

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

<b>State Agency</b> Colorado Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	<b>Loan Contract Number</b> CMS 182705 CT2024-1240		
<b>Borrower's Name and Address</b> Board of Water Works of Pueblo <b>Entity type</b> Governmental	<b>Loan Contract Project Performance Beginning Date</b> The Loan Effective Date <b>Loan Contract Project Performance End Date</b> 3 years from the Project Performance Beginning Date or upon the Project Performance End Date stated within CWCB's "Notice of Project Substantial Completion."		
<b>Base Loan Amount (Amount in CORE)</b> \$9,750,000 <b>One Percent (1%) Loan Origination Fee</b> \$97,500 <b>Total Loan Amount (Includes One Percent (1%) Origination Fee)</b> \$9,847,500	<b>Loan Effective Date</b> The date the State Controller or an authorized delegate signs this Loan Contract  <b>Loan Contract Terms</b> 2.25% for 20 years		
<b>Project Name</b> Southside Diversion Dam Improvement Project	<b>Contract Authority</b> Authority to enter into this Contract exists in §37-60-119 (2), C.R.S., §37-60-120, C.R.S., and §37-60-121, C.R.S.		
<b>Contract Purpose</b> The purpose of this Project is to reduce risk to river recreators and ensure the Southside Diversion Dam's continued ability to divert water to the Whitlock Water Treatment Plant and Riverside Dairy Ditch.			
<b>Appendices and Order of Precedence</b> The following Appendices are included with this Contract: <ol style="list-style-type: none"> <li>1. Appendix 1, Project Summary</li> <li>2. Appendix 2, Sample Option Letter</li> <li>3. Appendix 3, Promissory Note</li> <li>4. Appendix 4, Resolutions or Ordinance</li> <li>5. Appendix 5, Security Agreement</li> </ol> <p>In the event of a conflict or inconsistency between this Contract and any Appendices such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> <li>1. Colorado Special Provisions in §24 of the main body of this Contract.</li> <li>2. The provisions of the other sections of the main body of this Contract.</li> <li>3. Appendix 3, Promissory Note</li> <li>4. Appendix 5, Security Agreement</li> <li>5. All other Appendices</li> </ol>			
<b>Principal Representatives</b> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">           For the State:            Cole Bedford            Colorado Water Conservation Board            1313 Sherman St., Room 718            Denver, CO 80203  <a href="mailto:cole.bedford@state.co.us">cole.bedford@state.co.us</a>            (303) 866-3441 X 3234         </td> <td style="width: 50%;">           For Borrower:            Seth Clayton            Board of Water Works of Pueblo            319 W. 4<sup>th</sup> Street            Pueblo, CO 81003  <a href="mailto:sclayton@pueblowater.org">sclayton@pueblowater.org</a>            (719) 584-0214         </td> </tr> </table>		For the State: Cole Bedford Colorado Water Conservation Board 1313 Sherman St., Room 718 Denver, CO 80203 <a href="mailto:cole.bedford@state.co.us">cole.bedford@state.co.us</a> (303) 866-3441 X 3234	For Borrower: Seth Clayton Board of Water Works of Pueblo 319 W. 4 <sup>th</sup> Street Pueblo, CO 81003 <a href="mailto:sclayton@pueblowater.org">sclayton@pueblowater.org</a> (719) 584-0214
For the State: Cole Bedford Colorado Water Conservation Board 1313 Sherman St., Room 718 Denver, CO 80203 <a href="mailto:cole.bedford@state.co.us">cole.bedford@state.co.us</a> (303) 866-3441 X 3234	For Borrower: Seth Clayton Board of Water Works of Pueblo 319 W. 4 <sup>th</sup> Street Pueblo, CO 81003 <a href="mailto:sclayton@pueblowater.org">sclayton@pueblowater.org</a> (719) 584-0214		

**SIGNATURE PAGE****THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

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

<p style="text-align: center;"><b>BORROWER</b> Board of Water Works of Pueblo</p> <p>DocuSigned by: By: <u>Sam Krage</u> 916B97EDDD99404... (Signature)</p> <p>Name: <u>Sam Krage</u></p> <p>Title: <u>President</u></p> <p>Date: <u>August 25, 2023   2:25 PM CDT</u></p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> Jared S. Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director Colorado Water Conservation Board</p> <p>DocuSigned by: By: <u>Kirk Russell</u> 109C5E7A3A3F423... (Signature)</p> <p>Name: <u>Kirk Russell, P.E., Section Chief</u></p> <p>Date: <u>August 28, 2023   10:13 AM MDT</u></p>
<p style="text-align: center;"><b>ATTEST:</b></p> <p>DocuSigned by: By: <u>Seth Clayton</u> FDBF7AEB4DD3417... (Signature)</p> <p>Name: <u>Seth Clayton</u></p> <p>Title: <u>Executive Director</u></p> <p>Date: <u>August 25, 2023   1:42 PM MDT</u></p>	<p style="text-align: center;"><b>LEGAL REVIEW</b> Phil Weiser, Attorney General</p> <p>By: <u>N/A</u> Assistant Attorney General</p> <p>Date: _____</p>
<p style="text-align: center;">In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;"><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>DocuSigned by: By: <u>Ion Cotsapas</u> 70E3DF1B09EE4E8... (Signature)</p> <p>Name: <u>Ion Cotsapas</u></p> <p>Title: <u>DNR Procurement Director</u></p> <p>Effective Date: <u>September 5, 2023   2:23 PM MDT</u></p>	

TABLE OF CONTENTS

COVER PAGE .....1

SIGNATURE PAGE .....2

1. PARTIES .....3

2. TERM AND EFFECTIVE DATE .....3

3. DEFINITIONS .....4

4. AMENDMENTS AND OPTION LETTERS.....6

5. CONTRACT AMENDMENT SERVICE FEES .....7

6. PROMISSORY NOTE PROVISIONS.....7

7. INTEREST PRIOR TO PROJECT COMPLETION.....7

8. RETURN OF UNUSED LOAN FUNDS.....7

9. BORROWER’S AUTHORITY TO CONTRACT .....7

10. BOND COUNSEL’S OPINION LETTER.....8

11. PLEDGE OF REVENUES .....8

12. RELEASE AFTER LOAN IS REPAYED .....9

13. WARRANTIES .....9

14. OPERATION OF PROJECT.....10

15. CONFIDENTIAL INFORMATION-STATE RECORDS.....10

16. CONFLICTS OF INTEREST.....11

17. INSURANCE .....12

18. BREACH OF CONTRACT .....12

19. REMEDIES .....12

20. DISPUTE RESOLUTION.....13

21. NOTICES AND REPRESENTATIVES .....13

22. STATEWIDE CONTRACT MANAGEMENT SYSTEM .....14

23. GENERAL PROVISIONS .....14

24. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).....17

APPENDIX 1, PROJECT SUMMARY .....17

APPENDIX 2, SAMPLE OPTION LETTER .....1

APPENDIX 3, PROMISSORY NOTE .....1

APPENDIX 4, RESOLUTIONS OR ORDINANCE .....1

APPENDIX 5, SECURITY AGREEMENT .....1

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Loan Effective Date

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

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

B. Project Term

The Parties' respective performances, of the Project, under this Contract shall commence on the Contract Project Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Loan Contract Project Performance End Date shown on the Cover Page for this Contract unless sooner terminated or further extended in accordance with the terms of this Contract. **This Project Term does not include the full repayment period for the Loan or this Contract.**

C. Loan Expiration Date

The loan expiration date is the date on which this Contract expires. The loan expiration date is when the *full repayment period for the loan ends*.

D. Project Extension Term - State's Option

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

E. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Base Loan Amount”** means the amount disbursed to the Borrower, which does not include the one percent (1%) Loan Origination Fee.
- B. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Borrower, or the appointment of a receiver or similar officer for Borrower or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Borrower is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- C. **“Business Day”** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.
- D. **“Contract”** means this Loan Contract or Loan, including all attached Appendices, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- E. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- F. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- H. **“Loan Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract.
- I. **“Loan Origination Fee”** means CWCB’s Origination Fee of one percent (1%), added to the Base Loan Amount in accordance with CWCB Policy No. 16, resulting in the Total Loan Amount shown on the Cover page of this Contract.
- J. **“Parity Indebtedness”** means any existing parity debt and additional indebtedness that may be secured in the future.
- K. **“Party”** means the State or Borrower, and **“Parties”** means both the State and Borrower.
- L. **“Pledged Revenues”** means the revenues that consist solely of the Borrower’s revenues pledged for repayment of this loan, as defined in the Resolution and set forth in the Security Agreement.
- M. **“Project Extension Terms-State Option”** means the time period defined in §2.D.

- N. **“Project Term”** means the time period defined in §2.B.
- O. **“Promissory Note”** means the document issued to secure repayment of this loan.
- P. **“Resolution” or “Ordinance”** means the Borrower’s written authority to enter into this Contract.
- Q. **“Security Agreement”** means the document that provides a security interest in a specified revenue pledged to repay this loan.
- R. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Borrower which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Borrower without restrictions at the time of its disclosure to Borrower; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Borrower to the State; (iv) is disclosed to Borrower, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- S. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- T. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- U. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- V. **“Subcontractor”** means third-parties, if any, engaged by Borrower to aid in performance of the Work.
- W. **“Total Loan Amount”** means the total of the Base Loan Amount plus the Origination fee of one percent (1%).

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

#### 4. AMENDMENTS AND OPTION LETTERS

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

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

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

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

- A. A service fee may be imposed on the Borrower for amendments processed for the benefit of the Borrower and necessary for the Borrower's course of business but not necessary for the CWCB, including, but not limited to, a change in the Borrower's name, assignment of Contract, substitution of Pledged Revenues, loan payment deferrals in excess of three (3) per loan, and loan consolidation. Amendments in the course of CWCB business will be processed at no additional charge to the Borrower.
- B. The amount charged shall be in accordance with the service fee rate structure set forth in the CWCB Loan Service Charge Policy in effect at the time the Borrower shall request an amendment. The current service fee for an amendment is one thousand and no/100 dollars (\$1,000).
- C. The Borrower shall remit the service fee to the CWCB prior to initiation of the amendment. Any service fee remitted to the CWCB cannot be refunded.

## **6. PROMISSORY NOTE PROVISIONS**

The Promissory Note shall identify the Total Loan Amount. The CWCB agrees to loan to the Borrower an amount not to exceed the Total Loan Amount and the Borrower agrees to repay the loan in accordance with the terms as set forth in the Promissory Note, (attached as Appendix 3) and incorporated herein.

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

For all loan funds disbursed by the CWCB to the Borrower prior to the Contract Project Performance End Date, interest shall accrue on the disbursed funds at the rate set by the CWCB for this loan. The CWCB shall calculate the amount of the interest that accrued prior to the Project's substantial completion (as determined by the CWCB) and notify the Borrower of such amount. The Borrower shall repay that amount to the CWCB either (1) within thirty (30) days from the date of notification from the CWCB, (2) at the CWCB's discretion, said interest shall be deducted from the final disbursement of loan funds that the CWCB makes to the Borrower, or (3) at the CWCB's discretion, said interest shall be rolled into the Total Loan Amount due.

## **8. RETURN OF UNUSED LOAN FUNDS**

Any loan funds disbursed but not expended for the Project in accordance with the terms of this Contract shall be remitted to the CWCB within thirty (30) calendar days from notification from the CWCB of either (1) completion of the Project or (2) determination by the CWCB that the Project

will not be completed. Any such loan funds so remitted to CWCB shall be applied to the principal payment of amounts due on the Loan.

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

The Borrower warrants that it has full power and authority to enter into this Loan Contract. The execution and delivery of this Contract and the performance and observation of its terms, conditions and obligations have been duly authorized by all necessary actions of the Borrower. The Borrower's Authorizing Resolution(s) or Ordinance (attached as Appendix 4) include the authority to enter into this Loan Contract.

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

Prior to the final execution of this Contract the Borrower shall submit to the CWCB a letter from its bond counsel stating that it is the attorney's opinion that:

- A. The Contract has been duly executed by officers of the Borrower who are duly elected or appointed and are authorized to execute the Contract and to bind the Borrower; and
- B. The Resolutions (or Ordinances) of the Borrower authorizing the execution and delivery of the Contract were duly adopted by the governing bodies of the Borrower; and
- C. There are no provisions in the Borrower's articles of incorporation or bylaws or any state or local law that prevent this Contract from binding the Borrower; and
- D. The Contract will be valid and binding against the Borrower if entered into by the CWCB subject to typical limitations related to bankruptcy, police power and creditor's rights generally.
- E. The Borrower is a non-taxing district and meets the definition of an enterprise exempt from TABOR restrictions.

## **11. PLEDGE OF REVENUES**

The Borrower irrevocably (but not exclusively) pledges to the CWCB, for the purpose of repaying the Total Loan Amount, the Pledged Revenues, in such amount as is necessary to make each annual payment due under this Contract. Such pledge of the Pledged Revenues will receive second-lien priority to the debt identified in Section 5 of Appendix 1 (Schedule of Existing Debt) and will be on parity with any additional indebtedness that may be secured by the Pledged Revenues in the future that is incurred in accordance with Section 11.E., hereof, and together with the Existing Parity Debt, shall be the Borrower's "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 Total Loan Amount and all other Parity Indebtedness on an equal basis and thereafter may be used, by Borrower, for any and all other expenses.
- B. **Establish Security Interest.** The Borrower has duly executed a Security Agreement, (attached as Appendix 5) and incorporated herein, to provide a security interest to the CWCB in the Pledged Revenues. The lien of this Contract on the Pledged Revenues shall have second-lien priority to the existing debt identified in Section 5 of Appendix 1 (Schedule of Existing Debt) and 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 Appendix 5, 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 (0.1) of an annual payment into its debt service reserve account or fund on the due date of its first annual loan payment and annually thereafter for the first ten years of repayment of this loan. In the event that the Borrower applies funds from this account to repayment of the loan, the Borrower shall replenish the account within ninety (90) days of withdrawal of the funds. The debt service reserve account or fund requirement is in effect until the loan is paid in full.
- E. **Additional Debts or Bonds.** The Borrower shall not issue any indebtedness payable from the Pledged Revenues or have 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 CWCB, 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 CWCB a Parity Certificate from an certified public accountant certifying that, based on an analysis of the Borrower's revenues, for twelve (12) consecutive months out of the eighteen (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 ten percent (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 CWCB prior to the issuance of any additional debt. CWCB approval shall not be unreasonably withheld.
- F. **Annual Statement of Debt Coverage.** Each year during the term of this Contract, the Borrower shall promptly submit, to CWCB, a copy of the annual audit report of an audit performed on Borrower's records that relates to this Contract or the Project.
- G. **Pledged Revenues During Loan Repayment.** 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. CWCB approval shall not be unreasonably withheld.

## **12. RELEASE AFTER LOAN IS REPAYED**

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

## **13. WARRANTIES**

- A. The Borrower warrants that, by acceptance of the loan under this Contract and by its representations herein, the Borrower shall be estopped from asserting for any reason that it is not authorized or obligated to repay the loan to the CWCB as required by this Contract.
- B. The Borrower warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Borrower, to solicit or secure this Contract and has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this Contract.
- C. The Borrower warrants that the Pledged Revenues for this loan are not encumbered by any other deeds of trust or liens of any party other than the CWCB or in any other manner, except for the Existing Parity Indebtedness which sets forth the position of the lien created by this Contract in relation to any existing lien(s). Documentation establishing the relative priorities of said liens, if necessary, is attached to the Project Summary and incorporated herein.

## **14. OPERATION OF PROJECT**

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

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

### **A. Confidentiality**

Borrower shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Borrower shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in Writing by the State. Borrower shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Borrower shall immediately forward any request or demand for State Records to the State's principal representative.

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

Borrower may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Borrower shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective

as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Borrower shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Borrower shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Borrower shall provide the State with access, subject to Borrower's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Borrower shall return State Records provided to Borrower or destroy such State Records and certify to the State that it has done so, as directed by the State. If Borrower is prevented by law or regulation from returning or destroying State Confidential Information, Borrower warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Borrower becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Borrower can establish that none of Borrower or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Borrower shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Borrower shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Borrower's sole expense, require Borrower to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Borrower shall provide the State with the results of such audit and evidence of Borrower's planned remediation in response to any negative findings.

E. Data Protection and Handling

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

## 16. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

**B. Apparent Conflicts of Interest**

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

**C. Disclosure to the State**

If a conflict or the appearance of a conflict arises, or if Borrower is uncertain whether a conflict or the appearance of a conflict has arisen, Borrower shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

**17. INSURANCE**

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

**18. BREACH OF CONTRACT**

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within thirty (30) days after the delivery of written notice, the Party may exercise any of the remedies as described in §19., for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Borrower is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

**19. REMEDIES****A. State's Remedies****i. Loan Default Remedies**

Upon default in the payments to be made by the Borrower under this Contract, or default in the performance of any covenant or agreement contained herein, the CWCB, at its option, may do any of the following:

- a. Suspend this Contract and withhold further loan disbursements pending corrective action by the Borrower and if the Borrower does not cure the default as provided for below, permanently cease loan disbursements and deem the Project substantially complete.

- b. Declare the entire unpaid principal amount of the Promissory Note, accrued interest, and late charges, if any, then outstanding immediately due and payable.
- c. Exercise its rights under any appendices to this Contract, including, but not limited to, the Promissory Note, Security Agreement, and/or any instrument securing Pledged Revenues.
- d. Take any other action deemed appropriate by the CWCB.

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

#### B. Borrower's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Borrower, following the notice and cure period in **§19.A.i.d.**, and the dispute resolution process in **§20.**, shall have all remedies available at law and equity.

### 20. DISPUTE RESOLUTION

#### A. Initial Resolution

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

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

If the initial resolution described in **§20.A.**, fails to resolve the dispute within ten (10) Business Days, Borrower shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-102-202 (3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Borrower wishes to challenge any decision rendered by the Procurement Official, Borrower's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Borrower pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

### 21. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Loan Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered **(A)** by hand with receipt

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

## **22. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Borrower under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Borrower agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Borrower's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

## **23. GENERAL PROVISIONS**

### **A. Assignment**

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

### **B. Binding Effect**

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

### **C. Authority**

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

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

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

### **E. Counterparts**

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

F. Entire Understanding

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

G. Digital Signatures

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

H. Modification

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

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

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

J. External Terms and Conditions

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

K. Severability

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

L. Survival of Certain Contract Terms

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

M. Third Party Beneficiaries

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

N. Waiver

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

O. CORA Disclosure

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

P. Standard and Manner of Performance

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

Q. Licenses, Permits, and Other Authorizations.

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

R. Indemnification

i. General Indemnification

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

ii. Confidential Information Indemnification

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



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

iii. **Intellectual Property Indemnification**

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

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

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

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

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

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

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

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR.**

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

**requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

**E. COMPLIANCE WITH LAW.**

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

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

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

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

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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

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

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

APPENDIX 1, PROJECT SUMMARY

Loan Contract Number CT2024-1240

Section 1 –Borrower’s Name

Board of Water Works of Pueblo

Section 2 – Project Description

- A. Description of Project: The Borrower applied to the CWCB for a loan to be used for the Southside Diversion Dam Improvement Project (Project), located in Pueblo County, at a total estimated Project cost of \$11,715,000. The purpose of the Project is to reduce risk to river recreators and ensure the Southside Diversion Dam’s continued ability to divert water to the Whitlock Water Treatment Plant and Riverside Dairy Ditch.
- B. Description of Feasibility Study: Seth Clayton, Pueblo Water Executive Director, supported by Darren Shepherd P.E., with SG1 Water Consulting, Ltd., prepared the Loan Feasibility Report titled, “Feasibility of Arkansas River Southside Diversion Dam Modification and River Improvement Project” dated January 2023. The feasibility report was prepared in accordance with CWCB guidelines and includes an analysis of alternatives, preliminary engineering design, and construction cost estimates and is incorporated herein by this reference. Based upon the feasibility report, the CWCB determined the Project to be technically and financially feasible.

Section 3 – Contract Authority

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

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

Section 4 - CWCB Approval

At its March 16, 2023 meeting the CWCB approved a Project Loan from the to the Borrower, in an amount up to \$9,750,000 for Project Costs. CWCB’s Origination Fee of 1% in the amount of \$97,500, in accordance with CWCB Policy No. 16, added to the Base Loan Amount results in a Total Loan Amount of **\$9,847,500**, at an interest rate of 2.25 % per annum for a repayment term of 20 years.

Section 5 – Schedule of Existing Debt

As of the date of the CWCB loan approval, the Borrower has outstanding the following obligation:

TABLE 4: EXISTING DEBT

Lender	Original Balance	Current Balance	Annual Payment	Maturity Date	Collateral
Water Revenue Bond Series 2019	\$21,356,804	\$21,356,804	\$3,063,933	2029	Pledged Revenues

The CWCB accepts the provisions of the resolution provided in Appendix 4 which governs Board of Water Works of Pueblo and its existing debt. This loan shall receive a second-lien priority on

Borrower's net revenues that will be on parity with existing and future second-lien revenue obligations.

### **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 Contract, on a parity with all Parity Indebtedness; and (ii) an assessment covenant. The CWCB requires that all security for this loan be in accordance with CWCB Policy No. 5.

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

This loan shall receive a second-lien priority on the Board of Water Works of Pueblo's net revenues to existing Water Revenue Bond Series 2019 obligations.

### **Section 8 – “Loan 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. The Borrower shall contract for the construction of the work with responsible and capable Construction Firms, selected by the Borrower and found acceptable by the CWCB staff. CWCB must approve the award of the construction contract.
- F. The Borrower must provide a copy of the following construction contract documents: executed contractor's proposal, executed construction contract, executed performance bond, executed payment bond, executed notice of award, proposed notice to proceed, sample change order, and sample field order, as well as the advertisement for bid. 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.
- G. The Borrower shall conduct a pre-construction conference at which time the CWCB staff shall have the opportunity to review and approve the construction schedule.
- H. If the CWCB staff determines that the Project requires a resident inspector during construction, the Borrower shall employ an inspector who has been approved by the CWCB staff.
- I. The Borrower shall construct the Project in accordance with the approved plans and specifications.
- J. Upon completion of the Project construction, the Borrower shall provide as-built drawings of the

Project to 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.

K. Upon completion of the Project construction, the Borrower shall arrange a final inspection for the CWCB staff.

L. The Borrower shall pay all of the expenses related to the Project when such bills are due.

## **Section 9 – Eligible Expenses**

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

- A. Engineering associated with the feasibility report prepared as a requirement for this loan.
- B. Preparing final designs and specifications for the Project.
- C. Preparing bid and construction contract documents.
- D. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
- E. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.
- F. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.
- G. Actual construction as called for in the design documents and in change orders approved by the CWCB and the Borrower.
- H. Engineering services for construction management, including design and construction management for CWCB approved change orders.
- I. Interest prior to completion of the Project pursuant to Section 7., of the Contract.
- J. Legal services for reviewing engineering services contracts, reviewing this Contract, reviewing construction contract documents, and for complying with all federal, state, and local regulatory requirements.
- K. Project related expenses incurred prior to the Effective Date of this Contract in accordance with the approval of this loan.

## **Section 10 – Disbursement Schedule**

For Project expenses: The Borrower shall prepare a periodic progress report that sets forth a statement of the Project costs expended for that period and shall forward said statement to the CWCB. After receipt of the periodic progress report from the Borrower, and review and acceptance of the items therein as eligible expenses, as described above, the CWCB will pay to the Borrower the amount set forth in the report or such portion as has been approved by the CWCB. Such payment shall be made within thirty (30) days from the CWCB's approval of each progress report.

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

Project To Begin: Loan Effective Date.

Project To End: Three (3) years from the Effective Date of this Contract or based upon the date stated within the CWCB Notice of Project Substantial Completion.

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

<b>State Agency</b> Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	<b>Option Letter Number</b> Insert the Option Number (e.g. "1" for the first option)
<b>Borrower</b> Insert Borrower's Full Legal Name	<b>Original Contract Number</b> Insert CMS number or Other Contract Number of the Original Contract
	<b>Option Contract Number</b> Insert CMS number or Other Contract Number of this Option
	<b>Loan Contract Effective Date</b>
	<b>Loan Contract Expiration Date</b> Month Day, Year

**1. OPTIONS:**

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

**2. REQUIRED PROVISIONS:**

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

**3. OPTION EFFECTIVE DATE:**

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

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

Borrower: Board of Water Works of Pueblo

Total Loan Amount: \$9,847,500

Interest Rate: 2.25% per annum

Term of Repayment: 20 years

Loan Contract Number: CT2024-1240

Annual Loan Payment: \$616,867.79

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

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

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

1. For Value Received, the Borrower promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the Contract and this Promissory Note.
2. Principal and interest shall be payable in annual equal payments as set forth in "Annual Loan Payment" above, with the first payment due and payable one year from the Payment Initiation Date (the date the CWCB determines that the Project is substantially complete), and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 718, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of five percent (5%) of the annual payment if the CWCB does not receive the annual payment within sixty (60) calendar days of the due date. At the discretion of the CWCB, and if the Borrower requests in writing with sufficient justification, the late fee may be waived by the CWCB. CWCB will review the request from the Borrower, and may, in its sole discretion, choose to waive the late fee.
5. This Promissory Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. This Promissory Note is issued pursuant to the Contract between the CWCB and the Borrower. The Contract creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement of even date and amount herewith and cover the Pledged Revenues. The Contract and Security Instruments grant additional rights to the CWCB, including the right to accelerate the maturity of this Promissory Note in certain events.
7. If any annual payment is not paid when due or any default under the Contract or the Security Instruments securing this Promissory Note occurs, the CWCB may declare the entire outstanding principal balance of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of seven percent (7%) per annum from the date of default. The CWCB shall give



the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Borrower shall be considered in default for purposes of this Promissory Note.

8. The Borrower hereby agrees that if this Note or interest thereon is not paid when due or if suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
9. This Promissory Note is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State thereunto enabling. Specifically, but not by way of limitation, the Contract and this Promissory Note are authorized pursuant to and under the authority of Title 31, Article 35; Title 37, Article 45.1; and Title 11, Article 57, Part 2, C.R.S., and in full conformity therewith. Pursuant to Section 11-57-210, C.R.S., and Section 31-35-413, C.R.S., this recital shall be conclusive evidence of the validity and the regularity of the issuance of this Promissory Note and the Promissory Note shall be incontestable for any cause whatsoever after its delivery for value.

Borrower: DocuSigned by:

By: Sam Krage  
Signature

Attest:

Name: Sam Krage

Title: President

Date: August 28, 2023 | 11:01 AM CDT

DocuSigned by:

By: Seth Clayton  
Signature

Name: Seth Clayton

Title: Executive Director

Date: August 28, 2023 | 10:05 AM MDT

## **APPENDIX 4, RESOLUTION(S)**

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**AUTHORIZING RESOLUTION**

**OF**

**BOARD OF WATER WORKS OF PUEBLO, COLORADO**

Relating to the issuance and delivery of the

**CWCB LOAN CONTRACT NUMBER CT2023-3851**  
**AND RELATED PROMISSORY NOTE**  
**IN THE AGGREGATE AMOUNT NOT TO EXCEED**  
**\$9,847,500**

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

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## Table of Contents

	Page
Section 1. Definitions.....	2
Section 2. Approval of Loan Contract and Authorization of Promissory Note.....	5
Section 3. Security for the Promissory Note.....	5
Section 4. Form of Promissory Note.....	6
Section 5. Water Enterprise Fund and Establishment of Accounts .....	7
Section 6. Additional Obligations.....	8
Section 7. Enterprise Status .....	8
Section 8. Various Findings, Determinations, Declarations and Covenants .....	8
Section 9. Amendment of Resolution .....	8
Section 10. Supplemental Public Securities Act.....	8
Section 11. Approval of Related Documents.....	9
Section 12. Resolution is Contract with Owners of Promissory Note and Irrepealable .....	9
Section 13. Headings, Table of Contents and Cover Page .....	9
Section 14. Severability .....	9
Section 15. Repeal of Inconsistent Resolutions, Bylaws, Rules and Orders .....	10
Section 16. Ratification of Prior Actions.....	10
Section 17. Effective Date .....	10

**RESOLUTION NO. 2023-09**

**A RESOLUTION AUTHORIZING A LOAN FROM THE COLORADO WATER CONSERVATION BOARD TO FINANCE A PORTION OF THE COSTS OF THE SOUTHSIDE DIVERSION DAM IMPROVEMENT PROJECT, TOGETHER WITH RELATED IMPROVEMENTS, AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL LOAN CONTRACT AND A PROMISSORY NOTE TO DOCUMENT THE LOAN; AND PROVIDING THE FORM OF THE LOAN AND OTHER DETAILS IN CONNECTION THEREWITH.**

WHEREAS, the Board of Water Works of Pueblo, Colorado (the "Board"), in the County of Pueblo and the State of Colorado, has been created pursuant to Section 15-2 of the home rule charter (the "Charter") of the City of Pueblo (the "City") as a political subdivision of the State of Colorado (the "State") with all the powers granted to cities of the first class by the Constitution and laws of the State, except the power to levy and collect taxes directly or indirectly (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Resolution); and

WHEREAS, the City is also a political subdivision of the State, a body corporate and politic, and a home rule city pursuant to the Charter and Article XX of the State Constitution; and

WHEREAS, Section 15-2 of the Charter also provides that title to all property of the water works (the "System") is in the City, but that the entire control, management and operation of the System shall be exercised by an independent board named the "Board of Water Works of Pueblo, Colorado", over which City Council of the City shall have no jurisdiction or control; and

WHEREAS, Article X, Section 20 of the Colorado Constitution ("TABOR") requires that districts (as defined in TABOR) not issue bonded debt without prior voter approval unless the issuer is an "Enterprise" as defined in TABOR; and

WHEREAS, the System operated by the Board constitutes a government-owned business, and the Board is authorized to issue its own revenue bonds and receives under 10% of its annual revenue in grants from all Colorado state and local governments, including without limitation the City, and therefore constitutes an "Enterprise" within the meaning of TABOR;

WHEREAS, the Board has been presented with the Loan Contract from the Colorado Water Conservation Board (the "CWCB"), identified as Contract Number CMS 182705 CT2023-3851, to finance all or a portion of the costs of completing the Southside Diversion Dam Improvement Project, together with related improvements; and

WHEREAS, the Board's repayment obligation under the Loan Contract will be evidenced by a Promissory Note to be issued by the Board to the CWCB, which Promissory Note shall constitute a special revenue obligation payable from System Net Revenues (which generally includes all water operations of the Board) and, after consideration, the Board has determined that the execution of the Loan Contract and the issuance of the Promissory Note to CWCB is to the best advantage of the Board; and

WHEREAS, on September 22, 2009, the Board adopted Resolution No. 2009-9 (the "Master Resolution"), establishing general provisions relating to the water revenue bonds of the Board; and

WHEREAS, on May 15, 2019, the Board issued its Water Revenue Bonds, Series 2019 (the "Series 2019 Bonds") pursuant to Resolution No. 2019-05 and the Master Resolution; and

WHEREAS, the Loan Contract, as evidenced by the Promissory Note, shall be a Subordinate Lien Obligation under the Master Resolution; and

WHEREAS, no member of the Board has a potential conflict of interest in connection with the authorization, issuance, delivery or use of proceeds of the Loan Contract; and

WHEREAS, the form of the Loan Contract and related appendices have been reviewed by the Board staff and made available to the Board; and

WHEREAS, the Board desires to authorize the execution of the Loan Contract, the issuance and delivery of the Promissory Note, and the execution of any additional documentation which may be related to the financing;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER WORKS OF PUEBLO, COLORADO:

**Section 1. Definitions.** The following terms shall have the following meanings as used in this Resolution:

"*Board*" means the Board of Water Works of Pueblo, Colorado, and any successor body.

"*Capital Improvements*" means the acquisition of land, easements, facilities and equipment, other than ordinary repairs and replacements, and the construction or reconstruction of improvements, betterments and extensions for use by or in connection with the System.

"*County*" means Pueblo, Colorado.

"*Credit Facility*" means any letter or line of credit, bond insurance policy, surety bond or guarantee or similar instrument (other than a reserve policy) issued by a financial, insurance, or other institution and which specifically provides security, liquidity or both in respect of Securities payable from Net Revenue.

"*Credit Facility Obligations*" means repayment or other obligations incurred by the Board in respect of draws or other payments or disbursements made under a Credit Facility.

"*C.R.S.*" means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

"*CWCB*" means the Department of Natural Resources, Colorado Water Conservation Board, an agency of the State.

*“Enabling Laws”* means the Supplemental Public Securities Act and any other statutes or constitutional provisions of the State enabling the action taken by the Board pursuant to the terms of this Resolution.

*“Financial Products Agreement”* means an interest rate swap, cap, collar, option, floor, hedging agreement, arrangement or security, however denominated, entered into by the Board with a Provider with respect to any Parity Bonds or specific securities or as otherwise permitted by State law, providing that any payments by the Board thereunder are payable in whole or in part from Net Revenue for the purpose of (a) reducing or otherwise managing the Board’s risk of interest rate changes or interest rate costs; or (b) effectively converting the Board’s interest rate exposure, in whole or in part, from a fixed rate exposure to a variable rate exposure, from a variable rate exposure to a different variable rate exposure or from a variable rate exposure to a fixed rate exposure.

*“Financial Products Receipts”* means amounts periodically required to be paid to the Board by a Provider pursuant to a Financial Products Agreement, but specifically excluding any Financial Products Termination Payment.

*“Financial Products Termination Payment”* means any termination, settlement or similar payment required to be paid upon an early termination of the Financial Products Agreement as a result of any event of default or termination event thereunder.

*“Gross Revenues”* means all income and revenues directly or indirectly derived by the Board from the operation and use of the System, or any part thereof, including without limitation, any rates, fees, plant water investment fees, standby charges, system development charges, availability fees, participation payments, tap fees, tolls and charges for the services furnished by, or for the use of, the System, and any proceeds realized from any past or future dispositions of System property, or for rights in contracts, settlements, or judgments held or obtained in connection with the System or its operations, and including investment income accruing from moneys held by the Board in any of its funds; provided, however, that there shall be excluded from Gross Revenue any moneys borrowed and used for providing Capital Improvements; any money and securities, and investment income therefrom, in any refunding account, escrow account or similar account pledged to the payment of any bonds or other obligations; any Financial Products Receipts; any Financial Products Termination Payment; and any moneys received as grants or appropriations from the United States, the State, other local governments or enterprises, or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom, or which are otherwise generally available for any legal use by the Board.

*“Loan Contract”* means the State public loan, identified by Loan Contract Number CMS 182705 CT2023-3851, as the same may be amended from time to time, by and between the Board and the State acting by and through the CWCB.

*“Net Revenues”* means the Gross Revenues after deducting Operation and Maintenance Expenses.

“*Note Fund*” means the “2023 CWCB Promissory Note Fund,” established by the provisions hereof for payment of the principal of and interest on the Promissory Note.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the Board, paid or accrued, for operating, maintaining and repairing the System, as determined in accordance with generally accepted accounting principles, including without limitation legal and other overhead expenses of the Board related to the administration of the System, insurance premiums, payments of claims under a self-insurance program, audits, charges of depository banks and paying agents, professional services, salaries and administrative expenses, labor and the cost of materials and supplies for current operations, payments of rebate obligations, if any, to the United States of America in respect of any obligations of the Board, and rental payments under operating leases and administrative costs and expenses related thereto; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, non-cash overhead expenses of the System, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with Capital Improvements, payments due in connection with any loans, bonds, notes or other multiple fiscal year obligations issued to provide Capital Improvements, and charges for the accumulation of reserves.

“*Parity Obligations*” means loans, bonds, notes or other multiple fiscal year financial obligations having a lien upon the Pledged Revenues or any part thereof on a parity with the lien thereon of the Promissory Note.

“*Payment Dates*” means the dates established pursuant to the Loan Contract for the annual payment of the principal of and interest on the Promissory Note, as set forth therein.

“*Pledged Revenues*” means the Net Revenues and moneys on deposit in the Reserve Fund.

“*Pro Rata Portion*” means when used with respect to a required credit to the accounts or subaccounts established for the payment of the principal of and interest on the Promissory Note and any future Parity Obligations, the dollar amount derived by dividing the amount of principal or interest to come due on the next principal or interest payment date by the number of monthly credits required to be made prior to such payment date.

“*Project*” means any purpose for which proceeds of the Promissory Note may be expended under the Enabling Laws, as referenced in the preambles to this Resolution and more specifically described in Appendix 1 to the Loan Contract.

“*Project Fund*” means the “2023 CWCB Promissory Note Project Fund,” established by the provisions hereof for the purpose of paying the Project Costs. The Project Fund may include separate subaccounts relating to the respective Loan Contract.

“*Project Costs*” means the Board’s costs properly attributable to the Project and permissible as “Eligible Expenses” as set forth in Section 9 of Appendix 1 of the Loan Contract.

“*Promissory Note*” means the Promissory Note evidencing the Board’s repayment obligation from the date of substantial completion of the Project, as set forth in Appendix 3 to the Loan Contract.



*“Required Reserve Amount”* means an amount equal to the annual payment on the Promissory Note, one-tenth of which amount shall be funded annually until fully established and maintained in accordance with Section 11(D) of the Loan Contract.

*“Reserve Fund”* means the “2023 CWCB Reserve Fund,” established by the provisions hereof for the purpose of securing repayment of the Promissory Note.

*“Resolution”* means this Resolution, including any amendments or supplements hereto.

*“Provider”* means any financial institution, insurance company or similar entity which is a party to a Financial Products Agreement with the Board.

*“Securities”* means any and all bonds, notes, certificates, warrants, leases, contracts, or other financial obligations or securities (from time to time) issued by the Board and payable in whole or in part from a lien on Net Revenue, including the Prior Lien Bonds and the Parity Bonds, but not including any Credit Facility Obligation, Financial Products Agreement or any similar contractual arrangement.

*“State”* means the State of Colorado.

*“Subordinate Obligations”* means loans, bonds, notes or other multiple fiscal year financial obligations having a lien upon the Pledged Revenues or any part thereof junior and subordinate to the lien thereon of the Promissory Note.

*“Supplemental Public Securities Act”* means Part 2 of Article 57 of Title 11, C.R.S.

*“System”* means all of the water facilities, plant and properties owned by the City and operated by the Board, now owned or hereafter acquired, whether situated within or without the City’s boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto.

**Section 2. Approval of Loan Contract and Authorization of Promissory Note.** Pursuant to and in accordance with the Enabling Laws, there is hereby authorized and approved the execution of the Loan Contract. There shall be issued by the Board the Promissory Note in the aggregate principal amount not to exceed \$9,847,500, for the purpose of paying the Project Costs and other costs in connection with the Promissory Note. All covenants, statements, representations and agreements contained in the Loan Contract and the Promissory Note are hereby approved and adopted as the covenants, statements, representations and agreements of the Board. The accomplishment of the Project is hereby authorized, approved and ordered and it is hereby determined that the Promissory Note matures at such time not exceeding the estimated life of the Project.

### **Section 3. Security for the Promissory Note.**

(a) *Pledge of Net Revenues.* The Promissory Note is payable from the Pledged Revenues and the Pledged Revenues are hereby pledged to the payment of the Promissory Note and the amounts due under the Loan Contract. The Promissory Note shall constitute an irrevocable lien upon the

Pledged Revenues junior and subordinate to the lien of the Board's outstanding Series 2019 Bonds, but not necessarily an exclusive such lien.

(b) *Budgeting and Appropriation of Pledged Revenues.* The amounts necessary to pay all costs and expenses incidental to the issuance of the Promissory Note and to pay the principal of and interest on the Promissory Note when due and to fund the Reserve Fund are hereby appropriated for said purposes, and such amounts as appropriate for each year shall also be included in the annual budget and the appropriation bills to be adopted and passed by the Board in each year, respectively, until the Promissory Note has been fully paid, satisfied and discharged.

(c) *Flow of Funds.* The Board shall monthly apply the Net Revenue first to the payment of any amounts required to be paid and deposited into the debt service fund and the related reserve fund for the Series 2019 Bonds as more specifically set forth in Section 3.05 of the Master Resolution. After such payment or the allocation of Net Revenues to such payment, the Board shall apply the Net Revenues in the following order of priority:

FIRST, to the credit of or deposit in the funds, accounts or subaccounts established for the payment of interest on the Promissory Note and Parity Obligations, if any, the Pro Rata Portion equal to the interest coming due on the next succeeding interest payment date for the respective obligations;

SECOND, to the credit of or deposit in the funds, accounts or subaccounts established for the payment of principal on the Promissory Note and Parity Obligations, if any, the Pro Rata Portion equal to the principal coming due on the next succeeding principal payment date for the respective obligations;

THIRD, to the credit of any reserve funds or accounts established for the payment of the Promissory Note and the Parity Obligations, if any, the amounts required in the resolutions or related documents authorizing and controlling the establishment of such reserve accounts; and

FOURTH, to the credit of any other fund or account as may be designated by the Board, to be used for any lawful purpose, any moneys remaining after the payments and accumulations set forth in FIRST through THIRD hereof.

(d) *The Promissory Note Does Not Constitute a Debt.* The CWCB may not look to any general or other fund of the Board for the payment of the principal of or interest on the Promissory Note, except the funds and accounts pledged thereto pursuant to authority of this Resolution, and the Promissory Note shall not constitute a debt or an indebtedness of the Board within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be a general or limited tax obligation of the Board.

**Section 4. Form of Promissory Note.** The Promissory Note shall be in substantially the form set forth in Appendix 3 to the Loan Contract with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the Board executing the same (whose manual signatures thereon shall constitute conclusive evidence of such approval). The interest rate authorized for the Promissory Note is 2.25% per annum, exclusive of any late charges of 7.0% of the annual payment due which may be imposed pursuant to the terms of the Loan

Contract for any late payments. The maturity date shall be not later than twenty (20) years from the payment initiation date, as set forth in the Loan Contract.

## **Section 5. Establishment of Funds.**

(a) *Creation of Funds.* In accordance with Article III of the Master Resolution, the Board hereby creates and establishes the Project Fund, the Note Fund and the Reserve Fund. The foregoing funds shall be maintained by the Board in accordance with the provisions of the Master Resolution and this Resolution.

(b) *Project Fund.* All moneys received from CWCB under the Loan Contract shall be credited to the Project Fund, in one or more subaccounts relating to the Loan Contract as determined in the discretion of the Board's Executive Director, and shall be applied solely to the payment of the Project Costs. Upon the determination of the Board's Executive Director that all Project Costs have been paid or are determinable, any balance remaining in the Project Fund (less any amounts necessary to pay Project Costs not then due and owing) shall be applied solely in accordance with the terms of the Loan Contract, including without limitation Section 8 thereof.

(c) *Note Fund.* Moneys in the Note Fund shall be used solely for the purpose of paying the interest on and principal of the Promissory Note. There shall be credited to the Note Fund an amount of Pledged Revenues which, when combined with other legally available moneys in the Note Fund, will be sufficient to pay the principal of and interest on the Promissory Note when due. In the event of insufficient Pledged Revenues for the payment of amounts due on the Promissory Note and Parity Obligations, if any, moneys shall be applied as provided in the Loan Contract and in the financing documents providing for the Parity Obligations.

(d) *Reserve Fund.*

(i) Moneys in the Reserve Fund shall be used, if necessary, only to prevent a default in the payment of the principal of or interest on the Promissory Note on any Payment Dates and the Reserve Fund is hereby pledged to the payment of the Promissory Note. In the event the amounts credited to the Note Fund are insufficient to pay the principal of or interest on Promissory Note when due, the Board shall transfer from the Reserve Fund to the Note Fund an amount which, when combined with moneys in the Note Fund will be sufficient to make such payments when due.

(ii) Commencing with the first Payment Date, the Board shall annually credit an amount equal to one-tenth of the Required Reserve Amount on or before each Payment Date until such time as the amount credited thereto is equal to the Required Reserve Amount (i.e., the Reserve Fund is to be fully funded within ten years from substantial completion of the Project). In the event that moneys from the Reserve Fund are transferred to the Note Fund as provided in paragraph (i) of this Subsection, such amount shall be replenished as provided in the Loan Contract. Moneys credited to the Reserve Fund may be invested or deposited in lawful securities or obligations and all interest income from the investment or reinvestment of moneys credited to the Reserve Fund shall be credited to the Reserve Fund until the amount therein is equal to the Required Reserve Amount, at which time as the balance of the Reserve Fund shall be maintained in the Required Reserve Amount and such interest income shall be credited to the Note Fund.

**Section 6. Additional Obligations.** No loans, bonds, notes or other multiple fiscal year obligations shall be issued payable from the Pledged Revenues and having a lien thereon which is superior to the lien of the Promissory Note. The Board may issue Parity Obligations or Subordinate Obligations only upon compliance with the requirements of Section 11(E) of the Loan Contract.

**Section 7. Enterprise Status.** The Board has maintained and shall continue to maintain itself as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution for the Board’s 2023 fiscal year. Specifically, but not by way of limitation, the Board covenants and agrees that it shall not receive 10% or more of its annual revenue in grants from all Colorado state and local governments combined during its 2023 fiscal year. Further, the Board shall use its best efforts to maintain itself as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution during the term of the Loan Contract; provided, however, after the current calendar year the Board may disqualify the “enterprise” in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made in the Loan Contract. In the event that the “enterprise” is disqualified and the enforceability of the covenants made by the Board in the Loan Contract are materially, adversely affected, the Board covenants to (i) immediately take all actions necessary to qualify as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Loan Contract.

**Section 8. Various Findings, Determinations, Declarations and Covenants.** The Board, having been fully informed of and having considered all the pertinent facts and circumstances, hereby finds, determines, declares and covenants that:

(a) *Outstanding Pledged Revenue Obligations.* The Series 2019 Bonds have a lien on the Pledged Revenues that is senior and superior to that of the Loan Contract. As of the date of this Resolution, the Board has no outstanding loans, bonds, notes or other multiple fiscal year obligations with a parity lien on the Pledged Revenues.

(b) *Compliance with Law.* The issuance of the Promissory Note and all procedures undertaken incident thereto are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the constitution and laws of the State, including the Enabling Laws, and all conditions and limitations of the Enabling Laws relating to the issuance of the Promissory Note have been satisfied.

(c) *Best Interests.* It is in the best interest of the Board and the residents of the City that the Promissory Note be authorized, issued and delivered at the time, in the manner and for the purposes provided in this Resolution.

**Section 9. Amendment of Resolution.** This Resolution may be amended only with the prior written consent of the CWCB.

**Section 10. Supplemental Public Securities Act.**

(a) *Application of Act.* Pursuant to § 11-57-204, C.R.S., the Board hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the issuance and delivery of the Promissory Note.

(b) *Limitation of Actions.* In accordance with § 11-57-212, C.R.S., no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Promissory Note more than thirty days after the date of adoption of this Resolution.

(c) *Recourse against Officers and Agents.* Pursuant to § 11-57-209, C.R.S., if a member of the Board, or any officer or agent of the Board acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Promissory Note. Such recourse shall not be available either directly or indirectly through the Board, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise.

(d) *Pledged Revenue Lien.* The creation, perfection, enforcement and priority of the pledge of Net Revenues to secure or pay the Promissory Note shall be governed by § 11-57-208, C.R.S., of the Supplemental Public Securities Act and this Resolution. The Pledged Revenues shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the Pledged Revenues shall be on a parity with all other Parity Obligations, and shall have priority over any and all other obligations and liabilities of the Board. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Board irrespective of whether such persons have notice of such liens.

**Section 11. Approval of Related Documents.** The Board's President (or in the President's absence the Board's Vice President) and Board shall, and they are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution, including, but not limited to, the execution of the Loan Contract, the Promissory Note, the Security Agreement (as set forth in Appendix 5 to the Loan Contract) and such additional agreements, certificates and affidavits as may be reasonably required. The execution by the Board's President of any document authorized herein shall be conclusive proof of the approval by the Board of the terms thereof.

**Section 12. Resolution is Contract with Owners of Promissory Note and Irrepealable.** After the Promissory Note has been issued, this Resolution shall be and remain a contract between the Board and CWCB and shall be and remain irrepealable until all amounts due with respect to the Promissory Note shall be fully paid, satisfied and discharged and all other obligations of the Board with respect to the Promissory Note shall have been satisfied in the manner provided herein.

**Section 13. Headings, Table of Contents and Cover Page.** The headings to the various sections and subsections to this Resolution, and the cover page and table of contents that appear at front of this Resolution, have been inserted solely for the convenience of the reader, are not a part of this Resolution and shall not be used in any manner to interpret this Resolution.

**Section 14. Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if

any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

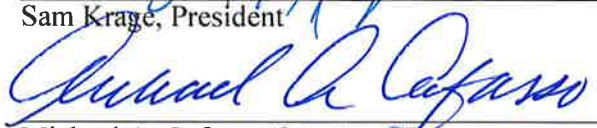
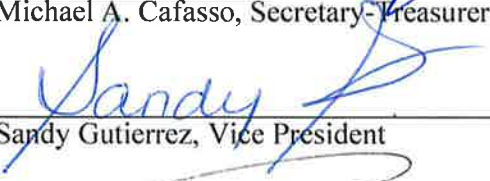


**Section 15. Repeal of Inconsistent Resolutions, Bylaws, Rules and Orders.** All resolutions, bylaws, rules and orders, or parts thereof, that are inconsistent with or in conflict with this Resolution, are hereby repealed to the extent of such inconsistency or conflict.

**Section 16. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Resolution or the Enabling Laws) by the Board or by the officers and employees of the Board directed toward the issuance of the Promissory Note for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 17. Recordation and Publication.** This Resolution, immediately on its passage, shall be recorded in the records of the Board kept for that purpose.

ADOPTED this 20<sup>th</sup> day of June, 2023.

Board of Water Works of Pueblo, Colorado

  
\_\_\_\_\_  
Sam Krage, President  
\_\_\_\_\_  
Michael A. Cafasso, Secretary-Treasurer  
\_\_\_\_\_  
Sandy Gutierrez, Vice President  
\_\_\_\_\_  
Dr. Thomas V. Autobee, Vice President  
\_\_\_\_\_  
Chris Woodka, Vice President  
\_\_\_\_\_  
Seth J. Clayton, Executive Director  
\_\_\_\_\_  
Patrick Garcia, Board Attorney

Resolution 2023-09

**RESOLUTION NO. 2023-10**

A RESOLUTION OF THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, DECLARING ITS OFFICIAL INTENT TO REIMBURSE ITSELF WITH THE PROCEEDS OF A LOAN FROM THE COLORADO WATER CONSERVATION BOARD FOR CERTAIN EXPENDITURES TO BE UNDERTAKEN BY THE BOARD IN CONNECTION WITH THE CONSTRUCTION OF THE SOUTHSIDE DIVERSION DAM IMPROVEMENT PROJECT; AND PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Board of Water Works of Pueblo, Colorado (the "Board"), in the County of Pueblo and the State of Colorado, has been created pursuant to Section 15-2 of the home rule charter (the "Charter") of the City of Pueblo (the "City") as a political subdivision of the State of Colorado (the "State") with all the powers granted to cities of the first class by the Constitution and laws of the State, except the power to levy and collect taxes directly or indirectly; and

WHEREAS, the Board has determined that it is in the best interest of the Board to make certain expenditures generally consisting of the construction of the Southside Diversion Dam Improvement Project (the "Project") in advance of the availability of the proceeds from a loan from the Colorado Water Conservation Board ("CWCBC"); and

WHEREAS, the CWCBC has, prior to the date of this resolution, approved the Board for a loan (the "Loan") in the amount of \$9,847,500 for the purpose of funding, in part, the costs of the Project or to reimburse the Board for moneys advanced for such purpose; and

WHEREAS, the Board currently intends and reasonably expects to participate in a tax-exempt financing that will include an amount which is currently estimated not to exceed \$9,847,500 to reimburse itself for all or a portion of such expenditures paid or to be paid from legally available funds subsequent to a period commencing 60 days prior to the date hereof and ending prior to the later of 18 months of the date such expenditures are paid or the date upon which the Project is placed in service (but in no event more than three years after the date of the original expenditure of such moneys); and

WHEREAS, the Board hereby desires to declare its official intent, pursuant to 26 C.F.R. § 1.150-2, to reimburse itself for such expenditures with the proceeds of a tax-exempt financing.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER WORKS OF PUEBLO, COLORADO:

**Section 1. Declaration of Official Intent.** The Board shall, presently intends, and reasonably expects to finance all or a portion of the Project with legally available funds.

**Section 2. Dates of Expenditures.** All of the expenditures covered by this Resolution were or will be paid on and after the date which is 60 days prior to the effective date of this Resolution.




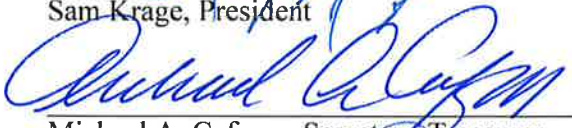
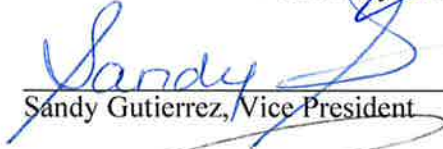

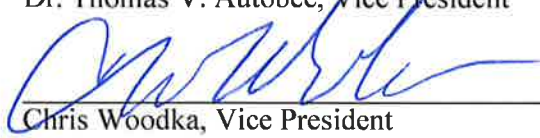
**Section 3. Tax-Exempt Financing.** The Board presently intends and reasonably expects to participate in a tax-exempt financing within 18 months of the date of the expenditure of moneys on the Project or the date upon which the Project is placed in service, whichever is later (but in no event more than three years after the date of the original expenditure of such moneys), and to allocate from such financing an amount not to exceed amounts advanced for the Project from legally available funds to reimburse the Board.

**Section 4. Confirmation of Prior Acts.** All prior acts and doings of the officials, agents and employees of the Board which are in conformity with the purpose and intent of this Resolution, and in furtherance of the Project, shall be and the same hereby are in all respects ratified, approved, and confirmed.

**Section 5. Recordation and Publication.** This Resolution, immediately on its passage, shall be recorded in the records of the Board kept for that purpose.

ADOPTED this 20<sup>th</sup> day of June, 2023.

Board of Water Works of Pueblo, Colorado

  
\_\_\_\_\_  
Sam Krage, President  
\_\_\_\_\_  
Michael A. Cafasso, Secretary-Treasurer  
\_\_\_\_\_  
Sandy Gutierrez, Vice President  
\_\_\_\_\_  
Dr. Thomas V. Autobee, Vice President  
\_\_\_\_\_  
Chris Woodka, Vice President  
\_\_\_\_\_  
Seth J. Clayton, Executive Director  
\_\_\_\_\_  
Patrick Garcia, Board Attorney

Resolution 2023-10

## APPENDIX 5, SECURITY AGREEMENT

Date:

Borrower: Board of Water Works of Pueblo

Secured Party: Colorado Water Conservation Board

Promissory Note: \$9,847,500

Terms of Repayment: 2.25% per annum interest for 20 years

Loan Contract Number: CT2024-1240

Pledged Revenues: All revenues derived from Board of Water Works of Pueblo's revenues and all of Borrower's right to receive said revenues to repay the loan as described in Pledged Revenues provisions of the Contract and Borrower's Resolutions adopted \_\_\_\_\_.

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 Appendix 1, Project Summary, Section 5, the Borrower is the owner of the Pledged Revenues free from any adverse lien, security interest or encumbrances; and that the Borrower will defend the Pledged Revenues against all claims and demands of all persons at any time claiming the same or any interest therein.
2. That the execution and delivery of this agreement by the Borrower will not violate any law or agreement governing the Borrower or to which the Borrower is a party.
3. Except in accordance with Section 11.E., of the Loan Contract, to not permit or allow any adverse lien, security interest or encumbrance whatsoever upon the Pledged Revenues and not to permit the same to be attached or replevined.
4. That by its acceptance of the loan money pursuant to the terms of the Loan 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 Loan 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; or

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

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

The Secured Party shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) Business Days of receipt of such notice before the Borrower shall be considered in default for purposes of this Security Agreement. No default shall be waived by Secured Party except in writing, and no waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion. The taking of this Security Agreement shall not waive or impair any other security Secured Party may have or hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this Security Agreement; but Secured Party shall retain its rights of set-off against the Borrower. In the event court action is deemed necessary to enforce the terms and conditions set forth herein, said action shall only be brought in the District Court for the City and County of Denver, State of Colorado, and the Borrower consents to venue and personal jurisdiction in said Court.

All rights of Secured Party hereunder shall inure to the benefit of its successors and assigns; and all promises and duties of the Borrower shall bind its successors or assigns.

Borrower Signed by:

By: Sam Krage  
916B97EDDD99404... Signature

Attest: DocuSigned by:  
By: Seth Clayton  
FDBE7AEB4DD3417... Signature

Name: Seth Clayton

Title: Executive Director

Date: August 28, 2023 | 10:05 AM MDT

Name: Sam Krage

Title: President

Date: August 28, 2023 | 11:01 AM CDT

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CT2024-1240