



## COLORADO

### Colorado Water Conservation Board

Department of Natural Resources  
1313 Sherman Street, Room 718  
Denver, CO 80203  
303-866-3441

November 13, 2024

Town of Fowler  
114 E. Craston Avenue  
Fowler, CO 81039

#### Loan Compliance Confirmation - CT2015-054 (C150359)

Attached for your records are the original documents relative to the agreement between the Town of Fowler, and the Colorado Water Conservation Board (CWCB), Loan Contract No. CT2015-054 (C150359). The documents have been stamped "PAID IN FULL" denoting that the Town has satisfied the terms of the agreement in full.

Should you have any questions, please contact me at by email at [mimi.winter@state.co.us](mailto:mimi.winter@state.co.us). If we can be of any further assistance to you in the near future, please let us know.

Sincerely,

*Mimi Winter*

Mimi Winter, Finance Manager  
Finance Section

Attachments

cc: CWCB Files

P 303.866.3441 F 303.866.4474 [www.cwcb.state.co.us](http://www.cwcb.state.co.us)  
Jared Polis, Governor | Dan Gibbs, DNR Director | Lauren Ris, CWCB Director





## COLORADO

Colorado Water  
Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 718  
Denver, CO 80203

December 16, 2019

Mr. Nathan Schultz, Mayor  
Town of Fowler  
317 South Main Street  
Fowler, CO 81039

Re: Augmentation Waterline Project - Loan Closeout  
CWCB Loan No. CT2015-054 (C150359)

Dear Mr. Schultz:

I would like to thank you for your participation in the Colorado Water Conservation Board Loan Program. We have reviewed your loan contract and, as you are aware, the contracted time frame to complete the Project has passed. The original Project end date was June 30, 2014 which was extended to June 30, 2016 and then to the most recent date of June 30, 2018. Per the second request, the additional time was needed for the following reason:

"The additional time is required to complete the process of obtaining those easements and for physical construction of the line. The construction engineering is complete unless the easement process mandates some change."

On October 30, 2018, the Town requested a third extension with the same explanation. In response to this request, CWCB requested additional information to justify the third extension. The CWCB staff reached out to Town staff multiple times in person, by phone and in writing requesting additional information.

On November 12, 2019, CWCB staff attended the Town Council meeting to discuss the Project's status. The Town elected to close out the loan on December 1, 2019, even though the Project has not been completed as originally planned. It is our understanding that a change to the Project scope of work is expected along with an amendment needed to Decree No. 13CW0007 with respect to the Oxford Ditch shares.

The Town owes \$4,783.99 for interest on the loan that has accrued to date. This interest will be rolled into the total final loan balance. The total amount disbursed under this contract was \$60,851.35 (\$60,248.86 plus \$602.49 for the 1% service fee). An adjustment of \$216,393.65 will be made to the contract for the funds no longer needed. Peg Mason, Contracts Manager, will



initiate the process of amending the contract and Promissory Note. The first annual loan payment of \$12,808.54 will be due on December 1, 2020 (see attached loan Repayment Schedule).

Please note, in accordance with the Loan Contract, audited annual financials must be submitted to the CWCB and a Reserve Account must be maintained during the entire repayment period.

We wish you success in your continued efforts to develop an augmentation supply for your community. If we can be of further assistance, feel free to contact us.

Sincerely,



Kirk Russell, P.E.  
Finance Section Chief

Original Loan Contract Amount \$277,245.00  
Final Disbursed Amount \$60,851.35

cc: Jack Goble, Board Member, Colorado Water Conservation Board  
Lonnie Spady, Water Commissioner, Division of Water Resources  
Kelly Lotrich, Town Clerk and Administrator, Town of Fowler

**COLORADO WATER CONSERVATION BOARD**

**LOAN REPAYMENT SCHEDULE**

<b>Borrower</b>	<b>Town of Fowler</b>	<b>FINAL</b>
Loan Contract Number	CT2015-054	CT2015-054
Principal	\$277,245.00	\$60,851.35
Interest Rate	2.25%	2.25%
Frequency	Annual	Annual
Term (In Years)	30	6
First Payment Due		December 1, 2020
Payment Amount	\$12,808.54	\$12,808.54

Loan Payment No.	Annual Payment Due Date	Annual Payment Amount	Principal	Interest	Principal BALANCE
					\$ 277,245.00
	CT Adj	\$216,393.65	\$216,393.65	\$ -	\$ 60,851.35
1	1-Dec-20	\$12,808.54	\$ 11,439.38	\$ 1,369.16	\$ 49,411.97
2	1-Dec-21	\$12,808.54	\$ 11,696.77	\$ 1,111.77	\$ 37,715.20
3	1-Dec-22	\$12,808.54	\$ 11,959.95	\$ 848.59	\$ 25,755.25
4	1-Dec-23	\$12,808.54	\$ 12,229.05	\$ 579.49	\$ 13,526.20
5	1-Dec-24	\$12,808.54	\$ 12,504.20	\$ 304.34	\$ 1,022.00
6	1-Dec-25	\$1,044.99	\$ 1,022.00	\$ 22.99	\$ -
<b>TOTALS</b>		\$65,087.69	\$60,851.35	\$4,236.34	\$0.00

**PAID IN FULL**



Colorado Water Conservation Board  
Project Expenditure Schedule

**Town of Fowler Augmentation Waterline Project**

Town of Fowler  
317 S. Main Street  
Fowler, CO 81039  
c/o Mr Dan Hyatt  
  
Ph. 719-263-4461  
Fax  
administrator@fowlercolorado.com

	<b>Original</b>	<b>Amended</b>	<b>Final</b>
Loan Contract No.:	CT2015-054		
Authorization:	\$277,245.00		
Contract Amount	\$274,500.00		\$ 60,248.86
Loan Service Fee %	1.00%		
Loan Service Fee	\$2,745.00		\$ 602.49
Total Loan Amount	\$277,245.00		\$ 60,851.35
Interest:	2.25%		2.25%
Term (Years):	30		30
Conditions:	Up to 90%		Up to 90%
IDC Calculation Date:	12/1/2019		

Substantial Completion Date

12/1/2019

Contract Expires:

6/30/2018

Pay Req. No.	Date	Description	Amount Disbursed	Cumulative Loan Balance	Balance Available to Loan	Interest	Accrued Interest
					\$ 277,245.00		
1	1/11/2016	Engineering, Surveying, Bid Processing	\$ 42,360.87	\$ 42,360.87	\$ 234,884.13	\$ 3,708.03	\$ 3,708.03
2	4/8/2016	Engineering, Surveying	\$ 13,104.00	\$ 55,464.87	\$ 221,780.13	\$ 1,075.96	\$ 4,783.99
Final	12/1/2019	Add IDC to Loan	\$ 4,783.99	\$ 60,248.86	\$ 216,996.14	(\$ 4,783.99)	-
Final	12/1/2019	Loan Service Fee @ 1%	\$ 602.49	\$ 60,851.35	\$ 216,393.65	-	-
CT	12/1/2019	Funds Not Needed	(\$ 216,393.65)	\$ 60,851.35	\$ 0.00	-	-

\* CORE AMT

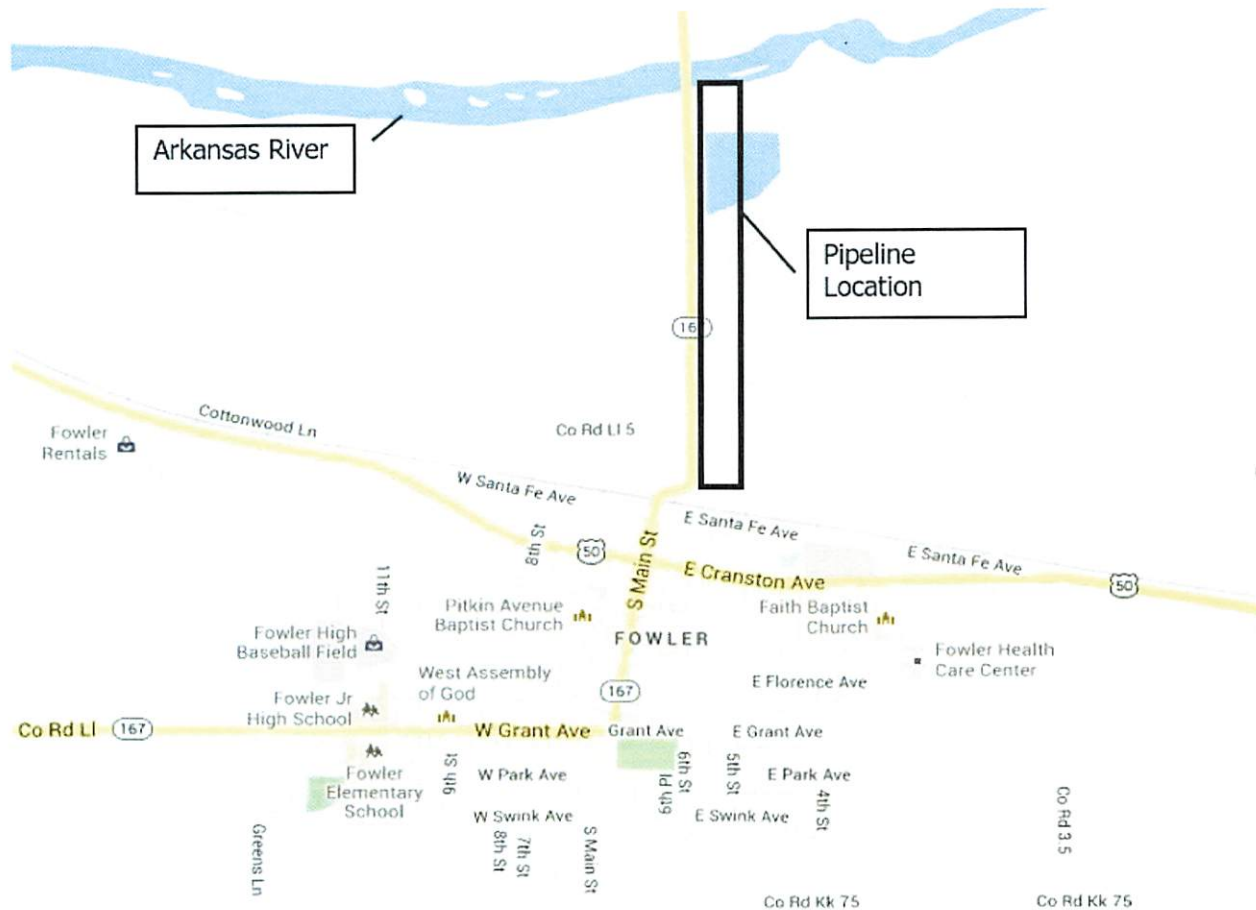
60,851.35

- 4,783.99 IDC

- 602.49 FEE

55,464.87

PAID IN FULL



## Project Description

The Town of Fowler is located in Otero County along Highway 50, approximately 35 miles east of Pueblo. It has approximately 1,185 residents. The Town's water system service area includes the Town and adjacent areas within unincorporated Otero and Crowley Counties for a total of 709 taps.

Per a water court mandate, the Town must separate its augmentation water from its stormwater. The purpose of this project was to construct a diversion box to separate stormwater from augmentation water and to pipe the augmentation water to the Arkansas River. Construction of the Project was scheduled for the fall of 2013 with completion expected to occur the following year. This Project was not completed and the loan was closed December 2019.

P R O J E C T   D A T A		
Sponsor: Town of Fowler	County: Otero	Water Source: Arkansas River
Type of Project: Augmentation	Board Approval Date: July 2013	
Terms of Loan: 2.25% for 30 years	(Original) \$277,245.00	(Final) \$60,851.35
Design Engineer: TST, Inc.		

STATE OF  
COLORADO

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

**RE: Email approval**

1 message

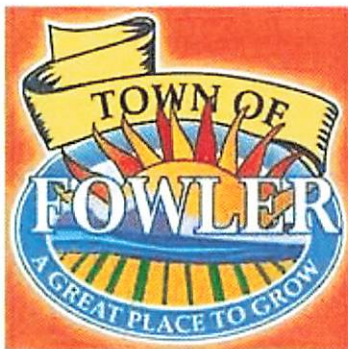
Town Clerk &lt;town\_clerk@fowlercolorado.com&gt;

Mon, Mar 23, 2020 at 7:39 AM

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

Peg-

The Town of Fowler approves the change of the term of repayment to 6 years.



Kelly Lotrich, CMC  
Fowler Town Clerk  
[town\\_clerk@fowlercolorado.com](mailto:town_clerk@fowlercolorado.com)  
114 E. Cranston Ave.  
Fowler, CO 81039  
719-263-4461

**PAID IN FULL****From:** Mason - DNR, Peg <[peg.mason@state.co.us](mailto:peg.mason@state.co.us)>**Sent:** Friday, March 13, 2020 9:10 AM**To:** [town\\_clerk@fowlercolorado.com](mailto:town_clerk@fowlercolorado.com)**Subject:** Email approval

Hi Kelly-

We had to make a change to the Promissory Note for CWCB Loan Contract No. CT2015-054, Amendment No. 1. The change consisted of changing the *Term of Repayment* in the

header from 12 years to 6 years. The loan contract term is 12 years, however the **Term of Repayment** is only 6 years.

Would you please respond to this email with an email approving this change?

Thank you,

**Peg Mason, Contracts Manager**

**Colorado Water Conservation Board**

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

**303-866-3441 ext.3227**

[peg.mason@state.co.us](mailto:peg.mason@state.co.us)

**PAID IN FULL**



STATE OF  
COLORADO

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

## CT2015-054 (C150359) Town of Fowler - Augmentation Waterline Project

1 message

Pittinger - DNR, Rachel &lt;rachel.pittinger@state.co.us&gt;

Wed, Jan 15, 2020 at 11:58 AM

To: Peg Mason &lt;peg.mason@state.co.us&gt;

Hi Peg.

The Town of Fowler would like to closeout this loan. The project is not substantially complete and at this time the Town is not able to provide an updated/amended scope of work, construction schedule or estimated construction costs for this project. Town staff, design engineers and consultants all have changed multiple times since the project began and the current direction for this project is undetermined at this point. The Town would like to stop interest from accruing on the loan amount and regroup to determine how they want to proceed.

Sincerely,

Rachel

Rachel Pittinger, P.E.

Project Manager

Finance Section



COLORADO

Colorado Water  
Conservation Board

Department of Natural Resources

O 303.866.3441 x 3254 | C 720.607.3549

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

[rachel.pittinger@state.co.us](mailto:rachel.pittinger@state.co.us) | [cwcb.state.co.us](http://cwcb.state.co.us)**PAID IN FULL**





## COLORADO

Colorado Water  
Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 718  
Denver, CO 80203

### TIME FOR PERFORMANCE EXTENSION AGREEMENT

June 7, 2016

Town of Fowler  
Attn: Charles Hitchcock, Mayor  
317 S. Main St.  
Fowler, CO 81039


Re: Construction of the Augmentation Waterline Project  
CWCB Loan Contract Number CT2015-054 (C150359)

Dear Mr. Hitchcock:

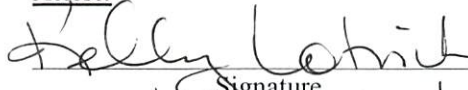
This letter is in response to your request for a time extension for CWCB Loan Contract Number CT2015-054 (C150359). The Time for Performance is June 30, 2016, as requested in a prior extension request to Appendix 1, Section 10 of the original loan contract. The Time for Performance shall be amended to extend the time of performance to June 30, 2018. By signing below, the Town of Fowler and CWCB acknowledge this amended Time for Performance.

Please sign and return this letter to Peg Mason, Contracts Manager at the address listed above.


TOWN OF FOWLER

  
Signature  
Name: Charles R. Hitchcock  
Title: Mayor  
Date: 6-13-16

Attest:

  
Signature  
Name: Kelly Lotrich  
Title: Town Clerk  
Date: 6-13-16

STATE OF COLORADO  
JOHN W. HICKENLOOPER, GOVERNOR  
DEPARTMENT OF NATURAL RESOURCES

By:   
Kirk Russell, P.E., Section Chief  
Finance Section  
Colorado Water Conservation Board  
Date: 6/21/16



# Town of Fowler

"A Great Place to Grow"

317 S. Main ST

Fowler, Co 81039



June 1, 2016

Colorado Water Conservation Board  
Water Supply Planning & Finance Section  
1580 Logan ST, STE 600  
Denver, CO 80203

RE: CWCB Loan Contract #C150359 Extension

Gentle Persons:

The Town of Fowler respectfully requests an extension of Loan Contract #C150359 for two years until June 30, 2018. A prior extension was granted providing for a project finish date of June 30, 2016.

This project was originally to construct a raw water line from the Otero Ditch located north of the town of Fowler to the Arkansas River. The line is to convey raw water from the Oxford Farmers Ditch located south of the town of Fowler to the Arkansas River to be used as augmentation water for the town's wells. A raw water line already existed from the Oxford Farmers Ditch to the southeast corner of Girard Park located on the south side of Fowler. From this point, the water entered the storm sewer system and flowed to the Otero Ditch.

After the project design commenced the town's engineers discovered that the existing raw water line was too small to convey the town's water resulting in a backup of the water at a flume which made accurate flume readings impossible. The engineer's recommended increasing the size of that portion of the line.

At the same time, the town filed an application for change of use of its Oxford Farmer's shares from irrigation to augmentation. During change of use case, the division engineer and other opposers expressed concern over the ability of the town to provide accurate measurements. The existing south portion of the line also carried irrigation water for a number of farmers who are able to use Fryingpan-Arkansas Project water reserved for agriculture as well as well water that the Oxford Farmers Ditch conveys to farmers but for which the town may not use. To address this issue, the town's water engineer requested that the town construct a new water line on the south side of town rather than increasing the size of the existing line so the irrigation water and the municipal water could be physically separated providing for more accurate measurements.

Constructing a new water line on the south side of town required a new survey and new easements. The survey has been completed. The town is in the process of obtaining new easements for the line south of Fowler.

The additional time is required to complete the process of obtaining those easements and for physical construction of the line. The construction engineering is complete unless the easement process mandates some change.

Sincerely,

Charles R. Hitchcock  
Mayor

# STATE OF COLORADO

## Colorado Water Conservation Board

Water Supply Planning & Finance Section

1580 Logan Street, Suite 600

Denver, Colorado 80203

www.cwcb.state.co.us



### LETTER AGREEMENT

April 15, 2014

Town of Fowler  
Attn: Ralph Rogers, Mayor  
317 Main Street  
Fowler, CO 81039

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

James Eklund  
CWCB Director

Subject: Extension of Time for Performance for CWCB Loan Contract #C150359

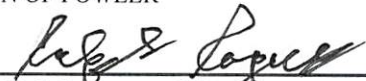
Dear Mr. Rogers:

The Time for Performance stated in Appendix 1, Section 10 of the Town of Fowler's CWCB Loan Contract #C150359 was June 30, 2014. In order to continue making payments for project costs, the Time for Performance will be extended again. CWCB has decided to extend the Project Finish date by two years. By signing below, the Town of Fowler and the CWCB acknowledge that the new Time for Performance in Section 10 of Appendix 1 of the Loan Contract shall read a new Project Finish date of June 30, 2016.

Please sign and return this letter to Peg Mason, Contracts Manager at the address listed above.

TOWN OF FOWLER

By

  
Ralph Rogers, Mayor

Attest:

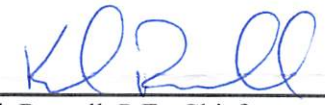
By

  
Town Clerk

STATE OF COLORADO

JOHN W. HICKENLOOPER, GOVERNOR

By

 4/23/14  
Kirk Russell, P.E., Chief  
Finance & Administration Section  
Colorado Water Conservation Board  
Department of Natural Resources  
James Eklund, Director



## **RESOLUTION NO. WAE 001-13**

### **A RESOLUTION OF THE TOWN OF FOWLER BOARD OF TRUSTEES ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE AUTHORIZING A LOAN TO CONSTRUCT A RAW WATER LINE FOR AUGMENTATION AND PLEDGING WATER ACTIVITY ENTERPRISE REVENUES**

**WHEREAS**, the Town of Fowler Board of Trustees ("Board") of the Town of Fowler met on October 14, 2013 in open public session after giving proper notice; and

**WHEREAS**, in adopting this Resolution Number WAE 001 concerning a secured loan from the State of Colorado Water Conservation Board ("CWCB"), for the purpose of the Augmentation Waterline Project in the amount of \$277,245, more or less, as may be needed by the Town and available from the CWCB including the CWCB loan origination fee of one percent (1.0%) of the loan amount the Trustees are acting by and through the Town of Fowler's Water Activity Enterprise established in Ordinance Number 688-13 previously adopted by the Board; and

**WHEREAS**, at said meeting, the Board charged that this resolution is irrevocable during the term of the loan and, pursuant to the state of Colorado statutes and the Town of Fowler's ordinances and authorized the Town of Fowler Mayor and town clerk as follows.

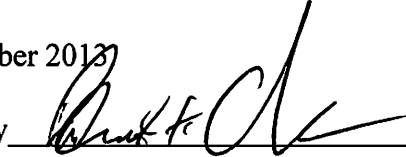
#### **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS.**

1. The mayor is hereby authorized to enter into and comply with the terms of a contract with the Colorado Water Conservation Board for a loan in the amount of \$277,245, or such actual amount, more or less, as needed to finance the Augmentation Waterline Project costs, including the CWCB loan origination fee of one percent (1.0%), and
2. to levy and collect water activity enterprise revenues in an amount sufficient to pay the annual amounts due under the LOAN CONTRACT, and to pledge said revenues and the Water Activity Enterprise's right to receive said revenues for repayment of the loan, and
3. to place said pledged revenues in a special account separate and apart from other Water Enterprise Activity's revenues, and
4. to make the annual payments required by the PROMISSORY NOTE and to make annual deposits to a debt service reserve fund, and
5. to pledge the Water Activity Enterprise revenues backed by a rate covenant and annual financial reporting as COLLATERAL for the loan and execute all documents, including a PROMISSORY NOTE and SECURITY AGREEMENT, necessary to convey a security interest in said property to the CWCB, and
6. to execute all documents as required by the LOAN CONTRACT, including, but not limited to, a PROMISSORY NOTE and SECURITY AGREEMENT, and

7. to take such other actions and to execute such other documents as may be necessary to consummate and implement the loan.
8. This resolution shall be irrevocable during the term of the loan

**APPROVED AND ADOPTED** this 14th day of October 2013

By



Patrick K. Christensen, Mayor

**ATTEST:**

  
Lori Kretz, Town Clerk

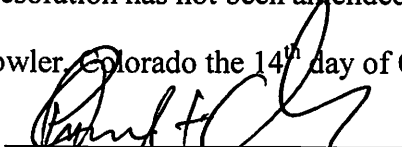
### CERTIFICATION

The undersigned, Mayor and Town Clerk of the Town of Fowler, hereby certify that the foregoing is a true and correct copy of Resolution Number WAE 001 duly adopted at a meeting of the Town of Fowler's Board of Trustees acting by and through its Water Activity Enterprise duly called and held as above recited pursuant to the statutes of the state of Colorado and the ordinances of the Town of Fowler and that said resolution has not been amended or rescinded.

Given under my hand and seal of the Town of Fowler, Colorado the 14<sup>th</sup> day of October 2013.

(SEAL)

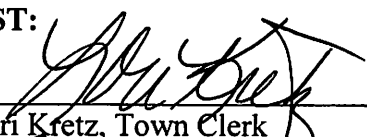
By

  
Patrick K. Christensen, Mayor

Date:

Oct 14, 2013

**ATTEST:**

  
By: Lori Kretz, Town Clerk

Date:

Oct 14, 2013

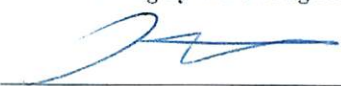
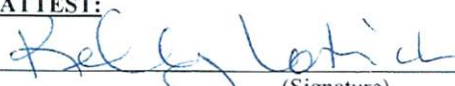

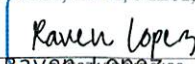


**LOAN CONTRACT AMENDMENT NO. 1****THREE (3) SIGNATURE PAGES (COVER PAGE) WITH ORIGINAL SIGNATURES ARE REQUIRED**

<b>State Agency</b> Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman St, Room 718 Denver, CO 80203	<b>Amendment No. 1 Contract Number</b> CMS 149008 CT2015-054
<b>Borrower and Address</b> Town of Fowler acting by and through its water activity enterprise 317 South Main Street Fowler, CO 81039	<b>Original Contract Number</b> CMS 62294 C150359
<b>Current Contract Maximum Amount</b> \$60,851.35 (includes the 1% origination fee)	<b>Contract Performance Beginning Date</b> 12/11/2013
<b>Project Name</b> Augmentation Waterline Project Loan Closeout	<b>Contract Performance End Date</b> 06/20/2018
<b>Reason for Modification</b> Decrease total loan amount due to close-out of loan	<b>Loan Contract Terms</b> 2.25% for 12 years <b>Loan Contract Repayment Schedule</b> Payment Initiation Date: December 1, 2019 Maturity Date: December 1, 2025

**THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT**

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

<b>TOWN OF FOWLER</b> acting by and through its water activity enterprise  (Signature) Name: <u>Nathan Shultz</u> Title: <u>Mayor</u> Date: <u>2/20/2020</u> <b>ATTEST:</b>  (Signature) Name: <u>Kelly Lotrich</u> Title: <u>Town Clerk/Administrator</u> Date: <u>2/20/2020</u>	<b>STATE OF COLORADO</b> Jared S. Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director  DocuSigned by:  Name: Kirk Russell, P.E., Section Chief Colorado Water Conservation Board March 27, 2020   9:56 AM PDT Date: _____
In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate <b>STATE CONTROLLER</b> Robert J. Lopez, MBA, JD By:  Name: <u>Raven Lopez</u> Title: <u>Purchasing Agent</u> Amendment Effective Date: <u>April 1, 2020</u>   3:24 PM PDT	

**1. PARTIES**

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

**2. TERMINOLOGY**

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

**3. AMENDMENT EFFECTIVE DATE AND TERM**

**A. Amendment Effective Date**

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

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

**4. PURPOSE**

The borrower was approved for a CWCB loan contract, on December 11, 2013, for the Augmentation Waterline Project. The project is not substantially completed, however the Town of Fowler is not able to complete the Project and have elected to close out the loan due to changes in Town staff, design engineers and consultants. As a result, there were changes to the scope of work, construction schedule and estimated construction costs that were outside the perimeters of the Project that caused the direction of this project to be undetermined at this time. The amount of the current loan contract amount is decreased by \$216,393.65 from \$277,245.00 to \$60,851.35. The total loan amount is hereby modified accordingly.

**5. MODIFICATIONS**

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

- PAID IN FULL**
- A. The original loan contract amount is hereby deleted and replaced with the Current Contract Maximum Amount of \$60,851.35, shown on the Signature and Cover Page for this Amendment. The loan terms shall change to 12 years at current percentage of 2.25%.
  - B. Amendment to Promissory Note, Appendix A, in the revised loan amount and incorporated herein, shall replace and supersede the Original Promissory Note attached to the Original Loan Contract as Appendix 2.
  - C. Amendment to Security Agreement, Appendix B, in the revised loan amount and incorporated herein, shall supplement and operate in conjunction with the Original Security Agreement, attached to the Original Loan Contract as Appendix 4.

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

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



**Appendix A, Amendment No. 1 to Loan Contract CT2015-054**  
**Amendment to Promissory Note**

Date:	February 20, 2020
Borrower:	Town of Fowler, acting by and through its water activity enterprise
Total Loan Amount:	\$60,851.35
Interest Rate:	2.25% per annum
Term of Repayment:	6 years or until loan is paid in full
Loan Contract No.:	CT2015-054
Annual Loan Payment:	\$12,808.54
Payment Initiation Date:	December 1, 2019
Maturity Date:	December 1, 2025

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

1. This Amendment to Promissory Note, in the **revised loan amount of \$60,851.35**, *shall replace and supersede* the Original Promissory Note, attached as Appendix 3 to the Original Loan Contract, in the amount of 277,245.00, and incorporated by reference.
2. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from Payment Initiation Date, and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street Room 718, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within sixty (60) calendar days of the due date.
5. This Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
7. This Note is issued pursuant to the Loan Contract between the CWCB and the Borrower. The Loan Contract creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement ("Security Instrument") of even date and amount and cover certain revenues. The Loan Contract and Security Instruments grant additional rights to the CWCB, including the right to accelerate the maturity of this Note in certain events.
8. If any annual payment is not paid when due or any default under the Loan Contract or the Security Instruments securing this Note occurs, the CWCB may declare the entire outstanding principal balance

of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of 7% per annum from the date of default. The CWCB shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Borrower shall be considered in default for purposes of this Promissory Note.

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

Town of Fowler, acting by and through its  
water activity enterprise

Attest:

By Kelly Lotrich  
Signature

Name Kelly Lotrich

Title Town Clerk/Administrator

Date 2/20/2020

By [Signature]  
Signature

Name Nathan Shultz

Title Mayer

Date 2/20/2020


**PAID IN FULL**

**Appendix B, Amendment No.1 to Loan Contract CT2015-054 (150359)**  
**Amendment to Security Agreement**

Debtor: Town of Fowler, acting by and through its water activity enterprise  
Secured Party: Colorado Water Conservation Board  
Revised Loan Amount: \$60,851.35  
Term of Repayment: 12 years or until loan is paid in full  
Interest Rate: 2.25% per annum  
Loan Contract Number: CT2015-054 (C150359)

1. The Parties have amended the Original Loan Contract and Promissory Note to decrease the loan amount from \$277,245.00 to \$60,851.35, and hereby amend the Original Security Agreement attached to the Original Contract as Appendix 4 to reflect this change to the total loan contract amount.
2. The Parties expressly agree that this Amendment to Security Agreement is supplemental to the Security Agreement and all terms, conditions, and provisions thereof, unless specifically modified below, are to apply to this Amendment to Security Agreement as though they were expressly rewritten, incorporated, and included herein.
3. Collateral for the loan remains the same.

Town of Fowler  
acting by and through its water activity enterprise


By   
Signature

Name Nathan Shultz

Title Mayer

Date 2/20/2020

Attest:

By   
Signature

Name Kelly Lotnid

Title Town Clerk / Administrator

Date 2/20/2020

**PAID IN FULL**



# SECURITY AGREEMENT

(PLEDGE OF REVENUES)

DATE: OCTOBER 14, 2013

DEBTOR: Town of Fowler, a Colorado statutory town, acting by and through its Water Activity Enterprise

SECURED PARTY: COLORADO WATER CONSERVATION BOARD  
1313 SHERMAN STREET, ROOM 721  
DENVER, CO 80203

PROMISSORY NOTE: \$277,245

TERMS OF REPAYMENT: 2.25% PER ANNUM FOR 30 YEARS

LOAN CONTRACT: C150359

COLLATERAL: All Water Activity Enterprise revenues pledged to repay the loan as described in Pledge of Revenues provisions of the LOAN CONTRACT and DEBTOR'S RESOLUTION No. WAE 001-13 dated OCTOBER 14, 2013.

To secure payment of the loan evidenced by the PROMISSORY NOTE payable in accordance with the TERMS OF REPAYMENT, or until all principal, interests, and late charges, if any, are paid in full, the DEBTOR grants to SECURED PARTY a security interest in the above described COLLATERAL.

DEBTOR EXPRESSLY WARRANTS AND COVENANTS:

**PAID IN FULL**

1. That except for the security interest granted hereby and any other security interests described in Section 5 of the Loan Contract Project Summary, DEBTOR is the owner of the COLLATERAL free from any adverse lien, security interest or encumbrances; and that DEBTOR will defend the COLLATERAL 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 DEBTOR will not violate any law or agreement governing DEBTOR or to which DEBTOR is a party.
3. To not permit or allow any adverse lien, security interest or encumbrance whatsoever upon the COLLATERAL and not to permit the same to be attached or replevined.
4. That by its acceptance of the loan money pursuant to the terms of the CONTRACT and by its representations herein, DEBTOR shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the COLLATERAL pursuant to the terms of this agreement.

UNTIL DEFAULT DEBTOR may have possession of the COLLATERAL, provided that DEBTOR keeps the COLLATERAL in an account separate from other revenues of DEBTOR

**Appendix 4 to Loan Contract C150359**

and does not use the COLLATERAL for any purpose not permitted by the CONTRACT. Upon default, SECURED PARTY shall have the immediate right to the possession of the COLLATERAL.

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

- a. default in the payment or performance of any obligation contained herein or in the PROMISSORY NOTE or Loan CONTRACT;
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against DEBTOR; or
- c. the making or furnishing of any warranty, representation or statement to SECURED PARTY by or on behalf of DEBTOR 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, as amended. SECURED PARTY may require DEBTOR to deliver or make the COLLATERAL 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 DEBTOR written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the DEBTOR 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 DEBTOR. 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 DEBTOR 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 DEBTOR shall bind its successors or assigns.



(SEAL)

Attest:

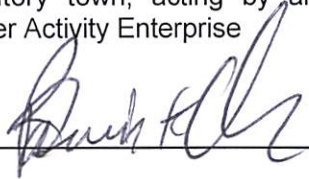
By   
Signature

NAME: LORI KRETZ

TITLE: Town Clerk

DATE: 10-14-2013

DEBTOR: Town of Fowler, a Colorado statutory town, acting by and through its Water Activity Enterprise

By 

NAME: PATRICK K. CHRISTENSEN, JR.

TITLE: MAYOR - Town of Fowler

DATE: 10-14-2013

**PAID IN FULL**



**ORDINANCE NO. 688-13**

**AN ORDINANCE ESTABLISHING THE TOWN OF FOWLER WATER ACTIVITY ENTERPRISE PURSUANT TO C.R.S. §37-34.1-101 ET SEQ.**

**WHEREAS**, the town of Fowler ("District") is a state of Colorado municipal corporation founded in 1901; and

**WHEREAS**, District is a local government entity that has authority to conduct water activities created pursuant to title 32, C.R.S.; and

**WHEREAS**, District is the sole owner and operator of the town of Fowler potable and non-potable water system which provides a secure water supply for domestic use; and

**WHEREAS**, the District adopted Ordinance No. 522 on or about July 8, 1997 which established a Water Enterprise in conformance with the Colo. Const. Art X, Sec. 20; and

**WHEREAS**, the District has its own bonding authority under C.R.S. §31-21-102; and

**WHEREAS**, pursuant to C.R.S. § 37-45.1-103 the District has the legal capacity to establish and maintain a water activity enterprise to pursue or continue water activities, including water acquisition or water project or facility activities, including the construction, operation, repair, and replacement of water facilities.

**NOW, THEREFORE, BE IT ORDAINED**, BY THE BOARD OF TRUSTEES OF THE TOWN OF FOWLER, COLORADO, AS FOLLOWS.

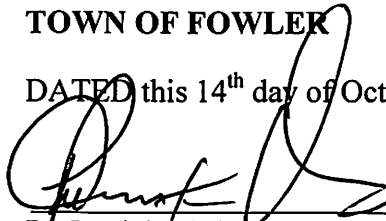
- a. The Town of Fowler Water Activity Enterprise is hereby established pursuant to C.R.S. §37-45.1-103(1).
- b. Water Activity Enterprise Purpose. The purpose of the water activity enterprise is to pursue and continue water activities, including, but not limited to water diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water, the provision of wholesale or retail water, the acquisition of water or water rights, and water project or facility activities, including the construction, operation, repair, and replacement of water facilities including, but not limited to, dams, storage reservoirs, compensatory or replacement reservoirs, canals, conduits, pipelines, tunnels, power plants, water treatment facilities and any and all works, facilities, improvements and property necessary or convenient for the purpose of conducting a water activity.
- c. Governing Body. The governing body of the water activity enterprise shall be the governing body of the District. Whenever, the governing body of the District is in session, the governing body of the water activity enterprise shall be in session without the need to give separate notice or to distinguish between the acts of the governing body of the District and acts of the governing body of the water activity enterprise.

- d. Exercise of Legal Authority. The governing body of the water activity enterprise shall exercise the District's legal authority relating to water activities but shall not levy a tax subject to Colo. Const. Art. X, Sec. 20(4).
- e. State And Local Grant Limitation. The Water Activity Enterprise shall not receive more than ten percent of its annual revenues
- f. Authority to Issue Revenue Bonds. The water activity enterprise, through its governing body, may issue or reissue revenue bonds in accordance with and through the provisions of C.R.S. §37-45.1-104(2)
- g. Power to Contract. The water activity enterprise shall have all the power to contract set forth in C.R.S. §37-45.1-106 including, but not limited to, the power to contract with the Colorado Water Conservation Board or any other governmental source of funding for loans and grants related to water activity enterprise functions and to contract with the Colorado Water Resources and Power Development Authority for loans or other available financial assistance related to water activity enterprise functions.
- h. Conflicts. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed or amended to the extent necessary to conform with this ordinance.
- i. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any Court, such decision shall not affect the validity of the remaining portions of this ordinance.
- j. Emergency Clause. The Board of Trustees of the town of Fowler, Colorado, hereby finds, determines, and declares that this action is necessary for the preservation and protection of the public health, safety, and general welfare and shall become effective immediately upon publication thereof.

**PASSED, ADOPTED** and ordered published the 14th day of October, 2013.

**TOWN OF FOWLER**

DATED this 14<sup>th</sup> day of October, 2013.



By Patrick Christensen, Jr.

Mayor

**ATTEST:**



Lori Kretz  
Town Clerk



## CERTIFICATION

The undersigned, Mayor and Town Clerk of the Town of Fowler, hereby certify that the foregoing is a true and correct copy of Ordinance Number 688-13 duly adopted at a meeting of the Town of Fowler's Board of Trustees duly called and held on the 14<sup>th</sup> day of October 2013 pursuant to the statutes of the state of Colorado and the ordinances of the Town of Fowler and that said ordinance has not been amended or rescinded.

Given under my hand and seal of the Town of Fowler, Colorado, the 14<sup>th</sup> day of October 2013.

(SEAL)

By: 

Patrick K. Christensen, Mayor

Date: Oct. 14, 2013

ATTEST:

By: 

Lori Kretz, Town Clerk

Date: Oct. 14, 2013

SPENCER FANE  
& GRIMSHAW<sup>LLP</sup>  
ATTORNEYS & COUNSELORS AT LAW

December 5, 2013

State of Colorado  
For the use and benefit of the  
Department of Natural Resources,  
Colorado Water Conservation Board

Gentlemen:

We are attorneys admitted to practice in the State of Colorado and have acted as Bond Counsel for the Town of Fowler, Colorado, acting by and through its Water Activity Enterprise ("Borrower") which has entered into a Loan Contract with the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board ("CWCB"), and have acted as such in connection with the authorization, execution, delivery by the Borrower of the Loan Contract.

In so acting, we have examined the constitution and laws of the State of Colorado and the proceedings relating to organization of the Borrower. We have also examined originals, or copies certified or otherwise identified to our satisfaction of the following:

(a) The Loan Contract No. C150359 by and between the CWCB and the Borrower, dated by the Borrower October 14, 2013;

(b) The proceedings of the governing body of the Borrower relating to approval of the Loan Contract, and the execution, issuance and delivery thereof on behalf of the Borrower.

Based upon the foregoing, we are of the opinion that:

1. 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

2. The Resolution of the Borrower authorizing the execution and delivery of the Contract as duly adopted by the governing body of the Borrower; and

3. There are no provisions in the Colorado Constitution or any other state or local law that prevent this Contract from binding the Borrower; and

4. The Contract will be valid and binding against the Borrower if entered into by the CWCB; subject, however, to the effect of, and to restrictions and limitations imposed by, or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment, or similar

1700 Lincoln Street, Suite 3800

Denver, Colorado 80203-4538

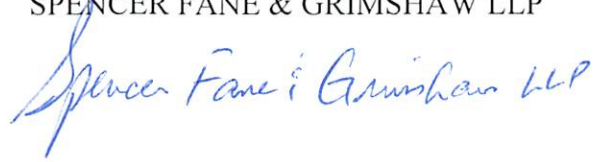
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(303) 839-3800    www.spencerfane.com    Fax (303) 839-3838

laws affecting creditor's rights generally (creditor's rights limitations), heretofore or hereafter enacted.

This opinion is rendered on the basis of the law of the State of Colorado as enacted and construed on the date hereof. We express no opinion as to any matter not set forth in the numbered paragraphs herein.

SPENCER FANE & GRIMSHAW LLP

A handwritten signature in blue ink that reads "Spencer Fane & Grimshaw LLP". The signature is written in a cursive, flowing style.



# **Daniel R. Hyatt**

**Attorney at Law**

1 Cactus Drive - La Junta, Colorado 81050

Telephone: 719-468-2307 Email: dan@hyattlawoffice.com

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October 15, 2013

Colorado Water Conservation Board  
Department of Natural Resources  
1580 Logal ST., STE 600  
Denver, CO 80203

RE; Legal Opinion on Contract No. C150359

Gentleperson:

At a properly noticed regular meeting of the Town of Fowler Board of Trustees on October 14, 2013, the following members were present: Mayor Pro-Tem, Chuck Hitchcock, trustee Jason Hagerman, trustee Keith Lance, trustee Randy A. McKown, trustee Emil S. Rogge, and trustee Travis True. Mayor Patrick K. Christensen, Jr. appeared late and did not vote on any matters relevant to this letter.

Ordinance Number 688-13 titled AN ORDINANCE ESTABLISHING THE TOWN OF FOWLER WATER ACTIVITY ENTERPRISE PURSUANT TO C.R.S. §37-34.1-101 ET. SEQ. was properly introduced and adopted by a unanimous affirmative vote. This ordinance established the Town of Fowler's Water Activity Enterprise and provides that the Board of Trustees serves as the governing body of the Water Activity Enterprise.

The Board of Trustees sitting as the governing body of the Water Activity Fund then adopted Resolution WAE 001-13 titled A RESOLUTION OF THE TOWN OF FOWLER BOARD OF TRUSTEES ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE AUTHORIZING A LOAN TO CONSTRUCT A RAW WATER LINE FOR AUGMENTATION AND PLEDGING WATER ACTIVITY ENTERPRISE REVENUES by unanimous affirmative vote. The resolution authorized the town of Fowler Mayor, Patrick K. Christensen, to execute Contract Number C150395 and the Promissory Note, Appendix 2, and Security Agreement, Appendix 4 and all other documents required by the loan contract.

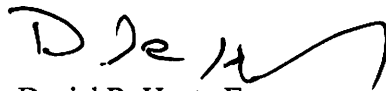
Following the adoption of Resolution WAE 001-13 and acting on authority delegated by the resolution, Mayor Patrick K. Christensen, Jr. executed Loan Contract #C150359 between the Town of Fowler and the Water Conservation Board, an agency of the State of Colorado with a loan amount of \$277,245 consisting of a project amount of \$274,500 and a loan service fee of \$2,745. The mayor also executed a Promissory Note, labeled as Appendix 2 to Loan Contract C150359 and a Security Agreement labeled as Appendix 4 to Loan Contract C150359.

IT IS MY OPINION based upon a review of the records of the Town of Fowler, the ordinances and resolutions of the Town of Fowler, the Colorado Revised Statutes, the Colorado Constitution and Colorado case law as follows.

1. Contract No. C150359, Promissory Note and Security Agreement were duly executed by the mayor of the Town of Fowler as authorized by the Town of Fowler Board of Trustees and that the documents bind the Water Activity Enterprise of the Town of Fowler.
2. Ordinance Number 688-13 titled AN ORDINANCE ESTABLISHING THE TOWN OF FOWLER WATER ACTIVITY ENTERPRISE PURSUANT TO C.R.S. §37-34.1-101 ET. SEQ. was duly adopted by the town of Fowler Board of Trustees.
3. Resolution WAE 001-13 titled A RESOLUTION OF THE TOWN OF FOWLER BOARD OF TRUSTEES ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE AUTHORIZING A LOAN TO CONSTRUCT A RAW WATER LINE FOR AUGMENTATION AND PLEDGING WATER ACTIVITY ENTERPRISE REVENUES were duly adopted by the town of Fowler Board of Trustees sitting as the governing body of the town of Fowler Water Activity Enterprise.
4. There are no provisions in the Colorado Constitution or any other state or local law that prevent this Contract from binding the town of Fowler Water Activity Enterprise.
5. Contract No. C150359 will be valid and binding against the town of Fowler Water Activity Enterprise if entered into by the Colorado Water Conservation Board.

This opinion is for the use of the Town of Fowler, Colorado and Colorado Water Conservation Board as requested by the Town of Fowler, Colorado.

Yours,

A handwritten signature in black ink, appearing to read 'D. Hyatt', with a stylized flourish at the end.

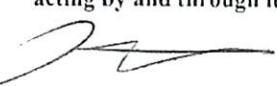

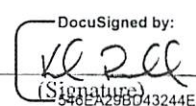
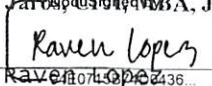
Daniel R. Hyatt, Esq.

**LOAN CONTRACT AMENDMENT NO. 1****THREE (3) SIGNATURE PAGES (COVER PAGE) WITH ORIGINAL SIGNATURES ARE REQUIRED**

<b>State Agency</b> Department of Natural Resources Colorado Water Conservation Board (CWCBC) 1313 Sherman St, Room 718 Denver, CO 80203	<b>Amendment No. 1 Contract Number</b> CMS 149008 CT2015-054
<b>Borrower and Address</b> Town of Fowler acting by and through its water activity enterprise 317 South Main Street Fowler, CO 81039	<b>Original Contract Number</b> CMS 62294 C150359
<b>Current Contract Maximum Amount</b> \$60,851.35 (includes the 1% origination fee)	<b>Contract Performance Beginning Date</b> 12/11/2013
<b>Project Name</b> Augmentation Waterline Project Loan Closeout	<b>Contract Performance End Date</b> 06/20/2018
<b>Reason for Modification</b> Decrease total loan amount due to close-out of loan	<b>Loan Contract Terms</b> 2.25% for 12 years <b>Loan Contract Repayment Schedule</b> Payment Initiation Date: December 1, 2019 Maturity Date: December 1, 2025

**THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT**

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

<b>TOWN OF FOWLER</b> acting by and through its water activity enterprise  (Signature) Name: <u>Nathan Shultz</u> Title: <u>Mayor</u> Date: <u>2/20/2020</u> <b>ATTEST:</b>  (Signature) Name: <u>Kelly Lotrich</u> Title: <u>Town Clerk/Administrator</u> Date: <u>2/20/2020</u>	<b>STATE OF COLORADO</b> Jared S. Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director  DocuSigned by:  (Signature) Name: Kirk Russell, P.E., Section Chief Colorado Water Conservation Board March 27, 2020   9:56 AM PDT Date: _____  <b>PAID IN FULL</b>
In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate <b>STATE CONTROLLER</b> Robert J. Lopez, MBA, JD By:  Name: <u>Raven Lopez</u> Title: <u>Purchasing Agent</u> Amendment Effective Date: <u>April 1, 2020</u>   3:24 PM PDT	



**1. PARTIES**

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

**2. TERMINOLOGY**

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

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

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

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

**4. PURPOSE**

The borrower was approved for a CWCB loan contract, on December 11, 2013, for the Augmentation Waterline Project. The project is not substantially completed, however the Town of Fowler is not able to complete the Project and have elected to close out the loan due to changes in Town staff, design engineers and consultants. As a result, there were changes to the scope of work, construction schedule and estimated construction costs that were outside the perimeters of the Project that caused the direction of this project to be undetermined at this time. The amount of the current loan contract amount is decreased by \$216,393.65 from \$277,245.00 to \$60,851.35. The total loan amount is hereby modified accordingly.

**PAID IN FULL****5. MODIFICATIONS**

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

- A. The original loan contract amount is hereby deleted and replaced with the Current Contract Maximum Amount of \$60,851.35, shown on the Signature and Cover Page for this Amendment. The loan terms shall change to 12 years at current percentage of 2.25%.
- B. Amendment to Promissory Note, Appendix A, in the revised loan amount and incorporated herein, shall replace and supersede the Original Promissory Note attached to the Original Loan Contract as Appendix 2.
- C. Amendment to Security Agreement, Appendix B, in the revised loan amount and incorporated herein, shall supplement and operate in conjunction with the Original Security Agreement, attached to the Original Loan Contract as Appendix 4.

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

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

**Appendix A, Amendment No. 1 to Loan Contract CT2015-054**  
**Amendment to Promissory Note**

Date:	February 20, 2020
Borrower:	Town of Fowler, acting by and through its water activity enterprise
Total Loan Amount:	\$60,851.35
Interest Rate:	2.25% per annum
Term of Repayment:	6 years or until loan is paid in full
Loan Contract No.:	CT2015-054
Annual Loan Payment:	\$12,808.54
Payment Initiation Date:	December 1, 2019
Maturity Date:	December 1, 2025

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

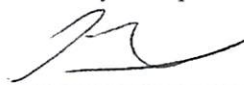
1. This Amendment to Promissory Note, in the **revised loan amount of \$60,851.35**, shall replace and supersede the Original Promissory Note, attached as Appendix 3 to the Original Loan Contract, in the amount of 277,245.00, and incorporated by reference.
2. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from Payment Initiation Date, and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street Room 718, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within sixty (60) calendar days of the due date.
5. This Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
7. This Note is issued pursuant to the Loan Contract between the CWCB and the Borrower. The Loan Contract creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement ("Security Instrument") of even date and amount and cover certain revenues. The Loan Contract and Security Instruments grant additional rights to the CWCB, including the right to accelerate the maturity of this Note in certain events.
8. If any annual payment is not paid when due or any default under the Loan Contract or the Security Instruments securing this Note occurs, the CWCB may declare the entire outstanding principal balance

of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of 7% per annum from the date of default. The CWCB shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Borrower shall be considered in default for purposes of this Promissory Note.

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

Town of Fowler, acting by and through its  
water activity enterprise

By



Signature

Name

Nathan Shultz

Title

Mayer

Date

2/20/2020

Attest:

By



Signature

Name

Kelly Lotrich

Title

Town Clerk/Administrator

Date

2/20/2020

**PAID IN FULL**

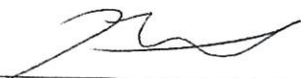


**Appendix B, Amendment No.1 to Loan Contract CT2015-054 (150359)**  
**Amendment to Security Agreement**

Debtor: Town of Fowler, acting by and through its water activity enterprise  
Secured Party: Colorado Water Conservation Board  
Revised Loan Amount: \$60,851.35  
Term of Repayment: 12 years or until loan is paid in full  
Interest Rate: 2.25% per annum  
Loan Contract Number: CT2015-054 (C150359)

1. The Parties have amended the Original Loan Contract and Promissory Note to decrease the loan amount from \$277,245.00 to \$60,851.35, and hereby amend the Original Security Agreement attached to the Original Contract as Appendix 4 to reflect this change to the total loan contract amount.
2. The Parties expressly agree that this Amendment to Security Agreement is supplemental to the Security Agreement and all terms, conditions, and provisions thereof, unless specifically modified below, are to apply to this Amendment to Security Agreement as though they were expressly rewritten, incorporated, and included herein.
3. Collateral for the loan remains the same.

Town of Fowler  
acting by and through its water activity enterprise


By   
Signature

Name Nathan Shultz

Title Mayer

Date 2/20/2020

Attest:

By   
Signature

Name Kelly Lotnid

Title Town Clerk/Administrator

Date 2/20/2020

**PAID IN FULL**

BORROWER: TOWN OF FOWLER ACTING BY  
AND THROUGH ITS WATER ACTIVITY  
ENTERPRISE

CONTRACT No. C150359  
PROJECT AMOUNT \$274,500  
LOAN SERVICE FEE \$2,745  
LOAN AMOUNT \$277,245

AGENCY NAME: Water Conservation Board  
AGENCY NUMBER: PDA  
CONTRACT FORM DATE: 071213  
CWCB CMS #62294

## LOAN CONTRACT

(STANDARD CONTRACT – WAIVER #160 – APPROVED NOVEMBER 10, 2003)

THIS CONTRACT, made between the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board ("CWCB" or "STATE"), and Town of Fowler, a Colorado statutory town, acting by and through its Water Activity Enterprise, 317 S. Main Street, Fowler, CO 81039, ("BORROWER").

### FACTUAL RECITALS

1. Authority exists in the law, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this CONTRACT under: Contract Encumbrance No. C150359, Fund Number 424, Appropriation Code M14, Organization YYYY, GBL F359, Program WTRC, Object Code 5510, Reporting Category 0359; Required approval, clearance, and coordination have been accomplished from and with appropriate agencies; and
2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies; and
3. On July 17, 2013, the CWCB approved a loan request from the BORROWER for the Augmentation Waterline Project to construct a diversion box to separate storm water from augmentation water and to pipe the augmentation water directly to the Arkansas River ("PROJECT"); and
4. The **PROJECT SUMMARY**, attached as **APPENDIX 1** and incorporated herein, contains BORROWER Information (Section 1), the PROJECT Description (Section 2), CWCB's authority for making this loan (Section 3), and CWCB Approval and Legislative Authorization which identifies the amount of the loan and the terms of repayment (Section 4); and
5. The CWCB now desires, by this CONTRACT, to loan money to the BORROWER for this PROJECT upon mutually agreeable terms and conditions.

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



## A. LOAN PROVISIONS

1. **Loan Service Fee.** The amount of the loan (LOAN AMOUNT) shall include (1) the amount of the funds loaned by the CWCB to the BORROWER for the PROJECT and (2) a service fee of one percent (1%) of the PROJECT amount. In the event that the BORROWER does not use the LOAN AMOUNT authorized, the parties shall amend this CONTRACT to revise the LOAN AMOUNT including adjustment of the service fee to reflect 1% of the actual LOAN AMOUNT disbursed to the BORROWER.
2. **Contract Amendment Service Fees.** Under certain circumstances, the BORROWER shall be assessed a fee for amending the CONTRACT.
  - a. A service fee shall be imposed on the BORROWER for amendments processed for the benefit of the BORROWER and necessary for the BORROWER's course of business but not necessary for the CWCB, including, but not limited to, a change in BORROWER name, assignment of CONTRACT, substitution of collateral, loan payment deferments in excess of 3 per loan, and loan consolidation. Amendments in the course of CWCB business, including, but not limited to, loan payment deferments (up to 3 per loan), and changes in terms of loan repayment will be processed at no additional charge to the BORROWER.
  - b. The amount charged shall be in accordance with the 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 fee for an amendment is \$1,000.
  - c. The BORROWER shall remit the service fee to the CWCB prior to initiation of the amendment. Any service fee remitted to the CWCB cannot be refunded.
3. **Promissory Note Provisions.** The CWCB agrees to loan to the BORROWER an amount not to exceed the LOAN AMOUNT and the BORROWER agrees to repay the loan in accordance with the terms as set forth in the **PROMISSORY NOTE**, attached hereto as **APPENDIX 2** and incorporated herein. The PROMISSORY NOTE shall identify the LOAN AMOUNT. If the amount of loan funds disbursed by the CWCB to the BORROWER differs from the LOAN AMOUNT, the parties agree to amend this CONTRACT, including its appendices where necessary, to revise the LOAN AMOUNT.
4. **Interest Prior to Project Completion.** As the loan funds are disbursed by the CWCB to the BORROWER, interest shall accrue at the rate set by the CWCB for this loan. The CWCB shall calculate the amount of the interest that accrued prior to PROJECT's substantial completion (as determined by the CWCB) and notify BORROWER of such amount. The BORROWER shall repay that amount to the CWCB either within ten (10) days from the date of notification from the CWCB, or, at the CWCB's discretion, said interest shall be deducted from the final disbursement of loan funds that the CWCB makes to the BORROWER.
5. **Return of Unused Loan Funds.** Any loan funds disbursed but not expended for the PROJECT in accordance with the terms of this CONTRACT shall be remitted to the CWCB within 30 calendar days from notification from the CWCB of either (1) completion of the



PROJECT or (2) determination by the CWCB that the PROJECT will not be completed.

6. **Borrower's Authority To Contract.** The BORROWER warrants that it has full power and authority to enter into this CONTRACT. The execution and delivery of this CONTRACT and the performance and observation of its terms, conditions and obligations have been duly authorized by all necessary actions of the BORROWER. The **BORROWER'S AUTHORIZING RESOLUTION(S) OR ORDINANCE(S)** are attached as **APPENDIX 3** and incorporated herein.
7. **Attorney's Opinion Letter.** Prior to the execution of this CONTRACT by the CWCB, the BORROWER shall submit to the CWCB a letter from its 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 resolution(s) or ordinance(s) 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 Colorado Constitution or any other 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.
8. **Pledge of revenues.** The BORROWER irrevocably pledges to the CWCB, for purposes of repayment of this loan, revenues levied for that purpose as authorized in APPENDIX 3 and any other funds legally available to the BORROWER, in an amount sufficient to pay the annual payment due under this CONTRACT ("PLEDGED REVENUES"). Further, the BORROWER agrees to:
  - a. **Segregation of Pledged Revenues.** The BORROWER shall set aside and keep the PLEDGED REVENUES in an account separate from other BORROWER revenues and warrants that these revenues will not be used for any other purpose.
  - b. **Establish Security Interest.** The BORROWER has duly executed a **SECURITY AGREEMENT**, attached hereto as **APPENDIX 4** and incorporated herein, to provide a security interest to the CWCB in the PLEDGED REVENUES. The CWCB shall have priority over all other competing claims for said revenues, except for the liens of the BORROWER's existing loans as listed in Section 5 (Schedule of Existing Debt), of the PROJECT SUMMARY, which sets forth the position of the lien created by this CONTRACT in relation to any existing lien(s).
  - c. **Rate 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 3, 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, including obtaining voter approval, if necessary, of increases in the BORROWER'S rate schedule or taxes, if applicable.

- d. **Debt Service Reserve Account.** To establish and maintain the debt service reserve account, the BORROWER shall deposit an amount equal to one-tenth of an annual payment into its debt service reserve 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.
- e. **Additional Debts or Bonds.** The BORROWER shall not issue any indebtedness payable from the PLEDGED REVENUES and having a lien thereon which is superior to the lien of this loan. The BORROWER may issue parity debt only with the prior written approval of the 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 independent certified public accountant certifying that, based on an analysis of the BORROWER'S revenues, for 12 consecutive months out of the 18 months immediately preceding the date of issuance of such parity debt, the BORROWER'S revenues are sufficient to pay its annual operating and maintenance expenses, annual debt service on all outstanding indebtedness having a lien on the pledged revenues, including this loan, the annual debt service on the proposed indebtedness to be issued, and all required deposits to any reserve funds required by this CONTRACT or by the lender(s) of any indebtedness having a lien on the pledged revenues. The analysis of revenues shall be based on the BORROWER'S current rate structure or the rate structure most recently adopted. No more than 10% of total revenues may originate from tap and/or connection fees.

The BORROWER acknowledges and understands that any request for approval of the issuance of additional debt must be reviewed and approved by the CWCB Director prior to the issuance of any additional debt.

- f. **Annual Statement of Debt Coverage.** Each year during the term of this CONTRACT, the BORROWER shall submit to the CWCB an annual audit report and a certificate of debt service coverage from a Certified Public Accountant.
9. **Pledged Revenues During Loan Repayment.** The BORROWER shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the PLEDGED REVENUES, so long as any of the principal, accrued interest, and late charges, if any, on this loan remain unpaid, without the prior written concurrence of



the CWCB.

10. **Release After Loan Is Repaid.** Upon complete repayment to the CWCB of the entire principal, all accrued interest, and late charges, if any, as specified in the PROMISSORY NOTE, the CWCB agrees to release and terminate any and all of the CWCB's right, title, and interest in and to the PLEDGED REVENUES.

11. **Warranties.**

- a. The BORROWER warrants that, by acceptance of the loan under this CONTRACT and by its representations herein, the BORROWER shall be estopped from asserting for any reason that it is not authorized or obligated to repay the loan to the CWCB as required by this CONTRACT.
- b. The BORROWER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the BORROWER, to solicit or secure this CONTRACT and has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this CONTRACT.
- c. The BORROWER warrants that the PLEDGED REVENUES and COLLATERAL for this loan are not encumbered by any other deeds of trust or liens of any party other than the CWCB or in any other manner, except for any existing lien(s) identified in Section 5 (Schedule of Existing Debt) of the PROJECT SUMMARY, which sets forth the position of the lien created by this CONTRACT in relation to any existing lien(s).

12. **Remedies For Default.** Upon default in the payments to be made by the BORROWER under this CONTRACT, or default in the performance of any covenant or agreement contained herein, the CWCB, at its option, may:

- a. suspend this CONTRACT and withhold further loan disbursements pending corrective action by the BORROWER, and if the BORROWER does not cure the default as provided for below, permanently cease loan disbursements and deem the PROJECT substantially complete;
- b. exercise its rights under any appendices to this CONTRACT, including, but not limited to, the PROMISSORY NOTE and SECURITY AGREEMENT; and/or
- c. take any other appropriate action.

The CWCB shall provide written notice to the BORROWER of any such default and shall give the BORROWER an opportunity to cure within thirty (30) days of receipt of such notice. All remedies described herein may be simultaneously or selectively and successively enforced. The CWCB may enforce the provisions of this CONTRACT at its option without regard to prior waivers of previous defaults by the BORROWER, through judicial proceedings to require specific performance of this CONTRACT, or by such other proceedings in law or equity as may be deemed necessary by the CWCB to ensure

compliance with provisions of this CONTRACT and the laws and regulations under which this CONTRACT is executed. The CWCB's exercise of any or all of the remedies described herein shall not relieve the BORROWER of any of its duties and obligations under this CONTRACT.

13. **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.

14. **Borrower's Liability Insurance.**

- a. Because the BORROWER is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the BORROWER shall at all times maintain such liability insurance, by commercial policy or self-insurance as is necessary to meet its liabilities under the Act.
- b. Prior to the disbursement of any loan funds, the BORROWER shall provide the CWCB with an Acord Form 25 or other form satisfactory to the CWCB evidencing said insurance and shall provide the CWCB with documentation of renewals of said insurance.

15. **Additional Contract Requirements.** Any additional CONTRACT requirements are set forth in Additional Contract Requirement (Section 6) of the PROJECT SUMMARY.

B. PROJECT PROVISIONS

PAID IN FULL

1. **Construction Fund Program Procedures.** During the completion of the PROJECT, the BORROWER shall adhere to the CWCB Construction Fund Program Procedures (Section 7) of the PROJECT SUMMARY.
2. **Eligible Expenses.** The PROJECT expenses for which the BORROWER is eligible for loan disbursements are listed in Eligible Expenses (Section 8) of the PROJECT SUMMARY.
3. **Loan Disbursements.** The CWCB shall disburse loan funds in accordance with the Disbursement Schedule (Section 9) of the PROJECT SUMMARY.
4. **Time for Performance.** The BORROWER recognizes that time is of the essence in the performance of all of its obligations under this CONTRACT. Therefore, the BORROWER shall complete the PROJECT within the time specified in Time for Performance (Section 10) of the PROJECT SUMMARY.
5. **Indemnification by the Construction Firm.** The BORROWER shall require all construction firms and their subcontractors to indemnify the STATE and the BORROWER against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of those parties or sustained in connection with the performance of any contract related to the PROJECT or by conditions created thereby, or based upon any violation of any statute, ordinance, or regulation, and the defense of any such claims or



actions.

6. **Liability Insurance during Construction.** During construction of the PROJECT, the BORROWER shall require the construction firm(s) and any subcontractors to maintain the following insurance coverage in the limits shown during the term of their contracts for the construction of the PROJECT. The BORROWER shall provide the CWCB with an Acord Form 25 evidencing said insurance prior to commencement of construction, maintained until construction is complete, and shall provide the CWCB with documentation of renewals of said insurance. No payments shall be made to the BORROWER unless all insurance certificates are current.
  - a. Worker's compensation and employer's liability insurance in the required statutory amounts.
  - b. Automobile liability insurance that includes coverage for all owned, non-owned and hired vehicles with minimum limits of \$1,000,000 combined single limit for bodily injury and property damage.
  - c. Commercial general liability insurance with minimum limits of \$1,000,000 combined single limit for each occurrence and \$2,000,000 general aggregate. This insurance coverage shall include products/completed operations and bodily injury/property damage.

#### C. GENERAL PROVISIONS

1. **Periodic Inspections.** Throughout the term of this CONTRACT, the BORROWER shall permit a designated representative of the CWCB to make periodic inspections of the PROJECT. Such inspections shall cover the condition of the PROJECT, operating records, maintenance records, and financial records. These inspections are solely for the purpose of verifying compliance with the terms and conditions of this CONTRACT and shall not be construed nor interpreted as an approval of the actual design, construction or operation of any element of the PROJECT facilities.
2. **Applicable Laws.** The BORROWER shall strictly adhere to all applicable federal, state, and local laws and regulations that are in effect or may hereafter be established throughout the term of this CONTRACT.
3. **Designated Agent Of The CWCB.** The CWCB's employees are designated as the agents of the CWCB for the purpose of this CONTRACT.
4. **Assignment.** The BORROWER may not assign this CONTRACT except with the prior written approval of the CWCB.
5. **Contract Relationship.** The parties to this CONTRACT intend that the relationship between them under this CONTRACT is that of lender-borrower, not employer-employee. No agent, employee, or servant of the BORROWER shall be, or shall be deemed to be, an employee, agent, or servant of the CWCB. The BORROWER shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants,

engineering firms, construction firms, and subcontractors during the term of this CONTRACT.

6. **Integration of Terms.** This CONTRACT is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written CONTRACT executed and approved pursuant to State fiscal rules, unless expressly provided for herein.
7. **Controlling Terms.** In the event of conflicts or inconsistencies between the terms of this CONTRACT and conditions as set forth in any of the appendices, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) Colorado Special Provisions, provided that the parties hereby agree that, for the purposes of such Special Provisions, (a) "Contractor" shall mean BORROWER (2) the remainder of this CONTRACT, and (3) the Appendices.
8. **Casualty and Eminent Domain.** If, at any time, during the term of this CONTRACT, (a) the BORROWER'S PROJECT facilities including buildings or any portion thereof, are damaged or destroyed, in whole or in part, by fire or other casualty, or (b) title to or use of the PROJECT facilities or any part thereof shall be taken under the exercise of the power of eminent domain, the BORROWER shall cause the net proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair and restoration of the PROJECT facilities or any portion thereof, or to repayment of this loan. Any net proceeds remaining after such work has been completed or this loan has been repaid, shall be retained by the BORROWER. If the net insurance proceeds are insufficient to pay the full cost of the replacement, repair and restoration, the BORROWER shall complete the work and pay any cost in excess of the net proceeds. In the event BORROWER chooses to repay the loan, BORROWER shall remain responsible for the full LOAN AMOUNT outstanding regardless of the amount of such insurance proceeds or condemnation award.
9. **Captions.** The captions and headings contained in this CONTRACT are for convenience and reference only and shall not be construed so as to define or limit the terms or provisions contracted herein.
10. **CWCB's Approval.** This CONTRACT requires review and approval of plans, specifications, and various other technical and legal documents. The CWCB's review of these documents is only for the purpose of verifying BORROWER'S compliance with this CONTRACT and shall not be construed or interpreted as a technical review or approval of the actual design or construction of the PROJECT. Notwithstanding any consents or approvals given to the BORROWER by the CWCB on any such documents, BORROWER and any of its consultants, by preparing any such documents, shall be solely responsible for the accuracy and completeness of any of said documents.
11. **Waiver.** The waiver of any breach of a term of this CONTRACT shall not be construed as a waiver of any other term or of any subsequent breach of the same term.



12. **Addresses for mailing.** All notices, correspondence, or other documents required by this CONTRACT shall be delivered or mailed to the addresses shown in the PROJECT SUMMARY, Section 1 for the BORROWER and to the address below for the CWCB:

Colorado Water Conservation Board  
Attn: Construction Fund Section  
1313 Sherman Street, Room 721  
Denver, CO 80203

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

**PAID IN FULL**

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

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



**9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.**

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

**10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

**11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

SPs Effective  
1/1/09

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT.

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

BORROWER:

Town of Fowler, a Colorado statutory town,  
acting by and through its Water Activity  
Enterprise

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

Signature

NAME: Patrick Christensen, JrTITLE: MayorDATE: 10-14-13

## STATE OF COLORADO

John W. Hickenlooper, Governor  
Department of Natural Resources  
Mike King, Executive Director

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

Name: Kirk Russell, P.E., Chief  
Finance & Administration Section  
Colorado Water Conservation Board

DATE: 12/6/13Pre-Approved Form Contract Reviewer

Attest (Seal)

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

Signature

NAME: Lori BretzTITLE: Town ClerkDATE: 10-14-13

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

Linda Bassi, CWCB Contracts Reviewer

DATE: 12-6-13ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid and there are no loan funds available until the State Controller, or such assistant as he may delegate, has signed it.

STATE CONTROLLER  
Robert Jaros, CPA, MBA, JD

By \_\_\_\_\_

Susan Borup, Controller, Department of Natural Resources

Effective Date 12/11/13**Loan Contract C150359**

Page 12 of 12



# Project Summary –Town of Fowler, Acting By and Through Its Water Activity Enterprise-Contract No. C150359

## SECTION 1 –BORROWER INFORMATION

Name: Town of Fowler, a Colorado statutory town, acting by and through its Water Activity Enterprise  
Address: 314 S. Main Street, Fowler, Colorado 81039  
Contact: Dan Hyatt  
Phone Number: 719-263-4461  
E-mail address: administrator@fowlercolorado.com  
Type of Entity: The BORROWER is a Colorado statutory town pursuant to Title 31, Article 1, Section 203 and Article 4, Section 100 or Section 200, C.R.S. and is located in Otero County, Colorado. The Town of Fowler Water Activity Enterprise is a water activity enterprise maintained by the Town, pursuant to Article 45.1, Title 37, C.R.S. and was formed and is operated as an enterprise within the meaning of COLORADO CONST. Art. X, Section 20.

## Section 2 – Project Description

- A. Description of PROJECT: The BORROWER applied to the CWCB for a loan to be used for the construction of the Augmentation Waterline Project (PROJECT), to construct a diversion box to separate storm water from augmentation water and to pipe water directly to the Arkansas River. The PROJECT will consist of the replacement of a concrete swale into a diversion box. At the diversion box, a section of 36-inch pipe will be installed to route storm water and a 12-inch pipe will be installed to route augmentation water. The PROJECT is located in Otero County at an estimated total cost of \$305,000.
- B. Description of Feasibility Study: The Loan Feasibility Study titled, *Town of Fowler-Augmentation Waterline Project-Loan Feasibility Study*, dated May 2013 was prepared by Michelle Probasco, P.E. with TST, Inc. with assistance from Dan Hyatt, Interim Town Manager and from W.W. Wheeler and Associates, water resource engineers. The study was prepared in accordance with the CWCB guidelines, which is incorporated herein by reference, and based upon the feasibility report, the CWCB determined the PROJECT to be technically and financially feasible.

## SECTION 3 – CWCB'S AUTHORITY

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

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

#### **SECTION 4 - BOARD APPROVAL AND LEGISLATIVE AUTHORIZATION**

At its July 2013 meeting, the CWCB approved a Small Project Loan from the Construction Fund to the BORROWER, in an amount up to \$274,500 for PROJECT costs, with \$2,745 for the loan origination fee of 1% in accordance with CWCB Policy No. 16, resulting in a total loan amount of \$277,245 at an interest rate of 2.25% per annum for a repayment term of 30 years.

#### **SECTION 5 – SCHEDULE OF EXISTING DEBT**

No other debt, backed by the Water Activity Enterprise revenues, exists.

#### **SECTION 6 – ADDITIONAL CONDITIONS & CONTRACT REQUIREMENTS**

NONE

#### **SECTION 7 – CONSTRUCTION FUND PROGRAM PROCEDURES**

- A. The BORROWER shall employ an engineer, registered in the state of Colorado to prepare plans and specifications for the PROJECT.
- B. Engineering contracts, 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 must be approved in writing by the CWCB staff.
- 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 extend an invitation to CWCB to be present at the bid opening.
- E. The BORROWER shall contract for the construction of the work with responsible and capable Construction Firms, which said Construction Firms shall be selected by the BORROWER and found acceptable by the CWCB staff.
- F. The BORROWER must provide a copy of the executed construction contract documents consisting of the contractor's proposal, construction contract, performance bond, payment bond, notice of award, notice to proceed, sample change order, and sample field order, as well as the advertisement for bid and bid bond at bidding. 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.

**PAID IN FULL**



- 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.
- M. PROJECT-related expenses incurred prior to the Effective Date of this CONTRACT in accordance with the legislative approval of this loan.

**SECTION 8 – ELIGIBLE EXPENSES.** The following items are eligible for loan disbursements.

- A. Preparing final designs and specifications for the PROJECT.
- B. Preparing bid and construction contract documents.
- C. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
- D. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.
- E. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.
- F. Actual construction as called for in the design documents and in change orders approved by the CWCB and the BORROWER.
- G. Engineering services for construction management, including design and construction management for CWCB-approved change orders.
- H. Interest during completion of the PROJECT pursuant to Paragraph A.4 of the CONTRACT.
- I. Legal services for reviewing engineering services contracts, reviewing this CONTRACT, reviewing construction contract documents, and for complying with all federal, state, and local regulatory requirements.

#### **SECTION 9 – DISBURSEMENT SCHEDULE**

For PROJECT costs: The BORROWER shall prepare a periodic progress report which contains 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 below, the CWCB will pay to the BORROWER the amount set forth in the report or such portion that 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 10 – TIME FOR PERFORMANCE**

PROJECT Beginning: Upon Effective Date of this CONTRACT (the date this CONTRACT is signed by the State Controller or his designee).

PROJECT Finish: June 30, 2014

**PAID IN FULL**

# PROMISSORY NOTE

Date: October 14, 2013

Borrower: Town of Fowler, a Colorado statutory town, acting by and through its Water Activity Enterprise

Principal Amount: \$277,245

Interest Rate: 2.25% per annum

Term of Repayment: 30 years

Loan CONTRACT No.: C150359

Loan Payment: \$12,808.54

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

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

**PAID IN FULL**

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

1. FOR VALUE RECEIVED, the BORROWER promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the LOAN CONTRACT and this PROMISSORY NOTE.
2. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from 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 721, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within 15 calendar days of the due date.
5. This PROMISSORY NOTE may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
7. This PROMISSORY NOTE is issued pursuant to the LOAN CONTRACT between the CWCB and the BORROWER. The LOAN CONTRACT creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a SECURITY AGREEMENT ("SECURITY INSTRUMENT") of even date and amount and cover certain revenues, real property, water rights and/or accounts of the BORROWER. The LOAN CONTRACT and SECURITY INSTRUMENTS grant additional rights to the CWCB.
8. The CWCB shall give the BORROWER written notice of any alleged default and an opportunity

## Appendix 2 to Loan Contract C150359



to cure within thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this PROMISSORY NOTE.

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

BORROWER: Town of Fowler, a Colorado statutory town, acting by and through its Water Activity Enterprise

(SEAL)

By

Signature

Attest:

NAME: PATRICK K. CHRISTENSEN, JR.

TITLE: MAYOR - Town of Fowler

DATE: 10-14-2013

By

Signature

NAME:

Lori Kretz

TITLE:

Town Clerk

DATE:

10-14-2013

**PAID IN FULL**



**RESOLUTION NO. WAE 001-13**

**A RESOLUTION OF THE TOWN OF FOWLER BOARD OF TRUSTEES ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE AUTHORIZING A LOAN TO CONSTRUCT A RAW WATER LINE FOR AUGMENTATION AND PLEDGING WATER ACTIVITY ENTERPRISE REVENUES**

**WHEREAS**, the Town of Fowler Board of Trustees ("Board") of the Town of Fowler met on October 14, 2013 in open public session after giving proper notice; and

**WHEREAS**, in adopting this Resolution Number WAE 001 concerning a secured loan from the State of Colorado Water Conservation Board ("CWCB), for the purpose of the Augmentation Waterline Project in the amount of \$277,245, more or less, as may be needed by the Town and available from the CWCB including the CWCB loan origination fee of one percent (1.0%) of the loan amount the Trustees are acting by and through the Town of Fowler's Water Activity Enterprise established in Ordinance Number 688-13 previously adopted by the Board; and

**WHEREAS**, at said meeting, the Board charged that this resolution is irrevocable during the term of the loan and, pursuant to the state of Colorado statutes and the Town of Fowler's ordinances and authorized the Town of Fowler Mayor and town clerk as follows.


**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS.**

1. The mayor is hereby authorized to enter into and comply with the terms of a contract with the Colorado Water Conservation Board for a loan in the amount of \$277,245, or such actual amount, more or less, as needed to finance the Augmentation Waterline Project costs, including the CWCB loan origination fee of one percent (1.0%), and
2. to levy and collect water activity enterprise revenues in an amount sufficient to pay the annual amounts due under the LOAN CONTRACT, and to pledge said revenues and the Water Activity Enterprise's right to receive said revenues for repayment of the loan, and
3. to place said pledged revenues in a special account separate and apart from other Water Enterprise Activity's revenues, and
4. to make the annual payments required by the PROMISSORY NOTE and to make annual deposits to a debt service reserve fund, and
5. to pledge the Water Activity Enterprise revenues backed by a rate covenant and annual financial reporting as COLLATERAL for the loan and execute all documents, including a PROMISSORY NOTE and SECURITY AGREEMENT, necessary to convey a security interest in said property to the CWCB, and
6. to execute all documents as require by the LOAN CONTRACT, including, but not limited to, a PROMISSORY NOTE and SECURITY AGREEMENT, and

7. to take such other actions and to execute such other documents as may be necessary to consummate and implement the loan.
8. This resolution shall be irrevocable during the term of the loan

**APPROVED AND ADOPTED** this 14th day of October 2013

By



Patrick K. Christensen, Mayor

**ATTEST:**

  
Lori Kretz, Town Clerk

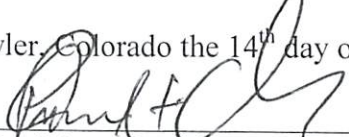
### CERTIFICATION

The undersigned, Mayor and Town Clerk of the Town of Fowler, hereby certify that the foregoing is a true and correct copy of Resolution Number WAE 001 duly adopted at a meeting of the Town of Fowler's Board of Trustees acting by and through its Water Activity Enterprise duly called and held as above recited pursuant to the statutes of the state of Colorado and the ordinances of the Town of Fowler and that said resolution has not been amended or rescinded.

Given under my hand and seal of the Town of Fowler, Colorado the 14<sup>th</sup> day of October 2013.

(SEAL)

By


  
Patrick K. Christensen, Mayor

Date:

Oct 14, 2013

**ATTEST:**

By:

  
Lori Kretz, Town Clerk

Date:

Oct 14, 2013

**PAID IN FULL**



# SECURITY AGREEMENT

(PLEDGE OF REVENUES)

DATE: OCTOBER 14, 2013

DEBTOR: Town of Fowler, a Colorado statutory town, acting by and through its Water Activity Enterprise

SECURED PARTY: COLORADO WATER CONSERVATION BOARD  
1313 SHERMAN STREET, ROOM 721  
DENVER, CO 80203

PROMISSORY NOTE: \$277,245

TERMS OF REPAYMENT: 2.25% PER ANNUM FOR 30 YEARS

LOAN CONTRACT: C150359

COLLATERAL: All Water Activity Enterprise revenues pledged to repay the loan as described in Pledge of Revenues provisions of the LOAN CONTRACT and DEBTOR'S RESOLUTION No. WAE 001-13 dated OCTOBER 14, 2013.

To secure payment of the loan evidenced by the PROMISSORY NOTE payable in accordance with the TERMS OF REPAYMENT, or until all principal, interests, and late charges, if any, are paid in full, the DEBTOR grants to SECURED PARTY a security interest in the above described COLLATERAL.

DEBTOR EXPRESSLY WARRANTS AND COVENANTS:

1. That except for the security interest granted hereby and any other security interests described in Section 5 of the Loan Contract Project Summary, DEBTOR is the owner of the COLLATERAL free from any adverse lien, security interest or encumbrances; and that DEBTOR will defend the COLLATERAL 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 DEBTOR will not violate any law or agreement governing DEBTOR or to which DEBTOR is a party.
3. To not permit or allow any adverse lien, security interest or encumbrance whatsoever upon the COLLATERAL and not to permit the same to be attached or replevined.
4. That by its acceptance of the loan money pursuant to the terms of the CONTRACT and by its representations herein, DEBTOR shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the COLLATERAL pursuant to the terms of this agreement.

UNTIL DEFAULT DEBTOR may have possession of the COLLATERAL, provided that DEBTOR keeps the COLLATERAL in an account separate from other revenues of DEBTOR

**Appendix 4 to Loan Contract C150359**

Page 1 of 3



and does not use the COLLATERAL for any purpose not permitted by the CONTRACT. Upon default, SECURED PARTY shall have the immediate right to the possession of the COLLATERAL.

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

- a. default in the payment or performance of any obligation contained herein or in the PROMISSORY NOTE or Loan CONTRACT;
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against DEBTOR; or
- c. the making or furnishing of any warranty, representation or statement to SECURED PARTY by or on behalf of DEBTOR 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, as amended. SECURED PARTY may require DEBTOR to deliver or make the COLLATERAL 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 DEBTOR written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the DEBTOR 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 DEBTOR. 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 DEBTOR 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 DEBTOR shall bind its successors or assigns.

DEBTOR: Town of Fowler, a Colorado  
statutory town, acting by and through its  
Water Activity Enterprise

(SEAL)

Attest:

By   
Signature

NAME: LORI KRETZ

TITLE: Town Clerk

DATE: 10-14-2013

By 

NAME: PATRICK K. CHRISTENSEN, JR.

TITLE: MAYOR - Town of Fowler

DATE: 10-14-2013

**PAID IN FULL**

ORDINANCE NO. 688-13

AN ORDINANCE ESTABLISHING THE TOWN OF FOWLER WATER  
ENTERPRISE PURSUANT TO C.R.S. §37-34.1-101 ET SEQ.

Ordinance to  
Form Water  
Activity  
Enterprise

WHEREAS, the town of Fowler ("District") is a state of Colorado municipal corporation founded in 1901; and

WHEREAS, District is a local government entity that has authority to conduct water activities created pursuant to title 32, C.R.S.; and

WHEREAS, District is the sole owner and operator of the town of Fowler potable and non-potable water system which provides a secure water supply for domestic use; and

WHEREAS, the District adopted Ordinance No. 522 on or about July 8, 1997 which established a Water Enterprise in conformance with the Colo. Const. Art X, Sec. 20; and

WHEREAS, the District has its own bonding authority under C.R.S. §31-21-102; and

WHEREAS, pursuant to C.R.S. § 37-45.1-103 the District has the legal capacity to establish and maintain a water activity enterprise to pursue or continue water activities, including water acquisition or water project or facility activities, including the construction, operation, repair, and replacement of water facilities.

NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF TRUSTEES OF THE TOWN OF FOWLER, COLORADO, AS FOLLOWS.

- a. The Town of Fowler Water Activity Enterprise is hereby established pursuant to C.R.S. §37-45.1-103(1).
- b. Water Activity Enterprise Purpose. The purpose of the water activity enterprise is to pursue and continue water activities, including, but not limited to water diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water, the provision of wholesale or retail water, the acquisition of water or water rights, and water project or facility activities, including the construction, operation, repair, and replacement of water facilities including, but not limited to, dams, storage reservoirs, compensatory or replacement reservoirs, canals, conduits, pipelines, tunnels, power plants, water treatment facilities and any and all works, facilities, improvements and property necessary or convenient for the purpose of conducting a water activity.
- c. Governing Body. The governing body of the water activity enterprise shall be the governing body of the District. Whenever, the governing body of the District is in session, the governing body of the water activity enterprise shall be in session without the need to give separate notice or to distinguish between the acts of the governing body of the District and acts of the governing body of the water activity enterprise.

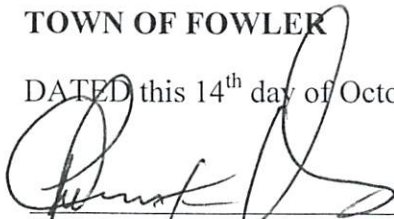


- d. Exercise of Legal Authority. The governing body of the water activity enterprise shall exercise the District's legal authority relating to water activities but shall not levy a tax subject to Colo. Const. Art. X, Sec. 20(4).
- e. State And Local Grant Limitation. The Water Activity Enterprise shall not receive more than ten percent of its annual revenues
- f. Authority to Issue Revenue Bonds. The water activity enterprise, through its governing body, may issue or reissue revenue bonds in accordance with and through the provisions of C.R.S. §37-45.1-104(2)
- g. Power to Contract. The water activity enterprise shall have all the power to contract set forth in C.R.S. §37-45.1-106 including, but not limited to, the power to contract with the Colorado Water Conservation Board or any other governmental source of funding for loans and grants related to water activity enterprise functions and to contract with the Colorado Water Resources and Power Development Authority for loans or other available financial assistance related to water activity enterprise functions.
- h. Conflicts. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed or amended to the extent necessary to conform with this ordinance.
- i. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any Court, such decision shall not affect the validity of the remaining portions of this ordinance.
- j. Emergency Clause. The Board of Trustees of the town of Fowler, Colorado, hereby finds, determines, and declares that this action is necessary for the preservation and protection of the public health, safety, and general welfare and shall become effective immediately upon publication thereof.

**PASSED, ADOPTED** and ordered published the 14th day of October, 2013.

**TOWN OF FOWLER**

DATED this 14<sup>th</sup> day of October, 2013.



By Patrick Christensen, Jr.  
Mayor

**ATTEST:**

  
Lori Kretz  
Town Clerk

**PAID IN FULL**

## CERTIFICATION

The undersigned, Mayor and Town Clerk of the Town of Fowler, hereby certify that the foregoing is a true and correct copy of Ordinance Number 688-13 duly adopted at a meeting of the Town of Fowler's Board of Trustees duly called and held on the 14<sup>th</sup> day of October 2013 pursuant to the statutes of the state of Colorado and the ordinances of the Town of Fowler and that said ordinance has not been amended or rescinded.

Given under my hand and seal of the Town of Fowler, Colorado the 14<sup>th</sup> day of October 2013.

(SEAL)

By: 

Patrick K. Christensen, Mayor

Date: Oct. 14, 2013

ATTEST:

By: 

Lori Kretz, Town Clerk

Date: Oct. 14, 2013

**PAID IN FULL**