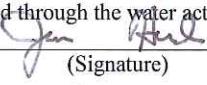
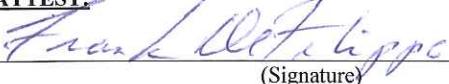


## LOAN CONTRACT AMENDMENT NO. 1

<u>State Agency</u> Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718, Denver, CO 80203	<u>Amendment No. 1 Contract Number</u> CMS 178736 CT2021-2851
<u>Borrower</u> Genesee Water and Sanitation District acting by and through the water activity enterprise	<u>Original Contract Number</u> CMS 164154 CT2021-2851
<u>Current Contract Maximum Amount</u> \$5,555,000.00 (includes CWCB 1% loan origination fee)	<u>Contract Performance Beginning Date</u> 05/24/2021
<u>Project Name</u> Genesee Reservoir No.1 Enlargement	<u>Contract Performance End Date</u> 05/24/2026
<u>Reason for Modification</u> The total Project cost has increased due to increased construction costs and inflation. Bids for construction were received in May 2022 and were higher than expected. This increase will cover the difference between the estimated cost and actual cost per contractor bids.	<u>Loan Contract Terms</u> 2.50% for 40 years <u>Loan Contract Repayment Schedule</u> Loan not in repayment at this time

## THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

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

<p><b>BORROWER</b> Genesee Water and Sanitation District acting by and through the water activity enterprise   (Signature)</p> <p>Name: <u>Jim Hurd</u> Title: <u>BOARD President</u> Date: <u>10-28-22</u></p> <p><b>ATTEST:</b>  (Signature)</p> <p>Name: <u>Frank DeFilippo</u> Title: <u>Secretary</u> Date: <u>Oct 28, 2020</u></p>	<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director Colorado Water Conservation Board   (Signature) S46EA29BD43244E...</p> <p>Name: Kirk Russell, P.E., Section Chief December 9, 2022   10:49 AM MST Date: _____</p> <p>In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate</p> <p><b>STATE CONTROLLER</b> Robert Jars, CPA, MBA, JD   (Signature) Name: <u>Ron Cotsapas</u> Title: <u>DNR Procurement Director</u> Amendment Effective Date: <u>December 9, 2022   4:30 PM MST</u></p>
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## **1. PARTIES**

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

## **2. TERMINOLOGY**

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

## **3. AMENDMENT EFFECTIVE DATE AND TERM**

### **A. Amendment Effective Date**

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

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

## **4. PURPOSE**

CWCB approved an increase to the loan amount for CWCB Loan Contract No. CT2021-2851, for the Genesee Reservoir No.1 Enlargement. The increase is due to increased construction costs and inflation. Bids for construction were received in May 2022 and were higher than expected. This increase will cover the difference between the estimated cost and actual cost per contractor bids. The parties agree to amend the contract to increase the final loan amount by \$1,313,000.00 from \$4,242,000.00 to \$5,555,000.00 and the total loan amount is hereby modified accordingly. These amounts include the one percent (1%) origination fee.

## **5. MODIFICATIONS**

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

- A. The original loan contract amount is hereby deleted and replaced with the Current Contract Maximum Amount of \$5,555,000.00, shown on the Signature and Cover Page for this Amendment.
- B. Amendment to Promissory Note, Appendix A, in the revised loan amount, and incorporated herein *shall replace and supersede* the Original Promissory Note attached to the Original Contract as Appendix 3.
- C. Amendment to Security Agreement, Appendix B, in the revised loan amount, and incorporated herein *shall supplement and operate in conjunction* with the Original Security Agreement, attached to the Original Contract as Appendix 5.
- D. The Special Provisions contained in the Contract are hereby modified as follows:
  - i. The Special Provision titled “Prohibited Terms” is replaced in its entirety with:

“PROHIBITED TERMS. Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor’s liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.”
  - ii. The Special Provision titled “Public Contracts with Natural Persons” is deleted.
  - iii. The Special Provision titled “Public Contracts with Natural Persons” is deleted.

## **6. RESOLUTION**

The Borrower has adopted a Resolution irrepealable for the term of this loan, authorizing the Borrower to enter into this contract amendment to borrow the additional loan amount, to establish and collect assessments sufficient to pay

the annual loan payments, to pledge said assessments for repayment of the loan, and to execute documents necessary to convey a security interest in said assessments if necessary, to the CWCB, and attached as **Appendix C**.

**7. BOND COUNSEL OPINION LETTER**

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

**8. LIMITS OF EFFECT AND ORDER OF PRECEDENCE**

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

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## **APPENDIX A, AMENDMENT NO. 1 TO LOAN CONTRACT CT2021-2851 AMENDMENT TO THE PROMISSORY NOTE**

Date: October 28, 2022

Borrower: Genesee Water and Sanitation District

Principal Amount: \$5,555,000.00

Term of Repayment: 2.50% for 40 years

Loan Contract No.: CT2021-2851

Loan Payment: \$221,290.28

Payment Initiation Date\*: \_\_\_\_\_

Maturity Date\*: \_\_\_\_\_

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

1. This Amendment to Promissory Note *shall replace and supersede* the Original Promissory Note attached to the Original Contract and incorporated by reference.
2. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from Payment Initiation Date, and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street Room 718, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within 15 calendar days of the due date.
5. This Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
7. This Note is issued pursuant to the Loan Contract between the CWCB and the Borrower. The Loan Contract creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement ("Security Instruments") of even date and amount and cover certain revenues, real property, water rights and/or 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 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 Note shall be governed in all respects by the laws of the State of Colorado.

Borrower: Genesee Water and Sanitation District,  
acting by and through the water activity enterprise

By  \_\_\_\_\_  
Signature

Attest:

By Frank DeFilippis \_\_\_\_\_  
Signature  
Name Frank DeFilippis  
Title Secretary  
Date 10/28/2022

Name Jim Hurd

Title BOARD President

Date 10-28-22

**APPENDIX B, AMENDMENT NO. 1 TO LOAN CONTRACT CT2021-2851**  
**AMENDMENT TO SECURITY AGREEMENT**

Debtor: Genesee Water and Sanitation District,  
acting by and through the water activity enterprise  
Secured Party: Colorado Water Conservation Board  
Revised Loan Amount: \$5,555,000.00  
Term of Repayment: 40 years of amortized payments or until loan is paid in full  
Interest Rate: 2.50%  
Loan Contract Number: CT2021-2851

1. The Parties have amended the Original Loan Contract and Promissory Note to increase the loan amount by \$1,313,000.00, from \$4,242,000.00 to \$5,555,000.00 and hereby amend the original Security Agreement to document the change of loan amount.
2. The Parties expressly agree that this Amendment to Security Agreement is supplemental to the Security Agreement and all terms, conditions, and provisions thereof, unless specifically modified below, are to apply to this Amendment to Security Agreement as though they were expressly rewritten, incorporated, and included herein.
3. Collateral for the loan remains the same.

(S E A L)

Attest:

By Frank DeFilippo  
Signature  
Name Frank DeFilippo  
Title Secretary  
Date 10/28/2022

Debtor: Genesee Water and Sanitation District,  
acting by and through the water activity enterprise

By Jim Hurd  
Signature

Name Jim Hurd  
Title BOARD President  
Date 10-28-22