANTOR, in consideration of the premises and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the said PUBLIC TRUSTEE in trust forever, the above described PLEDGED PROPERTY.

To have and to hold the same, together with all appurtenances, in trust nevertheless, that in case of default in the payment of said PROMISSORY NOTE, or any part thereof, or the interest thereon, or in the performance of any covenants hereinafter set forth or in said PROMISSORY NOTE or LOAN CONTRACT, then upon the BENEFICIARY filing notice of election and demand for sale, said PUBLIC TRUSTEE, after advertising notice of said sale weekly for not less than four weeks in some newspaper of general circulation in said COUNTY, shall sell said PLEDGED PROPERTY in the manner provided by law in effect at the time of filing said notice and demand, at public auction for cash, at any proper place designated in the notice of sale. Out of the proceeds of said sale, the PUBLIC TRUSTEE shall retain or pay first all fees, charges and costs and all moneys advanced for taxes, insurance and assessments, or on any prior encumbrance, with interest thereon and pay the principal and interest due on said PROMISSORY NOTE, rendering the overplus, if any, unto the GRANTOR; and after the expiration of the time of redemption, the PUBLIC TRUSTEE shall execute and deliver to the purchaser a deed to the PLEDGED PROPERTY sold. The BENEFICIARY may purchase said PLEDGED PROPERTY or any part thereof at such sale.

The GRANTOR covenants that at the time of the delivery of these presents, it is well seized of the PLEDGED PROPERTY in fee simple, and has full power and lawful authority to grant, bargain, sell and convey the same in the manner and form as aforesaid. The GRANTOR fully waives and releases all rights and claims it may have in or to said PLEDGED PROPERTY as a Homestead Exemption or other exemption, now or hereafter provided by law. The GRANTOR further

covenants that the PLEDGED PROPERTY is free and clear of all liens and encumbrances whatever and that the GRANTOR shall warrant and forever defend the PLEDGED PROPERTY in the quiet and peaceable possession of the PUBLIC TRUSTEE, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof.

Until payment in full of the indebtedness, the GRANTOR shall timely pay all taxes and assessments levied on the PLEDGED PROPERTY; any and all amounts due on account of the principal and interest or other sums on any senior encumbrances, if any; and will keep the PLEDGED PROPERTY insured in accordance with the requirements of the LOAN CONTRACT. In the event of the sale or transfer of the PLEDGED PROPERTY, the BENEFICIARY, at its option, may declare the entire balance of the note immediately due and payable.

In case of default in any of said payments of the principal or interest, according to the terms of said PROMISSORY NOTE or LOAN CONTRACT, by the GRANTOR, its successors or assigns, then said principal sum hereby secured, and interest thereon, may at once, at the option of the BENEFICIARY, become due and payable, and the said PLEDGED PROPERTY be sold in the manner and with the same effect as if said indebtedness had matured, and that if foreclosure be made by the PUBLIC TRUSTEE, an attorney's fee in a reasonable amount for services in the supervision of said foreclosure proceedings shall be allowed by the PUBLIC TRUSTEE as a part of the cost of foreclosure, and if foreclosure be made through the courts a reasonable attorney's fee shall be taxed by the court as a part of the cost of such foreclosure proceedings.

It is further understood and agreed, that if a release or a partial release of this DEED OF TRUST is required, the GRANTOR, its successors or assigns will pay the expense thereof; that all the covenants and agreements contained herein and in the PROMISSORY NOTE and LOAN CONTRACT shall extend to and be binding upon the successors or assigns of the respective parties hereto; and that the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

V O I D



Executed the day and date first written above.

(SEAL)

GRANTOR: Larimer and Weld Irrigation Company  
a Colorado nonprofit corporation

By [Signature]  
Signature  
Name Lynn Fagerberg  
Title President  
Date 11/10/16

ATTEST:

By [Signature]  
Signature  
Name Russ Leffler  
Title Director  
Date 11/10/16

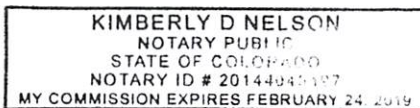
**Notary Required**

State of Colorado )  
County of Weld ) ss.

The foregoing instrument was acknowledged before me on Nov. 10, 2016, by

Lynn Fagerberg (Name) as President (Title) and  
Russ Leffler (Name) as Director (Title) of the Larimer and Weld Irrigation  
Company.

Witness my hand and official seal.



[Signature]  
Notary Public Signature

My commission expires Feb. 24, 2019 (SEAL)

VOID

(Colorado Water Conservation Board will record Amendment to DEED OF TRUST with the County.)



## PROMISSORY NOTE

DATE: NOVEMBER 10, 2016

BORROWER: LARIMER AND WELD IRRIGATION COMPANY, A COLORADO NONPROFIT CORPORATION

TOTAL LOAN AMOUNT: \$681,750.00

INTEREST RATE: 1.50% PER ANNUM

TERM OF REPAYMENT: 30 YEARS

LOAN CONTRACT NUMBER: CT2017-2253

ANNUAL LOAN PAYMENT: \$28,387.52

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 LOAN 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 5% of the annual payment if the CWCB does not receive the annual payment within 15 calendar days of the due date.
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. 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 PROMISSORY 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

and accounts of the BORROWER. The LOAN CONTRACT and SECURITY INSTRUMENTS grant additional rights to the CWCB, including the right to accelerate the maturity of this PROMISSORY 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 thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this PROMISSORY NOTE.
9. The BORROWER 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 PROMISSORY NOTE shall be governed in all respects by the laws of the State of Colorado.

BORROWER: LARIMER AND WELD IRRIGATION  
COMPANY, A COLORADO NONPROFIT  
CORPORATION

(SEAL)

Attest:

BY: 

Signature

NAME: Lynn Fagerberg

TITLE: President

DATE: 11/10/16

BY: 

Signature

NAME: Russ Leffler

TITLE: Director

DATE: 11/10/16

**PAID IN FULL**



BORROWER: LARIMER AND WELD  
IRRIGATION COMPANY  
BASE LOAN AMOUNT: \$675,000.00  
LOAN ORIGATION FEE: \$6,750.00  
TOTAL LOAN AMOUNT: \$681,750.00

AGENCY NAME: COLORADO WATER  
CONSERVATION BOARD  
CONTRACT TYPE: LOAN/PRIVATE  
CWCB CMS: 93929/CORE: CT2017-2253

## LOAN CONTRACT

This contract ("CONTRACT" or "LOAN CONTRACT") is made between the State of Colorado for the use and benefit of The Department of Natural Resources, Colorado Water Conservation Board, 1313 Sherman Street, Denver, CO, 80203, ("CWCB" or "State"), and **Larimer and Weld Irrigation Company**, 106 Elm Avenue, Eaton, Colorado 80615, a Colorado nonprofit corporation, ("BORROWER").

## FACTUAL RECITALS

1. CWCB authority exists in the law, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this CONTRACT; and
2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies; and
3. On September 21, 2016, the CWCB approved a loan request from the BORROWER for the Headgate Structure Replacement ("PROJECT"). The Company's diversion structure off the Cache la Poudre River is aging and in need of repair. The PROJECT will replace the headgate structure, including the concrete structure, gates, gate operators, and a new control building. The total estimated *Project Cost* is \$750,000.00. The total loan amount ("TOTAL LOAN AMOUNT") of **\$681,750.00** which includes a one percent (1%) loan origination fee of 6,750.00 is payable over 30 years at an interest rate of 1.50%; and
4. The **PROJECT SUMMARY**, attached as **APPENDIX 1**, and incorporated herein contains BORROWER Information (Section 1), the PROJECT Description (Section 2), CWCB's authority for making this loan (Section 3), and CWCB Approval or Legislative Authorization (Section 4), identifying the amount of the loan and the terms of repayment. The PROJECT SUMMARY also contains sections on the BORROWER's existing debt, contract requirements, procedures, eligible expenses, disbursement schedule and time for performance.
5. The CWCB now desires, by this CONTRACT, to loan money to the BORROWER for this PROJECT upon mutually agreeable terms and conditions.

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

## A. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

- i. **BASE LOAN AMOUNT:** Loan amount that does not include the one percent (1%) Loan Origination fee. This the amount disbursed by CWCB to the BORROWER.
- ii. **BORROWER:** An eligible entity, as specified, who will be responsible for the repayment of the loan.
- iii. **COLLATERAL:** Property or other assets that the BORROWER offers to secure the loan.
- iv. **DEED OF TRUST:** A security instrument conveying title in trust to CWCB covering a particular piece of property. It is used to secure payment of a PROMISSORY NOTE.
- v. **EVIDENCE OF INSURANCE:** Acord 25 form, written documentation of insurance.
- vi. **LOAN DOCUMENTS:** Include all formal loan contract documents including but not limited to the executed loan contract, all executed appendices, and all executed amendments.
- vii. **LOAN ORIGATION FEE:** One (1%) of the BASE LOAN AMOUNT.
- viii. **PROMISSORY NOTE:** The document providing a written agreement to pay the TOTAL LOAN AMOUNT to CWCB.
- ix. **SECURITY AGREEMENT:** The document that provides a security interest in a specified asset pledged to repay the loan.
- x. **TOTAL LOAN AMOUNT:** BASE LOAN AMOUNT and LOAN ORIGATION FEE of one percent (1%).

## B. LOAN PROVISIONS

1. **Loan Origination Fee.** The TOTAL LOAN AMOUNT shall include (1) the BASE LOAN AMOUNT loaned by the CWCB, to the BORROWER, for the PROJECT and (2) a LOAN ORIGATION FEE of one percent (1%) of the BASE LOAN AMOUNT.
2. **Amendments and Option Letters.** In the event that the BORROWER does not use the full amount authorized, the parties shall amend this CONTRACT or exercise an **OPTION LETTER** (attached as **APPENDIX 2**) to revise the TOTAL LOAN AMOUNT including an adjustment of the LOAN ORIGATION 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*, an increase in TOTAL LOAN AMOUNT, change in



pledged revenues or property, and 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 resulting decrease in the TOTAL LOAN AMOUNT and the BORROWER requests a change in the annual loan payment; the PARTIES agree to amend this contract.
  - b. Upon substantial completion of the PROJECT with a resulting decrease in the TOTAL LOAN AMOUNT, but **not** a change in the annual payment, the STATE may exercise an option and shall provide written notice to the BORROWER in form substantially equivalent to APPENDIX 2. 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.
3. **Contract Amendment Service Fees.** Under certain circumstances, the BORROWER shall be assessed a service fee for amending the CONTRACT.
  - a. A service fee shall be imposed on the BORROWER for amendments processed for the benefit of the BORROWER and necessary for the BORROWER's course of business but not necessary for the CWCB, including, but not limited to, a change in the BORROWER's name, assignment of contract, substitution of PLEDGED REVENUES or property, loan payment deferrals in excess of 3 per loan, and loan consolidation. Amendments in the course of CWCB business, including but not limited to, loan payment deferrals (up to 3 per loan) and changes in terms of loan repayment will be processed at no additional charge to the BORROWER.
  - b. The amount charged shall be in accordance with the 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 \$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.
4. **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 hereto as **APPENDIX 3** and incorporated herein.
5. **Interest Prior to PROJECT Completion.** As the loan funds are disbursed by the CWCB to the BORROWER, 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 ten (10) 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.

6. **Return of Unused Loan Funds.** Any loan funds disbursed but not expended for the PROJECT in accordance with the terms of this CONTRACT shall be remitted to the CWCB within 30 calendar days from notification from the CWCB of either (1) completion of the PROJECT or (2) determination by the CWCB that the PROJECT will not be completed. Any such loan funds so remitted to CWCB shall be applied to the principal payment of amounts due on the Loan.
7. **BORROWER'S Authority to Contract.** The BORROWER warrants that it has full power and authority to enter into this CONTRACT. The execution and delivery of this CONTRACT and the performance and observation of its terms, conditions and obligations have been duly authorized by all necessary actions of the BORROWER. The **BORROWER'S AUTHORIZING RESOLUTIONS** are attached as **APPENDICES 4a**, Resolutions of the Shareholders and **4b**, Resolutions of the Board of Directors and incorporated herein.
8. **Attorney's Opinion Letter.** Prior to the execution of this CONTRACT by the CWCB, the BORROWER shall submit to the CWCB a letter from its attorney 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 of the BORROWER authorizing the execution and delivery of the CONTRACT were duly adopted by the BORROWER's board of directors and/or shareholders; 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.
9. **Pledge of Revenues.** The Borrower irrevocably (but not exclusively) pledges to the CWCB, for the purpose of repaying the LOAN AMOUNT, the PLEDGED REVENUES, in such amount as is necessary to make each annual payment due under this LOAN CONTRACT. Such pledge of the PLEDGED REVENUES is on parity with the loans identified in SECTION 5 OF APPENDIX 1 (the "EXISTING PARITY LOANS") and any additional indebtedness that may be secured by the PLEDGED REVENUES in the future that is incurred in accordance with SECTION A.9.E. hereof, (the "ADDITIONAL PARITY INDEBTEDNESS," and together with the EXISTING PARITY LOANS, the "PARITY INDEBTEDNESS.")
  - a. **Segregation of Pledged Revenues.** The PLEDGED REVENUES shall be accounted for and maintained in an account separate from other BORROWER revenues at all times. The PLEDGED REVENUES shall be used first to pay debt service on the LOAN AMOUNT and all other PARITY INDEBTEDNESS on an equal basis and thereafter may be used for any and all other expenses.
  - b. **Establish Security Interest.** The BORROWER has duly executed a **SECURITY AGREEMENT**, attached hereto as **APPENDIX 5** and incorporated herein, to provide a security interest to the CWCB in the PLEDGED REVENUES. The lien of this LOAN CONTRACT on the PLEDGED REVENUES shall have priority over all other competing claims with respect to the PLEDGED REVENUES,

except for the parity lien on the PLEDGED REVENUES of any PARITY INDEBTEDNESS.

c. **Assessment Covenant.** Pursuant to its statutory authority and as permitted by law, the BORROWER shall take all necessary actions consistent therewith during the term of this CONTRACT to establish, levy and collect rates, charges and fees as described in APPENDICES 4a and 4b, in amounts sufficient to pay this loan as required by the terms of this CONTRACT and the PROMISSORY NOTE, to cover all expenditures for operation and maintenance and emergency repair services, and to maintain adequate debt service reserves.

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 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 or Bonds.** The BORROWER shall not issue any indebtedness payable from the PLEDGED REVENUES and having a lien thereon which is superior to the lien of this loan. The BORROWER may issue parity debt only with the prior written approval of the CWCBC, provided that:

- i. The BORROWER is currently and at the time of the issuance of the parity debt in substantial compliance with all of the obligations of this CONTRACT, including, but not limited to, being current on the annual payments due under this CONTRACT and in the accumulation of all amounts then required to be accumulated in the BORROWER's debt service reserve fund;
- ii. The BORROWER provides to the CWCBC a Parity Certificate from an independent certified public accountant certifying that, based on an analysis of the BORROWER's revenues, for 12 consecutive months out of the 18 months immediately preceding the date of issuance of such parity debt, the BORROWER's revenues are sufficient to pay its annual operating and maintenance expenses, annual debt service on all outstanding indebtedness having a lien on the pledged revenues, including this loan, the annual debt service on the proposed indebtedness to be issued, and all required deposits to any reserve funds required by this CONTRACT or by the lender(s) of any indebtedness having a lien on the pledged revenues. The analysis of revenues shall be based on the BORROWER's current rate structure or the rate structure most recently adopted. No more than 10% of total revenues may originate from tap and/or connection fees;
- iii. The BORROWER acknowledges and understands that any request for approval of the issuance of additional debt must be reviewed and approved by the CWCBC prior to the issuance of any additional debt.



- f. **Annual Statement of Debt Coverage.** Each year during the term of this CONTRACT, the BORROWER shall submit to the CWCB an annual audit report.
- g. **Pledged Revenues During Loan Repayment.** The BORROWER shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the PLEDGED REVENUES, so long as any of the principal, accrued interest, and late charges, if any, on this loan remain unpaid, without the prior written concurrence of the CWCB.
10. **Pledge of Property.** The BORROWER irrevocably pledges to the CWCB, for purposes of repayment of this loan, an interest in the PLEDGED PROPERTY. The PLEDGED PROPERTY as further described in Section 6 (LOAN SECURITY) of Appendix 1 is authorized by the BORROWER'S AUTHORIZING RESOLUTION, and secured by the **DEED OF TRUST (APPENDIX 6)**.
11. **Pledged Property during Loan Repayment.** The BORROWER shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the PLEDGED PROPERTY 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. In the event of any such sale, transfer or encumbrance without the CWCB's written concurrence, the CWCB may at any time thereafter declare all outstanding principal, interest, and late charges, if any, on this loan immediately due and payable.
12. **Release After Loan Is Repaid.** Upon complete repayment to the CWCB of the entire principal, all accrued interest, and late charges, if any, as specified in the PROMISSORY NOTE, the CWCB agrees to release and terminate any and all of the CWCB's right, title, and interest in and to the PLEDGED REVENUES and the PLEDGED PROPERTY.
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 and PLEDGED PROPERTY 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 the EXISTING PARITY LOANS 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. **Change of Ownership of Water Shares during Term of Contract.** If the interest rate for this loan is based on the CWCB's agricultural or blended agricultural and municipal and/or commercial and/or industrial rates, the BORROWER agrees to notify the CWCB of any change of the ownership of the water rights represented by its shares from irrigation to municipal or commercial or industrial use. The interest rate shall be revised when said change in ownership would increase the original interest rate by 0.5% or more. The parties shall amend this CONTRACT including a revised PROMISSORY NOTE, to effect said change in interest rate.
15. **Remedies for Default.** Upon default in the payments to be made by the BORROWER under this CONTRACT, or default in the performance of any covenant or agreement contained herein, the CWCB, at its option, may:
- a. suspend this CONTRACT and withhold further loan disbursements pending corrective action by the BORROWER, and if the BORROWER does not cure the default as provided for below, permanently cease loan disbursements and deem the PROJECT substantially complete;
  - b. declare the entire principal amount, 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, SECURITY AGREEMENT, and/or any instrument securing pledged revenues and property; and
  - d. take any other appropriate action.

The CWCB shall provide written notice to the BORROWER of any such default and shall give the BORROWER an opportunity to cure within thirty (30) days of receipt of such notice. All remedies described herein may be simultaneously or selectively and successively enforced. The CWCB may enforce the provisions of this CONTRACT at its option without regard to prior waivers of previous defaults by the BORROWER, through judicial proceedings to require specific performance of this CONTRACT, or by such other proceedings in law or equity as may be deemed necessary by the CWCB to ensure compliance with provisions of this CONTRACT and the laws and regulations under which this CONTRACT is executed. The CWCB's exercise of any or all of the remedies described herein shall not relieve the BORROWER of any of its duties and obligations under this CONTRACT.

16. **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.
17. **BORROWER'S Liability Insurance.**
- a. Upon execution of this CONTRACT and continuing until complete repayment of the loan is made to the CWCB, the BORROWER shall maintain commercial general liability insurance, with a company that is satisfactory to the CWCB, with minimum limits of \$1,000,000



combined single limit for each occurrence and \$2,000,000 general aggregate, including products/completed operations and personal injury.

- b. Prior to the disbursement of any loan funds, the BORROWER shall provide the CWCB with an Acord Form 25 evidencing said insurance and shall provide the CWCB with documentation of renewals of said insurance.

18. **Additional Contract Requirements.** Any additional contract requirements are set forth in, Section 7 of Appendix 1.

#### C. PROJECT PROVISIONS

1. **Construction Fund Program Procedures.** During the completion of the PROJECT, the BORROWER shall adhere to the CWCB Construction Fund Program Procedures, set forth in Section 8 of Appendix 1.
2. **Eligible Expenses.** The PROJECT expenses for which the BORROWER is eligible for loan disbursements are set forth in Section 9 of Appendix 1.
3. **Loan Disbursements.** The CWCB shall disburse loan funds in accordance with the Disbursement Schedule, set forth in Section 10 of Appendix 1.
4. **Time for Performance.** The BORROWER recognizes that time is of the essence in the performance of all of its obligations under this CONTRACT. Therefore, the BORROWER shall complete the PROJECT within the time specified in Time for Performance, set forth in Section 11 of Appendix 1.
5. **Indemnification by the Construction Firm.** The BORROWER shall require all Construction Firms and their subcontractors to indemnify the State and the BORROWER against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of those parties or sustained in connection with the performance of any contract related to the PROJECT or by conditions created thereby, or based upon any violation of any statute, ordinance, or regulation, and the defense of any such claims or actions.
6. **Liability Insurance during Construction.** During construction of the PROJECT, the BORROWER shall require the construction contractor and any subcontractors to maintain the following insurance coverage, in the limits shown, during the term of their contracts and until the PROJECT is complete. CWCB may request proof of construction contractor's and subcontractor's insurance during the term of the PROJECT.
  - a. Commercial general liability insurance with minimum limits of \$1,000,000 combined single limit for each occurrence and \$2,000,000 general aggregate. This insurance coverage shall include products/completed operations and bodily injury/property damage.
  - b. Worker's compensation and employer's liability insurance in the required statutory amounts.



- c. Automobile liability insurance that includes coverage for all owned, non-owned and hired vehicles with minimum limits of \$1,000,000 combined single limit for bodily injury and property damage.

#### D. GENERAL PROVISIONS

1. **Periodic Inspections.** Throughout the term of this CONTRACT, the BORROWER shall permit a designated representative of the CWCB to make periodic inspections of the PROJECT. Such inspections shall cover the condition of the PROJECT, operating records, maintenance records, and financial records. These inspections are solely for the purpose of verifying compliance with the terms and conditions of this CONTRACT and shall not be construed or interpreted as an approval of the actual design, construction or operation of any element of the PROJECT facilities.
2. **Applicable Laws.** The BORROWER shall strictly adhere to all applicable federal, state, and local laws and regulations that are in effect or may hereafter be established throughout the term of this CONTRACT.
3. **Designated Agent Of The CWCB.** The CWCB's employees are designated as the agents of the CWCB for the purpose of this CONTRACT.
4. **Assignment.** BORROWER'S rights and obligations, under this CONTRACT, are personal and may not be transferred, assigned without the prior, written consent of the State. Any attempt at assignment without such consent shall be void. All assignments approved by the BORROWER or the State are subject to all of the provisions hereof.
5. **Contract Relationship.** The Parties to this CONTRACT intend that the relationship between them under this CONTRACT is that of lender-borrower, not employer-employee. No agent, employee, or servant of the BORROWER shall be, or shall be deemed to be, an employee, agent, or servant of the CWCB. The BORROWER shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants, engineering firms, construction firms, and subcontractors during the term of this CONTRACT.
6. **Integration of Terms.** This CONTRACT is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever unless embodied herein in writing. No subsequent renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to State fiscal rules, unless expressly provided for herein.
7. **Order of Precedence.** The provisions of this CONTRACT shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this CONTRACT and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Colorado Special Provisions (provided that the Parties hereby agree that, for the purposes of such Special Provisions the "CONTRACTOR" shall mean the "BORROWER")

ii. The provisions of the main body of this CONTRACT

iii. Appendices

8. **Controlling Terms.** In the event of conflicts or inconsistencies between the terms of this CONTRACT and conditions as set forth in any of the appendices, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) Colorado Special Provisions, provided that the parties hereby agree that, for the purposes of such Special Provisions, the "Contractor" shall mean the BORROWER, (2) the remainder of this CONTRACT, and (3) the Appendices.
9. **Casualty and Eminent Domain.** If, at any time during the term of this CONTRACT, (a) the BORROWER'S PROJECT facilities, including buildings or any portion thereof, are damaged or destroyed, in whole or in part, by fire or other casualty, or (b) title to or use of the PROJECT facilities or any part thereof shall be taken under the exercise of the power of eminent domain, the BORROWER shall cause the net proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair and restoration of the PROJECT facilities or any portion thereof, or to repayment of this loan. Any net proceeds remaining after such work has been completed or this loan has been repaid, shall be retained by the BORROWER. If the net insurance proceeds are insufficient to pay the full cost of the replacement, repair and restoration, the BORROWER shall complete the work and pay any cost in excess of the net proceeds. In the event the BORROWER chooses to apply the net proceeds of an insurance claim or a condemnation award to repayment of the loan, the BORROWER shall repay the full TOTAL LOAN AMOUNT outstanding regardless of the amount of such insurance proceeds or condemnation award.
10. **Captions.** The captions and headings in this CONTRACT are for convenience of reference only, and shall not be construed so as to define, or limit its provisions.
11. **CWCB's Approval.** This CONTRACT requires review and approval of plans, specifications, and various other technical and legal documents. The CWCB's review of these documents is only for the purpose of verifying the BORROWER'S compliance with this CONTRACT and shall not be construed or interpreted as a technical review or approval of the actual design or construction of the PROJECT. Notwithstanding any consents or approvals given to the BORROWER by the CWCB on any such documents, the BORROWER and any of its consultants, by preparing any such documents, shall be solely responsible for the accuracy and completeness of any of said documents.
12. **Waiver.** Waiver of any breach under a term, provision, or requirement of this CONTRACT, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed as or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.



13. **CORA Disclosure.** To the extent not prohibited by federal law, this CONTRACT and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.
14. **Binding Effect.** All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
15. **Entire Understanding.** This CONTRACT represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.
16. **Severability.** Provided this CONTRACT can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this CONTRACT in accordance with its intent.
17. **Third Party Beneficiaries.** Enforcement of this CONTRACT and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits that third parties receive as a result of this CONTRACT are incidental to the CONTRACT, and do not create any rights for such third parties.
18. **Counterparts.** This CONTRACT may be executed in multiple identical original counterparts, all of which shall constitute one agreement.
19. **Indemnification.** The BORROWER shall indemnify, save, and hold harmless CWCB against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the BORROWER, or its employees, agents, or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this clause are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the Colorado Governmental Immunity Act (Section 24-10-101, et seq., C.R.S.), or under the laws of the United States or the State of Colorado.
20. **Addresses for mailing.** All notices, correspondence, or other documents required by this CONTRACT shall be delivered or mailed to the addresses set forth in Section 1 (BORROWER Information) of Appendix 1, for the BORROWER, and to the address below for the CWCB:

Colorado Water Conservation Board  
Attn: Finance Section  
1313 Sherman Street, Room 718  
Denver, CO 80203



## Special Provisions

(The Special Provisions apply to all contracts except where noted in *italics*.)

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

9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. [*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES.** CRS §8-17.5-101. [*Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

SPs Effective 1/1/09

[END OF SPECIAL PROVISIONS]



IN WITNESS WHEREOF, the Parties hereto have executed this CONTRACT

\* Persons signing for the BORROWER hereby swear and affirm that they are authorized to act on the BORROWER's behalf and acknowledge that the State is relying on their representations to that effect.

BORROWER: Larimer and Weld Irrigation  
Company, a Colorado nonprofit corporation

STATE OF COLORADO  
John W. Hickenlooper, Governor  
Department of Natural Resources

BY: [Signature]  
Signature

BY: [Signature]

NAME: Lynn Fagerberg

Name: Kirk Russell, P.E., Section Chief

TITLE: President

Finance Section

Colorado Water Conservation Board

DATE: 11/10/16

DATE: 1/25/17

Attest

BY: [Signature]  
Signature

VOID

NAME: Russ Lettler

TITLE: Director

DATE: 11/10/16

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all State contracts. This CONTRACT is not valid and the loan funds under this CONTRACT are not available until the State Controller, or such assistant as he may delegate, has signed it.

STATE CONTROLLER  
Robert Jaros, CPA, MBA, JD

By [Signature]

Name Susan Borup

Title Controller

Effective Date 1/27/17



**PROJECT SUMMARY – LARIMER AND WELD IRRIGATION COMPANY,  
A COLORADO NONPROFIT CORPORATION  
LOAN CONTRACT NO. CT2017-2253**

**SECTION 1 – BORROWER INFORMATION**

Name: Larimer and Weld Irrigation Company  
Type of Entity: A Colorado nonprofit corporation  
Address: 106 Elm Avenue, Eaton, Colorado 80615  
Contact: Mayo Sommermeyer, Attorney  
Phone Number: 970-420-9775  
E-mail address: mayosomm@gmail.com

**SECTION 2 – PROJECT DESCRIPTION**

- A. Description of PROJECT: The BORROWER applied to the CWCB for a loan to be used for the Headgate Structure Replacement (PROJECT), located in Larimer County, at a total estimated project cost of \$750,000.00. The Company's diversion structure off the Cache la Poudre River is aging and in need of repair. The PROJECT will replace the headgate structure, including the concrete structure, gates, gate operators, and a new control building.
- B. Description of Feasibility Study: The CWCB has reviewed a feasibility study report, on the PROJECT, dated July 10, 2016 titled "*Feasibility Study for Rehabilitation of Larimer & Weld Irrigation Company Canal Diversion on the Cache la Poudre River*," which was prepared by Brad Anderson, P.E. of Anderson Consulting Engineers, 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 – CWCB'S AUTHORITY**

**Construction Fund:** This loan is made pursuant to the provisions of §§ 37-60-119 and 37-60-120, C.R.S., which 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.

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

**SECTION 4 - BOARD APPROVAL**

At its September 21, 2016 meeting the CWCB approved a Project Loan from the Construction Fund to the BORROWER, in an amount up to \$675,000.00 for PROJECT Costs. CWCB's LOAN ORIGINATION FEE of 1% in the amount of \$6,750.00, in accordance with CWCB Policy No. 16, added to the BASE LOAN AMOUNT results in a TOTAL LOAN AMOUNT of \$681,750.00, at an interest rate of 1.50% per annum for a repayment term of 30 years.

## SECTION 5 – SCHEDULE OF EXISTING DEBT

As of the date of the CWCB loan approval, the BORROWER has two existing loans with the Colorado Water Conservation Board. The loans are in good standing.

TABLE OF EXISTING DEBT

Lender	Original Balance	Current Balance	Annual Payment	Maturity Date	Collateral
CWCB (Contract C150109)	\$1,000,000	\$693,790	\$49,384	2034	Pledge of Assessments and Project Itself
CWCB (Contract C150189)	\$1,620,492	\$1,298,030	\$77,423	2038	Pledge of Assessments and Project Itself (Big Windsor Res Inlet Structure & Lake Lee Dam

## 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 the PLEDGED REVENUES in such amount as is necessary to make each annual payment due under this LOAN CONTRACT; (ii) a rate covenant; and (iii) annual financial reporting in accordance with CWCB Policy No. 5 and an undivided one hundred percent (100%) interest in the headgate structure as more particularly described in the attached DEED OF TRUST (APPENDIX 6), incorporated herein, and in accordance with CWCB Policy No. 5.

## SECTION 7 – ADDITIONAL CONDITIONS & CONTRACT REQUIREMENTS

None.

## 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 available prior to bidding. 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 the bid opening date, time and location. CWCB staff may elect to attend the bid opening.
- E. CWCB must approve the award of the construction contract.
- F. 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.
- G. 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. After the CWCB staff verifies that these documents comply with the terms of this CONTRACT, the BORROWER may issue the notice to proceed to the Construction Firms.
- H. 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.
- I. 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.
- J. The BORROWER shall construct the PROJECT in accordance with the approved plans and specifications.
- K. Upon completion of the PROJECT construction, the BORROWER shall provide as-built drawings of the PROJECT to the CWCB staff, or, if required by § 37-87-105, C.R.S., the BORROWER shall provide the as-built drawings to the State Engineer's Office for approval and filing.
- 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 following items are eligible for loan disbursements:

- A. Preparing final designs and specifications for the PROJECT.
- B. Preparing bid and construction contract documents.
- C. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
- D. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.



- E. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.
- F. Actual construction as called for in the design documents and in change orders approved by the CWCB and the BORROWER.
- G. Engineering services for construction management, including design and construction management for CWCB approved change orders.
- H. Interest during completion of the PROJECT pursuant to Paragraph A.5 of the CONTRACT.
- I. Legal services for reviewing engineering services contracts, reviewing this CONTRACT, reviewing construction contract documents, and for complying with all federal, state, and local regulatory requirements.
- J. PROJECT-related expenses incurred prior to the Effective Date of this CONTRACT in accordance with the 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: Upon Effective Date of this CONTRACT (the date this CONTRACT is signed by the State Controller or his designee).

PROJECT To END: Three (3) years from the Effective Date of this CONTRACT.

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V O I D

# SAMPLE OPTION LETTER

(TO BE SIGNED, IF APPLICABLE, UPON SUBSTANTIAL COMPELTION OF PROJECT)

Date:	Original Contract #: CT	Option Letter #	CMS Routing #
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1) **OPTIONS:**

a. Decrease contract value (herein referred to as ("Total Loan Amount").

2) **REQUIRED PROVISION.** All Option Letters shall contain the appropriate provisions set forth below:

**For use with all Options 1a:**

1. The amount of the current Loan Contract Amount is decreased by (\$ amount of change) to a new Total Loan Amount of (\$ New Total Amount), in consideration of Substantial Completion of the Project. The Total Loan Amount is hereby modified accordingly. The revised Total Loan Amount including all previous amendments, option letters, etc. is (Insert New \$ Amt).
2. This change does not include a change to the annual payment.
3. This Option Letter and supporting documentation shall become part of and be incorporated into this Contract for the total duration of this Contract.
4. This Option Letter shall include the written Notice of Project Substantial Completion.

3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or Delegate.

<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, Governor</b> Department of Natural Resources Colorado Water Conservation Board</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>
---

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## PROMISSORY NOTE

DATE: NOVEMBER 10, 2016

BORROWER: LARIMER AND WELD IRRIGATION COMPANY, A COLORADO NONPROFIT CORPORATION

TOTAL LOAN AMOUNT: \$681,750.00

INTEREST RATE: 1.50% PER ANNUM

TERM OF REPAYMENT: 30 YEARS

LOAN CONTRACT NUMBER: CT2017-2253

ANNUAL LOAN PAYMENT: \$28,387.52

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 LOAN 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 5% of the annual payment if the CWCB does not receive the annual payment within 15 calendar days of the due date.
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. 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 PROMISSORY 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



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and accounts of the BORROWER. The LOAN CONTRACT and SECURITY INSTRUMENTS grant additional rights to the CWCB, including the right to accelerate the maturity of this PROMISSORY 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 thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this PROMISSORY NOTE.
9. The BORROWER 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 PROMISSORY NOTE shall be governed in all respects by the laws of the State of Colorado.

BORROWER: LARIMER AND WELD IRRIGATION  
COMPANY, A COLORADO NONPROFIT  
CORPORATION

(SEAL)

Attest:

BY: \_\_\_\_\_

Signature

NAME: Lynn Fagerberg

TITLE: President

DATE: 11/10/16

BY: \_\_\_\_\_

Signature

NAME: Russ Leffler

TITLE: Director

DATE: 11/10/16

**RESOLUTIONS OF THE SHAREHOLDERS  
OF LARIMER & WELD IRRIGATION COMPANY**

The Shareholders of Larimer & Weld Irrigation Company (Company) at a Shareholders meeting held December 3, 2016 at Eaton, Colorado, adopted the following resolutions concerning a secured loan from the State of Colorado Water Conservation Board (CWCB) for the purpose of the Headgate Structure Replacement (Project), in an amount not to exceed \$1,000,000.00 which includes the CWCB Loan Origination Fee of 1% of the Base Loan Amount. The Loan Contract Number is CT2017-2253.

At said meeting, the Shareholders charged that these resolutions are irrevocable during the term of the loan and, pursuant to the Company's bylaws, authorized the Board of Directors and Officers, RESOLVED as follows:


1. To enter into and comply with the terms of a contract with the Colorado Water Conservation Board for a loan in an amount not to exceed \$1,000,000.00 as needed to finance the project costs, including the CWCB Loan Origination Fee of 1%, and
2. To levy and collect assessments from the shareholders in an amount sufficient to pay the annual amounts due under the Loan Contract, and to pledge assessment revenues and the Company's right to receive said revenues for repayment of the loan, and
3. To annually place an amount sufficient to pay the annual payment in a special account separate and apart from other Company accounts, and
4. To make the annual payments required by the Promissory Note and to make annual deposits to a debt service reserve fund, and
5. To pledge as collateral for the loan the Company's assessment revenues backed by an assessment covenant and an undivided one hundred percent (100%) interest in the Headgate Structure, and
6. To execute all documents as required by the Loan Contract, including, but not limited to, a Promissory Note, Security Agreement, and Deed of Trust, necessary to convey a security interest in said property to the CWCB, 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 Corporate Secretary hereby certify that the foregoing are true and correct copies of Resolutions duly adopted at a meeting of the Company's Shareholders duly called and held as above recited, pursuant to the Company's Bylaws, and that said Resolutions have not been amended or rescinded.

Given under our hands and the seal of the Company this 3<sup>rd</sup> day of December, 2016.

(SEAL)

BY:   
Signature  
NAME: Lynn Fagenberg  
TITLE: President  
DATE: 12/3/16

ATTEST:

BY:   
Signature  
NAME: Kimberly Nelson  
TITLE: Secretary Bd. of Dir.  
DATE: 12/3/16



**UNANIMOUS CONSENT RESOLUTIONS OF THE DIRECTORS OF  
LARIMER & WELD IRRIGATION COMPANY,  
A COLORADO MUTUAL DITCH COMPANY  
AND NON-PROFIT CORPORATION**

The undersigned, being all of the Directors of the Larimer & Weld Irrigation Company, a Colorado Mutual Ditch Company and nonprofit corporation ("the Company"), hereby unanimously consent that the following actions be taken, as authorized by the laws of the State of Colorado.

RESOLVED, that the Directors approve the loan from the Colorado Water Conservation Board (CWCBC) to fund the proposed Poudre River Dam and Offtake Project for Larimer & Weld Irrigation Company in an amount not to exceed \$1,000,000.00 and to pledge assets of Larimer & Weld Irrigation Company as collateral to secure said loan with CWCBC as required. The loan term shall be 30 years at the prevailing interest rate as of the date of Closing, not to exceed 2.5% per annum. The officers of the Company are authorized to apply for and close this loan.

As collateral to secure this loan, the Company agrees to pledge its annual assessment revenues in an amount sufficient to cover the annual loan payment.

The officers of the Company are authorized and directed to execute and deliver Loan Agreements, a Promissory Note, any other loan documents as may be reasonably necessary or required in order to close this CWCBC loan, according to the terms and conditions as set forth in the Feasibility Study dated July 10, 2016.

The officers of the Company are authorized to establish a separate Reserve Account as required by CWCBC as a part of the loan process. This Reserve Account will be for the purpose of accumulating 10% of the annual payments due on the loan each year for the first ten years of the loan. This Reserve Account is to be established at Farmers Bank in Ault, Colorado.

Adopted this 3<sup>rd</sup> day of December, 2016.

Larimer & Weld Irrigation Company

By:   
Lynn Fagerberg, President

By:   
Ron Kreps

By:   
Gary Booth, Vice President

By:   
Russell D. Leffler

By:   
Ken Knievel

By:   
Daniel Haythorn

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## SECURITY AGREEMENT

DATE: NOVEMBER 10, 2016

BORROWER: LARIMER AND WELD IRRIGATION COMPANY, A COLORADO NONPROFIT CORPORATION

SECURED PARTY: COLORADO WATER CONSERVATION BOARD

PROMISSORY NOTE: \$681,750.00

TERMS OF REPAYMENT: 1.50% INTEREST FOR 30 YEARS

LOAN CONTRACT NUMBER: CT2017-2253

PLEDGED REVENUES: All assessment revenues and all of DEBTOR'S right to receive said revenues to repay the loan as described in PLEDGED REVENUES provisions of the LOAN CONTRACT and DEBTOR'S Resolutions adopted September 8, 2016.

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 described in Section 5 of the LOAN CONTRACT, PROJECT SUMMARY, 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. 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, 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 LOAN CONTRACT;
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against the BORROWER; or

Appendix 5

Page 1 of 2



- 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, SECURED PARTY shall have the remedies of a secured party under Article 9 of the Colorado Uniform Commercial Code. 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 thirty (30) 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.

BORROWER: Larimer and Weld Irrigation Company, a Colorado nonprofit corporation

(SEAL)

Attest:

BY:   
Signature

NAME: Lynn Fagerberg

TITLE: President

DATE: 11/10/16

BY:   
Signature

NAME: Russ Leffler

TITLE: Director

DATE: 11/10/16

**DEED OF TRUST**

DATE: November 10, 2016  
GRANTOR: LARIMER AND WELD IRRIGATION COMPANY, A COLORADO NONPROFIT CORPORATION  
BENEFICIARY: COLORADO WATER CONSERVATION BOARD  
COUNTY: LARIMER  
TOTAL LOAN AMOUNT: \$681,750.00  
LOAN CONTRACT NUMBER: CT2017-2253  
TERMS OF REPAYMENT: 1.50% INTEREST FOR 30 YEARS  
PLEDGED PROPERTY: AN UNDIVIDED ONE-HUNDRED PERCENT INTEREST IN THE HEADGATE STRUCTURE LOCATED IN THE SE 1/4 OF THE SE 1/4 OF THE SW 1/4, SECTION 34, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6TH P.M., LARIMER COUNTY

This indenture is between the Grantor, and the Public Trustee of the above referenced COUNTY, State of Colorado ("PUBLIC TRUSTEE").

**FACTUAL RECITALS**

1. The GRANTOR has executed a PROMISSORY NOTE of even date and amount, set forth in the LOAN CONTRACT, for a loan in the TOTAL LOAN AMOUNT to be repaid to the BENEFICIARY, with TERMS OF REPAYMENT and in accordance with the PROMISSORY NOTE or until loan is paid in full.
2. The GRANTOR is desirous of securing payment of the TOTAL LOAN AMOUNT and interest of said PROMISSORY NOTE to the BENEFICIARY.

The GRANTOR, in consideration of the premises and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the said PUBLIC TRUSTEE in trust forever, the above described PLEDGED PROPERTY.

To have and to hold the same, together with all appurtenances, in trust nevertheless, that in case of default in the payment of said PROMISSORY NOTE, or any part thereof, or the interest thereon, or in the performance of any covenants hereinafter set forth or in said PROMISSORY NOTE or LOAN CONTRACT, then upon the BENEFICIARY filing notice of election and demand for sale, said PUBLIC TRUSTEE, after advertising notice of said sale weekly for not less than four weeks in some newspaper of general circulation in said COUNTY, shall sell said PLEDGED PROPERTY in the manner provided by law in effect at the time of filing said notice and demand, at public auction for cash, at any proper place designated in the notice of sale. Out of the proceeds of said sale, the PUBLIC TRUSTEE shall retain or pay first all fees, charges and costs and all moneys advanced for taxes, insurance and assessments, or on any prior encumbrance, with interest thereon and pay the principal and interest due on said PROMISSORY NOTE, rendering the overplus, if any, unto the GRANTOR; and after the expiration of the time of redemption, the PUBLIC TRUSTEE shall execute and deliver to the purchaser a deed to the PLEDGED PROPERTY sold. The BENEFICIARY may purchase said PLEDGED PROPERTY or any part thereof at such sale.

The GRANTOR covenants that at the time of the delivery of these presents, it is well seized of the PLEDGED PROPERTY in fee simple, and has full power and lawful authority to grant, bargain, sell and convey the same in the manner and form as aforesaid. The GRANTOR fully waives and releases all rights and claims it may have in or to said PLEDGED PROPERTY as a Homestead Exemption or other exemption, now or hereafter provided by law. The GRANTOR further



COPY

covenants that the PLEDGED PROPERTY is free and clear of all liens and encumbrances whatever and that the GRANTOR shall warrant and forever defend the PLEDGED PROPERTY in the quiet and peaceable possession of the PUBLIC TRUSTEE, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof.

Until payment in full of the indebtedness, the GRANTOR shall timely pay all taxes and assessments levied on the PLEDGED PROPERTY; any and all amounts due on account of the principal and interest or other sums on any senior encumbrances, if any; and will keep the PLEDGED PROPERTY insured in accordance with the requirements of the LOAN CONTRACT. In the event of the sale or transfer of the PLEDGED PROPERTY, the BENEFICIARY, at its option, may declare the entire balance of the note immediately due and payable.

In case of default in any of said payments of the principal or interest, according to the terms of said PROMISSORY NOTE or LOAN CONTRACT, by the GRANTOR, its successors or assigns, then said principal sum hereby secured, and interest thereon, may at once, at the option of the BENEFICIARY, become due and payable, and the said PLEDGED PROPERTY be sold in the manner and with the same effect as if said indebtedness had matured, and that if foreclosure be made by the PUBLIC TRUSTEE, an attorney's fee in a reasonable amount for services in the supervision of said foreclosure proceedings shall be allowed by the PUBLIC TRUSTEE as a part of the cost of foreclosure, and if foreclosure be made through the courts a reasonable attorney's fee shall be taxed by the court as a part of the cost of such foreclosure proceedings.

It is further understood and agreed, that if a release or a partial release of this DEED OF TRUST is required, the GRANTOR, its successors or assigns will pay the expense thereof; that all the covenants and agreements contained herein and in the PROMISSORY NOTE and LOAN CONTRACT shall extend to and be binding upon the successors or assigns of the respective parties hereto; and that the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

Executed the day and date first written above.

(SEAL)

GRANTOR: Larimer and Weld Irrigation Company  
a Colorado nonprofit corporation

By

Signature

Name Lynn Fagerberg

Title President

Date 11/10/16

ATTEST:

By

Signature

Name Russ Lettler

Title Director

Date 11/10/16

**Notary Required**

State of Colorado

County of Weld

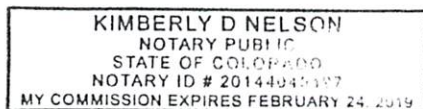
) ss.

The foregoing instrument was acknowledged before me on Nov. 10, 2016, by

Lynn Fagerberg (Name) as President (Title) and

Russ Lettler (Name) as Director (Title) of the Larimer and Weld Irrigation Company.

Witness my hand and official seal.



Signature of Notary Public

Notary Public Signature

My commission expires Feb. 24, 2019

(SEAL)

(Colorado Water Conservation Board will record Amendment to DEED OF TRUST with the County.)

Appendix 6

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