



## **CITY OF BOULDER CITY COUNCIL AGENDA ITEM**

**MEETING DATE: October 19, 2023**

### **AGENDA TITLE**

Introduction, first reading, consideration of a motion to order published by title only and adopt by emergency measure Ordinance 8612 an Emergency Ordinance of the City of Boulder, Colorado (acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), approving loans from the Colorado Water Resources and Power Development Authority to finance improvements to the sewer system and the wastewater treatment facility; authorizing the execution of loan agreements and bonds to document the loans; and providing for payment of the bonds from a pledge of net income of the water system and sewer system; and setting for related details.

### **PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Kara Skinner, Chief Financial Officer  
Joe Taddeucci, Utilities Director  
Chris Douville, Utilities Deputy Director of Operations  
Chris Douglass, Utilities Civil Engineering Senior Manager  
Ron Gilbert, Assistant Controller

### **EXECUTIVE SUMMARY**

City Council is asked to consider approval of the following documents: (a) Emergency Ordinance 8612 (**Attachment A**) authorizing the issuance of the Colorado Water Resources and Power Development Authority Loans with the following parameters: the aggregate principal amount of the loans shall not exceed \$19,000,000, the final maturity date shall be no later than December 1, 2048 and the net effective interest rate shall not exceed 5.25%, and delegating approval of the final terms of the loans to the chief financial officer or the city manager at a closing date to be determined per the loan agreements (**Attachments B, C, and D**) and expected to be in mid-December.

The loan proceeds will be used to fund capital improvements to the City's Water System and Wastewater System. The city currently expects the Project will be comprised of the phosphorus treatment upgrades project at the Water Resource Recovery Facility (WRRF).

To meet the bond sale deadline, staff is requesting that City Council adopted Proposed Ordinance 8612 as an emergency measure on first reading.

## STAFF RECOMMENDATION

### Suggested Motion Language

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce, order published by title only, and adopt by emergency measure Ordinance 8612 an Emergency Ordinance of the City of Boulder, Colorado (acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), approving loans from the Colorado Water Resources and Power Development Authority to finance improvements to the sewer system and the wastewater treatment facility; authorizing the execution of loan agreements and bonds to document the loans; and providing for payment of the bonds from a pledge of net income of the water system and sewer system; and setting for related details.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** - The Colorado Water Resources and Power Development Authority loans provide funding for the WRRF Project at lower interest rates than the city can obtain through bond sales and include \$1.5 million in up front principal forgiveness.
- **Environmental** - The project at the WRRF helps improve water quality and collectively supports the environmental health of Boulder Creek. The project modifies the biological treatment process and includes the installation of high efficiency blowers to aerate the wastewater. Both improvements will reduce the energy required for treatment and enable the WRRF to proactively meet water quality targets.
- **Social** - Achieving quality and reliable wastewater infrastructure and treatment is necessary to the health, safety, and well being of the community. Wastewater treatment is an essential function of city government.

## OTHER IMPACTS

- **Fiscal** - The issuance of the loans will address major capital needs of the utility that are summarized in the Background and Analysis section of this Agenda Memorandum. The annual debt service payments will be made from revenues collected in the Wastewater Fund and payable from revenues derived from the operation of the Water System and Wastewater System.
- **Staff time** - Administration of the loans is part of normal staff time that is included in the appropriate department budgets.

## RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE

None.

## BOARD AND COMMISSION FEEDBACK

The loan related projects included in this Memorandum along with the corresponding loan agreements are part of the Utilities CIP plan which was recommended by the [Water Resources Advisory Board \(WRAB\) in July 2023 \(as well as prior years\)](#).

## PUBLIC FEEDBACK

None

## BACKGROUND AND ANALYSIS

The Colorado Water Resources and Power Development Authority (CWRPDA) Board approved a loan application from the Utilities Department at its August 23, 2023, meeting. The terms for the loans are better than the city could obtain from the 2024 bond sales. The loans include approximately \$19 million for the Phosphorus Upgrades Project at the WRRF.

To address upcoming regulatory phosphorus removal requirements, this project will both enable phosphorus removal and enhance the WRRF's nitrogen removal capabilities. The project will begin construction in 2023 with completion planned for 2025. This project will be funded, in part, through three Water Pollution Control Revolving Fund loans, including attractive interest rates for green project elements and forgivable principal through the Bipartisan Infrastructure Law. The remainder of the project will be funded from 2024 bond proceeds. Council is requested to consider the proposed ordinance in **Attachment A** as an emergency to meet the deadlines for the bond sale in one of the CWRPDA loans.

The 2024 bond sales will be reduced to account for the cost saving from these CWRPDA loans. The approximately \$19 million in the CWRPDA loans will be compromised of three separate loan agreements. The draft agreements are included in **Attachments B, C, and D** and are summarized below:

**Attachment B.** The Green Project Reserve loan is for \$3 million and a 20-year term. The interest rate is a fixed 0.50% for the life of the loan. This loan was awarded because the project will reduce the power consumption of the aeration system by modifying the biological treatment process and installing high efficiency equipment.

**Attachment C.** The Bipartisan Infrastructure Law loan is for \$2.87 million and a 20-year term. The interest rate is a fixed 3.00% for the life of the loan. This loan includes \$1.5 million in up-front principal forgiveness. The maximum total principal to be repaid is \$1.37 million for this loan.

**Attachment D.** The Leveraged loan is for an estimated amount of \$13.13 million and a 20-year term plus construction. The interest rate will be a fixed rate that will not exceed a net effective interest rate of 5.25% as set forth in the Emergency Ordinance.

**To complete these loans, the City Council is requested to approve:**

The attached parameter loan Emergency Ordinance 8612 (**Attachment A**) which authorizes the Colorado Water Resources and Power Development Authority Loans in an amount not to exceed \$19,000,000, with a final maturity date not later than December 1, 2048 and a net effective interest rate not to exceed 5.25%, and delegates approval of the final terms of the Colorado Water Resources and Power Development Authority Loans to the chief financial officer or the city manager on a closing date expected to be in mid-December 2023, and approves the form of the loans included as **Attachments B, C, and D**.

**NEXT STEPS**

- Once the Emergency Ordinance is adopted, the city will work with its bond counsel to finalize the loan agreements.
- The city along with its bond counsel will provide parity certificates, additional bonds test certificates, opinions on the loan agreements and any other necessary documents to execute the three loan agreements.
- The city will also work with the CWRPDA to provide any other necessary documents to execute these loans.
- The Utilities Department intends to bring forward a bond ordinance in the amount not to exceed \$83 million for the Water Utility and the Wastewater Utility in December for a planned bond sale in January.

**ATTACHMENTS**

A – Proposed Emergency Ordinance 8612

B – Colorado Water Resources and Power Development Authority Loan Agreement - Green Project Reserve Agreement

C – Colorado Water Resources and Power Development Authority Loan Agreement - Bipartisan Infrastructure Law Agreement

D – Colorado Water Resources and Power Development Authority Loan Agreement - Leveraged Loan Agreement

## **ORDINANCE 8612**

**AN EMERGENCY ORDINANCE OF THE CITY OF BOULDER, COLORADO (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND ITS WASTEWATER UTILITY ENTERPRISE), APPROVING LOANS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE IMPROVEMENTS TO THE CITY'S WATER RESOURCES RECOVERY FACILITY; AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS AND BONDS TO DOCUMENT THE LOANS; AND PROVIDING FOR PAYMENT OF THE BONDS FROM A PLEDGE OF NET INCOME OF THE WATER SYSTEM AND SEWER SYSTEM.**

WHEREAS, the City of Boulder, Colorado, is a home rule municipality and political subdivision of the State of Colorado, duly organized and operating under the constitution and laws of the State of Colorado and the Charter (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, the City is the owner and operator of a municipal water system (the "Water System") and a municipal sanitary sewer system (the "Sewer System") (which Water System and Sewer System are herein jointly designated as the "Facilities"); and

WHEREAS, Ordinance 5601, introduced, read, passed and adopted on the 9th day of November 1993 (the "Enterprise Ordinance"), added sections 11-1-55 to -58 to the Boulder Revised Code, 1981, providing for the establishment of the City's water system as a "water activity enterprise" within the meaning of Part 1 of Article 45.1 of Title 37, Colorado Revised Statutes, as amended, and naming the City's water system the "Water Utility Enterprise"; and

WHEREAS, the Enterprise Ordinance also added sections 11-2-36 to -39 to the Boulder Revised Code, 1981, providing for the establishment of the City's sanitary sewer system as a "wastewater activity enterprise" within the meaning of Part 1 of Article 45.1 of Title 37, Colorado Revised Statutes, as amended, and naming the City's sanitary sewer system the "Wastewater Utility Enterprise"; and

WHEREAS, pursuant to the Charter and the Enterprise Ordinance, the City Council is the governing body of the Water Utility Enterprise and the Wastewater Utility Enterprise and the City Council need not announce or acknowledge that actions taken by the City Council are taken by the governing body of the Water Utility Enterprise and/or the Wastewater Utility Enterprise; and

WHEREAS, Article X, Section 20 of the Colorado Constitution ("TABOR") requires that bonded debt (other than certain refunding bonds) not be issued without prior voter approval unless the issuer is an "Enterprise" as defined in TABOR; and

WHEREAS, pursuant to the Charter and the Enterprise Ordinance, the Water Utility Enterprise and the Wastewater Utility Enterprise may issue revenue bonds payable from

revenues derived from the operation of such enterprise without voter approval so long as such enterprise qualifies as an “Enterprise” within the meaning of TABOR during the City’s fiscal year of the issuance of such revenue bonds; and

WHEREAS, the Water Utility Enterprise and the Wastewater Utility Enterprise are each an “Enterprise” within the meaning of TABOR; and

WHEREAS, to finance the estimated costs of the phosphorus upgrades project at the City’s Water Resources Recovery Facility (as further defined in the Loan Agreements, the “Project”), the City Council has determined to enter into Loan Agreements with the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, pursuant to which CWRPDA is to make three loans to the City in an aggregate principal amount not to exceed \$19,000,000; and

WHEREAS, the City’s repayment obligation under the Loan Agreements will be evidenced by governmental agency bonds to be issued by the City to the CWRPDA, which Bonds shall constitute special revenue obligations of the City which are to be paid from the income and revenues derived from the operation and use of the Facilities less reasonable and necessary current expenses of the City of operating, maintaining and repairing the Facilities and, after consideration, the City Council has determined that the execution of the Loan Agreements and the issuance of the Bonds to the CWRPDA is to the best advantage of the City; and

WHEREAS, as obligations of the Water Utility Enterprise and the Wastewater Utility Enterprise, voter approval in advance is not required under TABOR for the execution of the Loan Agreements or the issuance of the Bonds; and

WHEREAS, upon their issuance, the Bonds will be secured by a lien on the Net Income of the Facilities that is on a parity with that of the City’s Outstanding Parity Obligations, and the Bonds are being issued as “Parity Bonds” as defined in the Prior Ordinances; and

WHEREAS, for purposes of financing additional improvements to the Facilities, the City expects to issue its City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2024 (the “2024 Bonds”) in the original principal amount not to exceed \$83,000,000 in January, 2024 as Additional Parity Obligations; and

WHEREAS, the form of the Loan Agreements and the Bonds have been presented to the City and made available upon request to the City Council; now, therefore,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

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

*“Additional Parity Obligations”* means one or more series of additional bonds, notes, interim securities or other obligations issued by the City having a lien on the Net Income which is on a parity with the lien of the Bonds and the Outstanding Parity Obligations.

*“Bonds”* means the respective governmental agency bonds to be issued by the City to the CWRPDA pursuant to the Loan Agreements, the forms of which are set forth in Exhibit D to the respective Loan Agreements.

*“City”* means the City of Boulder, Colorado.

*“Charter”* means the home rule charter of the City.

*“City Council”* means the City Council of the City, acting as the governing body of the Enterprise.

*“C.R.S.”* means the Colorado Revised Statutes, as amended and supplemented.

*“CWRPDA”* means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State.

*“Enabling Law”* means the Charter, the Enterprise Ordinance and the Supplemental Public Securities Act, as may be amended.

*“Enterprise”* means, collectively, the Water Utility Enterprise and the Wastewater Utility Enterprise which have been established pursuant to the Enterprise Ordinance and the provisions of Title 11, Chapters 1 and 2 of the of the Boulder Revised Code, 1981.

*“Enterprise Ordinance”* means Ordinance No. 5601, introduced, read, passed and adopted on the 9th day of November 1993, and codified in Sections 11-1-55 to -58 and Sections 11-2-36 to -39 of the Boulder Revised Code, 1981.

*“Financing Documents”* means the Loan Agreements and the Bonds.

*“Facilities”* means, collectively, the Sewer System and the Water System of the City.

*“Generally Accepted Accounting Principles”* means accounting principles, methods and terminology followed and construed for enterprises which are employed in business comparable to the business of the City, as amended from time to time.

*“Gross Income”* means all income and revenues derived directly or indirectly by the City from the operation and use of the Facilities, as may be designated, or any part thereof, whether resulting from improvements, extensions, enlargements, repairs or betterments thereto, or otherwise, including interest earnings on moneys in any fund or account attributable to the financial operations of the Facilities and includes all revenues earned by the City therefrom, including without limiting the generality of the foregoing, all rentals, fees, rates and other charges for the use thereof, or for any service rendered by the City in the operation thereof, but excluding any moneys received as grants, appropriations or gifts from the United States of America, the State, or other sources, the use of which is limited by the grantor or donor to the construction of capital improvements therefor, except to the extent

any such moneys shall be received as payments for the use of the Facilities, or any part thereof.

*“Loan Agreements”* means the respective Loan Agreements between the City and the CWRPDA pursuant to which the CWRPDA is to make one leveraged loan and two direct loans from its Water Pollution Control Revolving Fund to the City.

*“Minimum Bond Reserve”* means an amount equal to not less than the average annual debt service on the Bonds; provided, however that upon satisfaction of the conditions set forth in Section 6 of this Ordinance, the requirement of establishing and maintaining the Reserve Fund and the Minimum Bond Reserve, if any, for the Bonds shall be at the election of the City, in its sole discretion.

*“Net Income”* means the Gross Income derived from the operation and use of the Sewer System and the Water System as may be designated, after the deduction of the Operation and Maintenance Expenses.

*“Operation and Maintenance Expenses”* means all reasonable and necessary current expenses of the City, paid or accrued, for operating, maintaining and repairing the Water System and the Sewer System as may be designated; and the term may include at the City’s option (except as limited by law), without limiting the generality of the foregoing, (a) engineering, auditing, reporting, legal and other overhead expenses of the City directly related to the administration, operation and maintenance thereof; (b) insurance and fidelity bond premiums; (c) the reasonable charges of the Paying Agent and any other depository bank appertaining thereto; (d) payments to pension, retirement, health and hospitalization funds; (e) any taxes, assessments or other charges which may be lawfully imposed on the City or its income or operations of any properties under its control and appertaining thereto; (f) ordinary and current rentals of equipment or other property; (g) refunds of any revenues lawfully due to others; (h) expenses in connection with the issuance of bonds or other securities evidencing any loan to the City and payable from Gross Income; (i) the expenses and compensation of any trustee or other fiduciary; (j) contractual services and professional services required by this Instrument; (k) salaries, labor and the cost of materials and supplies used for current operation; and (l) all other third party administrative, general and commercial expenses, but:

(i) excluding any allowance for depreciation or any amounts for capital replacements;

(ii) excluding the costs of improvements, extensions, enlargements and betterments (or any combination thereof) that qualify as capital items in accordance with Generally Accepted Accounting Principles, or any reserves therefor;

(iii) excluding any reserves for operation, maintenance or repair of the Facilities;



(iv) excluding any allowance for the redemption of any bond or other security evidencing a loan, or the payment of any interest thereon, or any reserve therefor; and

(v) excluding liabilities incurred by the City as the result of its negligence in the operation of the Facilities or other ground of legal liability not based on contract, or any reserve therefor.

*“Outstanding Parity Obligations”* means, collectively, the bonds designated as (a) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2012 (the “2012 Bonds”) issued in the original principal amount of \$24,325,000 and currently outstanding in the aggregate principal amount of \$8,740,000; (b) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2015 (the “2015 Bonds”) issued in the original principal amount of \$10,075,000 and currently outstanding in the aggregate principal amount of \$7,145,000; (c) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2016 (the “2016 Bonds”) issued in the original principal amount of \$34,145,000 and currently outstanding in the aggregate principal amount of \$24,340,000; (d) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2018 (the “2018 Bonds”) issued in the original principal amount of \$38,260,000 and currently outstanding in the aggregate principal amount of \$32,760,000; (e) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Refunding Note, Series 2020 (the “2020 Note”) issued in the original principal amount of \$5,100,000 and currently outstanding in the aggregate principal amount of \$4,150,000; and (f) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2022 (the “2022 Bonds”) issued in the original principal amount of \$44,140,000 and currently outstanding in the aggregate principal amount of \$41,950,000 (the 2012 Bonds, the 2015 Bonds, the 2016 Bonds, the 2018 Bonds, the 2020 Note and the 2022 Bonds shall be collectively referred to herein as the “Outstanding Parity Obligations”).

*"Prime Rate"* means the prevailing commercial interest rate established pursuant to the terms of the Loan Agreements.

*“Prior Ordinances”* means, collectively, Ordinance 7875, Ordinance 8074, Ordinance 8117, Ordinance 8255, Ordinance 8408 and Ordinance 8518, adopted by the City Council authorizing the execution and delivery of the Outstanding Prior Obligations.

*“Project”* means modifications and improvements to the City’s existing wastewater treatment facility to improve nutrient removal, replacing aeration blowers, construction of a hydrocyclone facility, converting the existing pre-dewatering storage tank into a redundant post-aerobic tank, and replacing the internal mechanisms of the primary clarifier as set forth in the Loan Agreements and as the Project may be later modified by determination of the City Council.

*“Project Costs”* means the City’s costs properly attributable to the Project, or any parts thereof, and permitted by the provisions of the Enabling Law.

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

*“Reserve Fund”* means the debt service reserve fund for the Bonds established in Section 6 hereof.

*“Reserve Policy”* means one or more municipal bond debt service reserve insurance policies issued by the Reserve Policy Provider guaranteeing certain payments from the Reserve Fund with respect to the Bonds, which shall be credited to the Reserve Fund.

*“Reserve Policy Provider”* means Build America Mutual Assurance Company, and its successors and assigns, or any other provider of a Reserve Policy approved by the Chief Financial Officer of the City.

*“Sewer Income Fund”* means the “City of Boulder Sewer Income Fund,” created and designated as the “City of Boulder Gross Income Sewer Fund” in the Prior Ordinances, and directed to be continued and redesignated hereby.

*“Sewer System”* means the City’s municipally-owned sanitary sewer system, consisting of all properties, real, personal, mixed, or otherwise, now owned or hereafter acquired by the City through purchase, construction, or otherwise, or reasonably necessary for the operation of the sanitary sewer system regardless of ownership of the capital asset, and used in connection with the sanitary sewer system of the City, and in any way appertaining thereto, whether situated within or without the corporate boundaries of the City, or both within and without the corporate boundaries of the City.

*“State”* means the State of Colorado.

*“Supplemental Public Securities Act”* shall mean Part 2, Article 57, Title 11 of the Revised Statutes of the State of Colorado, as amended.

*“Water Income Fund”* means the “City of Boulder Water Income Fund,” created and designated as the “City of Boulder Gross Income Water Fund” in the Prior Ordinances, and directed to be continued and redesignated hereby.

*“Water System”* means the City’s municipally-owned water system, consisting of all properties, real personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, construction, or otherwise, or reasonably necessary for the operation of the water system regardless of ownership of the capital asset, and used in connection with the water system of the City, and in any way appertaining thereto, whether situated within or without the City limits, or both within and without the City limits.

**Section 2. Approval of Loan Agreements and Authorization of Bonds.** Pursuant to and in accordance with the Colorado Constitution and the Enabling Law, the Bonds shall be issued by the City through its Water Utility Enterprise and its Wastewater Utility Enterprise. The forms of the Loan Agreements setting forth the terms, conditions and details of the Bonds and the procedures relating thereto, are incorporated herein by reference and are hereby approved; all City officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the City under the Financing Documents. The City shall enter into the Loan Agreements and deliver the Bonds in substantially the forms presented to the City at or prior to this meeting of the City Council with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The accomplishment of the Project and the payment of Project Costs are hereby authorized, approved, and ordered. It is hereby determined that the date of final maturity of the Bonds does not exceed the estimated life of the Project.

**Section 3. Details for Bonds.** The Bonds shall be in substantially the form set forth in Exhibit D to the respective Loan Agreements with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the City executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). The Bonds shall be in an aggregate principal amount not to exceed \$19,000,000, shall bear interest at a net effective rate not to exceed 5.25% per annum, shall be payable semi-annually, and the final maturity date shall be no later than December 1, 2048, all as more particularly set forth in the Loan Agreements. The Bonds may provide for a late charge (penalty interest rate) in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on late payments; provided however, such late charge rate shall not exceed the maximum rate permitted by law. For a period not to exceed one year from the effective date of this Ordinance, the City Council hereby delegates to the Chief Financial Officer of the City, or in the absence of the Chief Financial Officer, the City Manager, the right to determine, within the parameters established above, the final principal of, interest rate for and loan term for, the respective Bonds.

**Section 4. Pledge for Payment of the Bonds.**

(a) ***Pledge of Net Income.*** Net Income is hereby pledged to the payment of the Bonds and the amounts due under the respective Loan Agreements. The Bonds shall constitute a first lien upon the Net Income, but not necessarily an exclusive first lien. Pursuant to and in accordance with Section 11-57-208, C.R.S., Net Income, as received by or otherwise credited to the City, shall immediately be subject to the lien of the pledge stated above without any physical delivery, filing, or further act. The lien of each such pledge, and the obligation to perform the contractual provisions made in this Ordinance, the Prior Ordinances and the Financing Documents, shall have priority over any or all other obligations and liabilities of the City except as may be otherwise provided in this Ordinance, the Prior Ordinances or in the Financing Documents. The lien of the above pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

(b) ***Establishment of Accounts.*** There is hereby reaffirmed the Water Income Fund and the Sewer Income Fund which shall continue to be maintained by the City to carry out the terms and provisions of this Ordinance, the Prior Ordinances and the Loan Agreements.

(c) ***Flow of Funds.*** All Gross Income derived from the operation of the Sewer System shall continue to be credited to the Sewer Income Fund and all Gross Income derived from the operation of the Water System shall continue to be credited to the Water Income Fund. The City shall pay from the Water Income Fund all Operation and Maintenance Expenses of the Water System as they become due and payable. The City shall pay from the Sewer Income Fund all Operation and Maintenance Expenses of the Sewer System as they become due and payable. After such payment or the allocation of Gross Income to such payment, the City shall apply the Net Income in the following order of priority:

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

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

THIRD, to the credit of any reserve accounts established for the payment of the Bonds, the Outstanding Parity Obligations and any Additional Parity Obligations, the amounts required in the ordinances or related documents authorizing and controlling the establishment of such reserve accounts; and

FOURTH, to the credit of or deposit in the accounts or subaccounts established for the payment of principal of and interest on other obligations the payment of which is subordinate to the payment of the Bonds, the Outstanding Parity Obligations and any Additional Parity Obligations, the Pro Rata Portion equal to the principal of or interest on such obligations coming due on the next succeeding payment date for the respective obligations; and

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

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

**Section 5. Various Findings, Determinations, Declarations and Covenants.** The City Council, having been fully informed of and having considered all the pertinent facts and circumstances, hereby affirms the covenants set forth in Section 2.02 of the respective Loan Agreements and further finds, determines, declares and covenants that:

(a) ***Additional Obligations.*** No bonds, notes, interim securities or other obligations shall be issued payable from the Net Income and having a lien thereon which is superior to, on a parity with, or subordinate to the lien of the Bonds unless the requirements set forth in EXHIBIT F of the Loan Agreements, under caption titled “Additional Bonds”, respectively, have been met, as well as any additional requirements set forth in the Prior Ordinances.

(b) ***Maintenance of Rates and Coverage.*** The City hereby covenants that it will establish, maintain, enforce and collect rates, fees and charges for services furnished by or the use of the Facilities as required in provision set forth in EXHIBIT A and EXHIBIT F of the respective Loan Agreements under the caption titled “Rate Covenant”. In the event that the Gross Income at any time is not sufficient to make the payments required by said provision, the City covenants to promptly increase such rates, fees and charges to an extent which will ensure compliance with said covenant.

(c) ***Enterprise Status.*** The City Council hereby determines that the Enterprise is an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution. The City has and will continue to maintain the Facilities as part of its “enterprise” within the meaning Article X, Section 20 of the Colorado Constitution and the Enabling Law; provided, however, after the current calendar year the City may disqualify the “enterprise” in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made in the Financing Documents. In the event that the “enterprise” is disqualified and the enforceability of the covenants made by the City in the Financing Documents are materially, adversely affected, the City covenants to (i) immediately take all actions necessary to requalify the Enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Financing Documents.

(d) ***Obligations Currently Secured by Net Income.*** As of the date of issuance of the Bonds, the Outstanding Parity Obligations will be the only other City obligations secured by Net Income of the Facilities.

(e) ***Findings of the City Council.*** The City Council having been fully informed of and having considered all the pertinent facts and circumstances, hereby finds, determines, declares and covenants with the CWRPDA that:

(i) the Enterprise has been duly established and is operating during the current calendar year as an “enterprise” within the meaning of TABOR;

(ii) the City Council elects to apply all of the provisions of the Supplemental Public Securities Act to the execution of the Loan Agreements and to the issuance of the Bonds;

(iii) the execution of the respective Loan Agreements and the issuance and delivery of the respective Bonds, and all procedures undertaken incident thereto, are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Colorado Constitution and the Enabling Law, and all conditions and limitations of the Enabling Law and other applicable law relating to the execution of the respective Loan Agreements and the issuance and delivery of the respective Bonds have been satisfied; and

(iv) it is in the best interests of the City and its residents that the Bonds be authorized, issued and delivered at the time, in the manner and for the purposes provided in this Ordinance.

**Section 6. Reserve Fund.** To comply with the requirements of Section 7.03 of the Prior Ordinances with respect to the issuance of the Bonds as additional Parity Bonds thereunder, the City shall maintain a debt service reserve fund (the “Reserve Fund”) for each of the Bonds funded in an amount equal to the Minimum Bond Reserve. The Reserve Fund may be funded by any legally available moneys of the City or by a Reserve Policy. Notwithstanding the foregoing provisions of this Section 6 or anything else to the contrary provided in this Ordinance, the holder of the Bonds shall be deemed to have agreed that at such time as (i) each series of Outstanding Parity Obligations issued by the City prior to the issuance of the 2022 Bonds (as specified in the definition of Outstanding Parity Obligations) is no longer outstanding (through maturity, refunding, redemption, defeasance or otherwise) or (ii) in accordance with Section 11.01 of the Prior Ordinances, the holders of more than 50% of the remaining Outstanding Parity Obligations issued by the City prior to the issuance of the 2022 Bonds shall have consented to the following clauses (A) and (B) as proposed amendments to the Prior Ordinances, then: (A) the requirement of establishing or maintaining a debt service reserve fund for the Bonds and the amount of the Minimum Bond Reserve, if any, for the Bonds shall be at the election of the City, in its sole discretion, and (B) the requirement to establish and maintain a reserve fund, if any, for additional Parity Obligations and the minimum amount of any such reserve fund, if established, shall be at the election of the City, in its sole discretion.

**Section 7. Authorization to Execute Documents.** In accordance with Exhibit B of the Loan Agreements, the Mayor, the Mayor Pro-Tem, the Chief Financial Officer, the City Manager, and any other duly authorized officer of the City, shall, and they are hereby authorized and directed to, take all actions necessary or desirable to effectuate the provisions of this Ordinance, including, but not limited to, the execution of the Bonds, the Loan Agreements and such certificates and other documents as may be reasonably required by the CWRPDA or as are necessary and appropriate to effectuate the transactions described in this Ordinance. The execution by the Mayor, the Mayor Pro-Tem, the Chief Financial Officer, the City Manager or any other duly authorized officer of the City of any document authorized herein shall be conclusive proof of the approval by the City of the terms thereof.

**Section 8. Amendment of Ordinance.** This Ordinance may be amended only with the prior written consent of the CWRPDA.

**Section 9. Limitation of Actions.** Pursuant Section 11-57-212, C.R.S., no action or proceeding concerning the issuance of the Bonds shall be maintained against the City unless commenced within 30 days after the date of passage of this Ordinance.

**Section 10. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 11. Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

**Section 12. Ordinance Irrepealable.** After any Bond has been issued, this Ordinance shall constitute a contract between the CWRPDA and the City, and shall be and remain irrepealable until the respective Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 13. Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

**Section 14. Repealer.** All orders, bylaws, resolutions and ordinances of the City, or parts thereof, inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

**Section 15. Recordation and Publication.** This Ordinance, immediately on its final passage, shall be recorded in the City's Ordinance Record kept for that purpose, authenticated by the Mayor and the Clerk, and shall be published by title only in The Daily Camera, a daily newspaper printed, published and of general circulation in the City, in accordance with the provisions of the Charter of the City.

**Section 16. Emergency Declaration; Effective Date.** Due to fluctuations in municipal bond prices and interest rates, and due to currently favorable interest rates, and due to the need to finally act upon and accept the financing terms for the Bonds in an expeditious manner, it is hereby declared that, in the opinion of the Council, an emergency exists, this Ordinance is necessary for the preservation of the public peace, health and property of the City and its inhabitants and shall be in full force and effect upon its passage.

INTRODUCED, READ AND ADOPTED AS AN EMERGENCY ORDINANCE  
BY A TWO THIRDS VOTE OF THE COUNCIL MEMBERS PRESENT AND ORDERED  
PUBLISHED BY TITLE THIS 19th DAY OF OCTOBER, 2023.

[CITY SEAL]

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk



**WATER POLLUTION CONTROL REVOLVING FUND**

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**LOAN AGREEMENT**

**BETWEEN**

**COLORADO WATER RESOURCES AND POWER  
DEVELOPMENT AUTHORITY**

**AND**

**CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS  
\_\_\_\_\_ ENTERPRISE**

**DATED**  
\_\_\_\_\_

---

Direct Loan - Revenue Pledge – Open Funded

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2023, by and between **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), a body corporate and political subdivision of the State of Colorado, and the **CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE** (the "Governmental Agency").

### WITNESSETH THAT:

**WHEREAS**, the United States of America, pursuant to the federal Water Quality Act of 1987, requires increased state and local participation in the financing of the costs of wastewater treatment projects and said federal Water Quality Act requires each state to establish a water pollution control revolving fund to be administered by an instrumentality of the state.

**WHEREAS**, the Authority was created to initiate, acquire, construct, maintain, repair, and operate or cause to be operated water management projects which include wastewater treatment facilities;

**WHEREAS**, Section 37-95-107.6, Colorado Revised Statutes has created a Water Pollution Control Revolving Fund to be administered by the Authority that will enable the State of Colorado to comply with the provisions of said federal Water Quality Act of 1987;

**WHEREAS**, the Authority and the United States Environmental Protection Agency have entered into an Operating Agreement and 1989 Capitalization Grant Agreement for the Water Pollution Control Revolving Fund;

**WHEREAS**, pursuant to the Federal Capitalization Agreement, as defined below, the Authority has reserved certain funds to be loaned at a reduced interest rate for projects certified upon final construction by the Colorado Department of Public Health and the Environment, Water Quality Control Division ("WQCD") to be Green Projects, as defined below;

**WHEREAS**, the Governmental Agency has made timely application to the Authority for a loan to finance all or a portion of the cost of a wastewater treatment facility (the "Project", as further defined below);

**WHEREAS**, the Governmental Agency intends to seek certification by the WQCD of the Project, when finally constructed, as a Green Project;

**WHEREAS**, the Colorado Legislature has approved a project eligibility list that includes the Project proposed by the Governmental Agency to be financed hereunder;

**WHEREAS**, the Authority has approved the Governmental Agency's application for a loan from funds available in the Water Pollution Control Revolving Fund in an amount not to exceed

the amount of the Loan Commitment set forth in Paragraph (4) of Exhibit B hereto to finance all or a portion of the cost of the Project of the Governmental Agency;

**WHEREAS**, the Governmental Agency will issue its bond to the Authority to evidence said loan and its obligations hereunder to the Authority;

**NOW THEREFORE**, for and in consideration of the award of the loan by the Authority, the Governmental Agency agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

## **ARTICLE I**

### **DEFINITIONS**

**SECTION 1.01. Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

**"Act"** means the "Colorado Water Resources and Power Development Authority Act," being Section 37-95-101 et seq. of the Colorado Revised Statutes, as the same may from time to time be amended and supplemented.

**"Administrative Fee"** means the semi-annual fee for administration of the Loan as set forth on Exhibit C hereto, payable as a part of the Loan Repayment under paragraph 3.03.

**"Authority"** means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State of Colorado duly created and validly existing under and by virtue of the Act.

**"Authorized Officer"** means, in the case of the Governmental Agency, the person whose name is set forth in Paragraph (7) of Exhibit B hereto or such other person or persons authorized pursuant to a resolution or ordinance of the governing body of the Governmental Agency to act as an Authorized Officer of the Governmental Agency to perform any act or execute any document relating to the Loan, the Governmental Agency Bond, or this Loan Agreement, whose name is furnished in writing to the Authority.

**"Commencement Date"** means the date of commencement of the term of this Loan Agreement, as set forth in Paragraph (1) of Exhibit B attached hereto and made a part hereof.

**"Cost"** means those costs that are eligible to be funded are reasonable, necessary and allocable to the Project and are associated with the approved scope of work, the plans and specifications, and change orders and are permitted by generally accepted accounting principles to be costs of the Project.

**"Event of Default"** means any occurrence or event specified in Section 5.01 hereof.

**"Federal Capitalization Agreement"** means the instrument or agreement established or entered into by the United States of America Environmental Protection Agency and the Authority to make capitalization grant payments pursuant to the federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.)

**"Green Project"** means a Project that is certified as green (as defined in the Federal Capitalization Agreement) by the Colorado Department of Public Health and Environment, Water Quality Control Division ("WQCD"), upon final approval of the Project plans and specifications, and remains certified by the WQCD as green after final approval of the constructed Project WQCD.

**"Governmental Agency"** means the entity that is a party to and is described in the first paragraph of this Loan Agreement, and its successors and assigns.

**"Governmental Agency Bond"** means the bond executed and delivered by the Governmental Agency to the Authority to evidence the Loan and its obligations to the Authority pursuant to the Loan, the form of which is attached hereto as Exhibit D and made a part hereof.

**"Loan"** means the loan made by the Authority to the Governmental Agency to finance or refinance a portion of the Cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the principal amount of the Loan at any time shall be the amount of the Loan Commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part of this Loan Agreement.

**"Loan Agreement"** means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified, or amended from time to time in accordance with the terms hereof.

**"Loan Closing"** means the date upon which the Loan herein shall be closed as set forth in Paragraph 3.08.

**"Loan Repayments"** means the payments payable by the Governmental Agency pursuant to Section 3.03 of this Loan Agreement, including payments payable under the Governmental Agency Bond.

**"Loan Term"** means the term of this Loan Agreement provided in Paragraph (5) of Exhibit B attached hereto and made a part hereof. If the Loan is prepaid in its entirety pursuant to Section 3.06, the Loan Term shall automatically terminate.

**"Pledged Property"** means the source of repayment described in Paragraph (3) of Exhibit A to this Loan Agreement attached hereto and made a part hereof.

**"Prime Rate"** means the prevailing commercial interest rate announced by the Wall Street Journal from time to time, or, if the Wall Street Journal ceases announcing a prime rate, shall be the prevailing commercial interest rate announced by Citibank, N.A. as its prime lending rate.

**"Project"** means the project of the Governmental Agency described in Paragraph (1) of Exhibit A attached hereto and made a part hereof, all or a portion of the Cost of which is financed or refinanced by the Authority through the making of the Loan under this Loan Agreement.

**"Project Loan Account"** means the Project Loan Account established within the Water Pollution Control Revolving Fund.

**"System"** means the wastewater and water treatment system of the Governmental Agency, described in Paragraph (2) of Exhibit A, including the Project, described in Paragraph (1) of Exhibit A attached hereto and made a part hereof, for which the Governmental Agency is making the borrowing under this Loan Agreement, as such System may be modified, replaced, or expanded from time to time.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF GOVERNMENTAL AGENCY

**SECTION 2.01. Representations of Governmental Agency.** The Governmental Agency represents for the benefit of the Authority:

(a) Organization and Authority.

(i) The Governmental Agency is a governmental agency as defined in the Act and as described in the first paragraph of this Loan Agreement.

(ii) The Governmental Agency has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate, and maintain the System, other than licenses and permits relating to the construction and acquisition of the Project, that the Governmental Agency expects to receive in the ordinary course of business; to carry on its activities relating thereto; and to undertake and complete the Project. The Governmental Agency has full legal right and authority to execute and deliver this Loan Agreement to execute, issue, and deliver the Governmental Agency Bond; and to carry out and consummate all transactions contemplated by this Loan Agreement and the Governmental Agency Bond. The Project is on the water pollution control project eligibility list approved by the General Assembly of the State of Colorado pursuant to the Act and is a project that the Governmental Agency may undertake pursuant to Colorado law, and for which the Governmental Agency is authorized by law to borrow money.

(iii) The proceedings of the Governmental Agency's governing members and voters, if a referendum is necessary, approving this Loan Agreement and the Governmental Agency Bond and authorizing their execution, issuance, and delivery on behalf of the

Governmental Agency, and authorizing the Governmental Agency to undertake and complete the Project, or to cause the same to be undertaken and completed, have been duly and lawfully adopted and approved in accordance with the laws of Colorado, and such proceedings were duly approved and published, if necessary, in accordance with applicable Colorado law, at a meeting or meetings that were duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout.

(iv) This Loan Agreement has been, and the Governmental Agency Bond when delivered at the Loan Closing will have been, duly authorized, executed, and delivered by an Authorized Officer of the Governmental Agency; and, assuming that the Authority has all the requisite power and authority to authorize, execute, and deliver, and has duly authorized, executed, and delivered, this Loan Agreement, this Loan Agreement constitutes, and the Governmental Agency Bond when delivered to the Authority will constitute, the legal, valid, and binding obligations of the Governmental Agency in accordance with their respective terms; and the information contained under "Description of the Loan" on Exhibit B attached hereto and made a part hereof is true and accurate in all material respects.

(b) Full Disclosure.

There is no fact that the Governmental Agency has not disclosed to the Authority in writing on the Governmental Agency's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(c) Pending Litigation.

Except as disclosed to the Authority in writing, there are no proceedings pending, or, to the knowledge of the Governmental Agency threatened, against or affecting the Governmental Agency, in any court, or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(d) Compliance with Existing Laws and Agreements.

The authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions provided for in this Loan Agreement and in the Governmental Agency Bond; the compliance by the Governmental Agency with the

provisions of this Loan Agreement and the Governmental Agency Bond; and the undertaking and completion of the Project; will not result in any breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon, any property or assets of the Governmental Agency pursuant to any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement, or other instrument (other than the lien and charge of this Loan Agreement and the Governmental Agency Bond) to which the Governmental Agency is a party or by which the Governmental Agency, the System, or any of the property or assets of the Governmental Agency may be bound, and such action will not result in any violation of the provisions of the charter or other document pursuant to which the Governmental Agency was established, or of any laws, ordinances, resolutions, governmental rules, regulations, or court orders to which the Governmental Agency, the System, or the properties or operations of the Governmental Agency are subject.

(e) No Defaults.

No event has occurred and no condition exists that, upon authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Governmental Agency is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party, or by which it, the System, or its property, may be bound, which violation would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(f) Governmental Consent.

The Governmental Agency has obtained all permits and approvals required to date by any governmental body or officer for the making, observance, and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond, or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Governmental Agency has complied with all applicable provisions of law requiring any notification, declaration, filing, or registration with any governmental body or officer in connection with the making, observance, and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond, or with the undertaking or completion of the Project and the financing or refinancing thereof. Other than those relating to the construction and acquisition of the Project, which the Governmental Agency expects to receive in the ordinary course of business, no consent, approval, or authorization of, or filing, registration, or qualification with, any governmental body or officer that has not been obtained is required on the part of the Governmental Agency as a condition to the authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law.

The Governmental Agency:

(i) is in compliance with all laws, ordinances, governmental rules, and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Governmental Agency to conduct its activities or to undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System; and

(ii) has obtained all licenses, permits, franchises, or other governmental authorizations presently necessary for the ownership of its property, or for the conduct of its activities that, if not obtained, would materially adversely affect the ability of the Governmental Agency to conduct its activities or to undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System.

(h) Use of Proceeds.

The Governmental Agency will apply the proceeds of the Loan from the Authority as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Cost; and (ii) where applicable, to reimburse the Governmental Agency for a portion of the Cost, which portion was paid or incurred in anticipation of reimbursement by the Authority.

**SECTION 2.02. Particular Covenants of the Governmental Agency.**

(a) Pledge of Source of Repayment.

The Governmental Agency irrevocably pledges and grants a lien upon the source of repayment described in Paragraph (3) of Exhibit A for the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement and the Governmental Agency Bond according to their respective terms.

(b) Performance Under Loan Agreement; System Maintenance; Compliance with Covenants.

The Governmental Agency covenants and agrees to maintain the System in good repair and operating condition; to cooperate with the Authority in the observance and performance of the respective duties, covenants, obligations and agreements of the Governmental Agency and the Authority under this Loan Agreement; and, to comply with the covenants described in the Exhibits to this Loan Agreement.

(c) Completion of Project and Provision of Moneys Therefor.

The Governmental Agency covenants and agrees to exercise its best efforts in accordance with prudent wastewater utility practice to complete the Project and to provide from the Pledged Property or other sources available to it all moneys, in excess of the total amount of loan proceeds it receives under the Loan, required to complete the Project.



(d) Disposition of the System.

During the Loan Term, the Governmental Agency shall not sell, lease, abandon, or otherwise dispose of, all or substantially all, or any substantial portion, of the System or any other system that provides revenues to provide for the payment of this Loan Agreement or the Governmental Agency Bond, except on ninety (90) days' prior written notice to the Authority and, in any event, shall not so sell, lease, abandon, or otherwise dispose of the same unless the following conditions are met: (i) the Governmental Agency shall assign this Loan Agreement in accordance with Section 4.02 hereof and its rights and interests hereunder to the purchaser or lessee of the System, and such purchaser or lessee shall expressly assume all duties, covenants, obligations, and agreements of the Governmental Agency under this Loan Agreement in writing; and (ii) the Authority shall by appropriate action determine that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations, and agreements under the Act, the Federal Clean Water Act, the Safe Drinking Water Act, or any agreement between the Authority or the State of Colorado relating to any capitalization grant received by the Authority or the State of Colorado under the Federal Clean Water Act, the Safe Drinking Water Act, and in its sole discretion, approve such sale, lease, abandonment, or other disposition.

(e) Inspections; Information.

During the Loan Term, the Governmental Agency shall permit the Authority to examine, visit, and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of, any accounts, books, and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments, and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith. In addition, the Governmental Agency shall provide the Authority with copies of any official statements or other forms of offering prospectus relating to any other bonds, notes, or other indebtedness of the Governmental Agency secured from the Pledged Property and issued after the date of this Loan Agreement. At the discretion of the Authority, the Governmental Agency may be required to provide unaudited quarterly financial reports to the Authority.

(f) Cost of Project.

The Governmental Agency certifies that the Estimated Cost of the Project, as listed in Paragraph (3) of Exhibit B hereto and made a part hereof, is a reasonable and accurate estimation, and that upon direction of the Authority it shall supply the Authority with a certificate from its engineer stating that such cost is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project, and other money that would, absent the Loan, have been used to pay the Estimated Cost of the Project.

(g) Reimbursement for Ineligible Costs.

The Governmental Agency shall promptly reimburse the Authority for any portion of the Loan that is determined not to be a Cost of the Project and that would not be eligible for funding from draws under the Water Pollution Control Revolving Fund. Such reimbursement

shall be promptly repaid to the Authority upon written request of the Authority with interest on the amount to be reimbursed at the rate set forth for the Loan.

(h) Advertising.

The Governmental Agency agrees not to advertise the Project for bids until plans and specifications for the Project, if such plans and specifications require approval, have been approved by the State Department of Public Health and Environment.

(i) Commencement of Construction.

Within twelve (12) months after the Loan Closing, the Governmental Agency shall initiate construction of the Project.

(j) Interest in Project Site.

As a condition of the Loan, the Governmental Agency will demonstrate to the satisfaction of the Authority before advertising for bids for construction that the Governmental Agency has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and rights-of-way, as the Authority finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

(k) No Lobbying.

No portion of the Loan shall be used for lobbying or propaganda as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74.

(l) Operation and Maintenance of System.

The Governmental Agency covenants and agrees that it shall, in accordance with prudent water and wastewater utility practice: (i) at all times operate the properties of its System and any business in connection therewith in an efficient manner; (ii) maintain its System in good repair, working order and operating condition; (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments, and improvements with respect to its System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Governmental Agency to expend any funds that are derived from sources other than the operation of its System or other receipts of such System that are not pledged under subsection (a) of this Section 2.02, and provided further that nothing herein shall be construed as preventing the Governmental Agency from doing so.

(m) Records; Accounts.

During the Loan Term, the Governmental Agency shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Records"). Such System Records, including project accounts, shall

be maintained in accordance with generally accepted accounting principles, generally accepted government accounting standards, including standards related to the reporting of infrastructure assets and System Records and General Records shall be made available for inspection by the Authority at any reasonable time.

(n) Audits.

(i) If the Governmental Agency's System Records or General Records are audited annually by an independent accountant, then it must provide a copy of such annual audit(s) including all written comments and recommendations of the accountant preparing the audit to the Authority within 210 days of the close of the fiscal year audited, and the Governmental Agency shall cause its independent auditor to file with the Authority a report to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement, which report may be a part of the annual audit or a separate document.

(ii) If the Governmental Agency's annual revenues are greater than \$100,000 but less than or equal to \$750,000, then, within 210 days of the close of the fiscal year, the Governmental Agency must provide the Authority with a completed CPA Review that includes findings to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement.

(iii) If the Governmental Agency's annual revenues are less than or equal to \$100,000, then, within 210 days of the close of the fiscal year, the Governmental Agency must provide the Authority with a completed CPA Compilation that includes findings to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement.

(o) Insurance.

During the Loan Term, the Governmental Agency shall maintain or cause to be maintained in force, insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage, or destruction of its System, at least to the extent that similar insurance is usually carried by utilities constructing, operating, and maintaining utility system facilities of the nature of the Governmental Agency's System, including liability coverage. The Governmental Agency shall pay all insurance premiums for coverage required hereby from revenues derived from the operation of the System. Nothing herein shall be deemed to preclude the Governmental Agency from asserting against any party, other than the Authority, a defense that may be available to the Governmental Agency, including, without limitation, a defense of governmental immunity.

(p) Notice of Material Adverse Change.

During the Loan Term, (i) the Governmental Agency shall promptly notify the Authority of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Governmental Agency relating to its System, or its ability to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement; (ii) the Governmental Agency shall promptly notify the Authority of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Governmental Agency relating to its ability to make all Loan Repayments from the Pledged Property, or its ability to otherwise observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(q) Hiring Requirements.

The Governmental Agency agrees to comply with the requirements found at Title 8, Article 17, Colorado Revised Statutes.

(r) Continuing Representations.

The representations of the Governmental Agency contained herein shall be true at the time of the execution of this Loan Agreement and the Governmental Agency covenants not to take any action that would cause them not to be true at all times during the Loan Term.

(s) Archeological Artifacts.

In the event that archeological artifacts or historical resources are unearthed during construction excavation, the Governmental Agency shall stop or cause to be stopped, construction activities and will notify the State Historic Preservation Office and the Authority of such unearthing.

(t) Federal Clean Water Act.

The Governmental Agency covenants to meet the requirements of or otherwise be treated under Section 204(d)(2) of the Clean Water Act, which requires that, one year after the date of completion of construction and initiation of operation the owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit (40 CFR 35.2218(c), (d) and (e)(2): Project Performance).

(u) Additional Covenants and Requirements.

Additional covenants and requirements are included on Exhibit F attached hereto and made a part hereof. The Governmental Agency agrees to observe and comply with each such additional covenant and requirement included on Exhibit F.

### ARTICLE III

**LOAN TO GOVERNMENTAL AGENCY; AMOUNTS PAYABLE;  
GENERAL AGREEMENTS**

**SECTION 3.01. The Loan.** The Authority hereby agrees to loan and disburse to the Governmental Agency in accordance with Section 3.02 hereof, and the Governmental Agency agrees to borrow and accept from the Authority, the Loan in the principal amount equal to the Loan Commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part hereof as such Loan Commitment may be revised to reflect a reduction in the Cost of the Project prior to the initial Loan Repayment; provided, however, that the Authority shall be under no obligation to make the Loan if (i) the Governmental Agency does not deliver its Governmental Agency Bond to the Authority on the Loan Closing, or (ii) an Event of Default has occurred and is continuing under this Loan Agreement. The Governmental Agency shall use the proceeds of the Loan strictly in accordance with Section 2.01(h) hereof.

**SECTION 3.02. Disbursement of the Loan.** The Authority has created in the Water Pollution Control Revolving Fund a Project Loan Account for this Project from which the Costs of the Project shall be paid. Amounts shall be transferred into the Project Loan Account and disbursed to the Governmental Agency upon receipt of a requisition executed by an Authorized Officer, and approved by the Authority and the State Department of Public Health and Environment, in the form set forth in Exhibit G; provided that the Disbursement of the Loan may be withheld if the Governmental Agency is not complying with any of the covenants and conditions in the Loan Agreement.

**SECTION 3.03. Amounts Payable.**

(a) The Governmental Agency shall repay the principal of, interest on, and Administrative Fee on the Loan, by making Loan Repayments **semi-annually on May 1st and November 1st** in accordance with the schedule set forth on Exhibit C attached hereto and made a part hereof, as the same may be amended or modified, commencing on the Loan Repayment Commencement Date set forth in Paragraph (8) of Exhibit B.

The Governmental Agency shall execute the Governmental Agency Bond to evidence its obligations to make Loan Repayments and the obligations of the Governmental Agency under the Governmental Agency Bond shall be deemed to be amounts payable under this Section 3.03. Each Loan Repayment shall be deemed to be a credit against the corresponding obligation of the Governmental Agency under this Section 3.03 and shall fulfill the Governmental Agency's obligation to pay such amount hereunder and under the Governmental Agency Bond. Each payment made pursuant to this Section 3.03 shall be applied first to interest, then due and payable, as set forth in Exhibit C, then to the Administrative Fee, then due and payable, as set forth in Exhibit C, and then to principal as set forth in Exhibit C.

(b) In addition to the payments required by subsection (a) of this Section 3.03, the Governmental Agency shall pay a late charge for any payment that is received by the Authority later than the tenth (10th) day following its due date, in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per

annum on such late payment from its due date to the date it is actually paid; provided, however, that the interest rate payable on the Loan including such late charge shall not be in excess of the maximum rate permitted by law as of the date hereof.

(c) Loan Repayments pursuant to this Section 3.03 shall be made by electronic means (either by bank wire transfer or by Automated Clearing House “ACH” transfer).

(d) The Project, as finally constructed, may be eligible for Green Project certification by the WQCD and for a reduced interest rate applicable to Green Projects under the provisions of the Federal Capitalization Agreement and as provided by resolution of the Authority. If the Project is not certified by the WQCD as a Green Project upon final construction, Exhibit C will be revised by the Authority on or before the scheduled initial payment to incorporate a 2.25% interest rate.

**SECTION 3.04. Unconditional Obligations.** The Loan Repayments and all other payments required hereunder are payable solely from the Pledged Property. The obligation of the Governmental Agency to make the Loan Repayments and all other payments required hereunder shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments due under the Loan Agreement remain unpaid regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Colorado or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement or any rights of set-off, recoupment, abatement or counterclaim that the Governmental Agency might otherwise have against the Authority or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 3.05. Disclaimer of Warranties and Indemnification.** The Governmental Agency acknowledges and agrees that (i) the Authority makes no warranty or representation, either express or implied as to the value, design, condition, merchantability, or fitness for particular purpose, or fitness for any use, of the Project or any portions thereof, or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or its agents be liable or responsible for any direct, incidental, indirect, special, or consequential damages in connection with or arising out of this Loan Agreement, or the Project, or the existence, furnishing, functioning, or use of the Project, or any item or products or services provided for in this Loan Agreement; and (iii) to the extent authorized by law, the Governmental Agency shall indemnify, save, and hold harmless the Authority against any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees incurred as a result of any act or omission by the Governmental Agency, or its employees, agents, or subcontractors pursuant to the terms of this Loan Agreement, provided, however, that the provisions of this clause (iii) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the Colorado Governmental Immunity Act (Section 24-10-101, et seq. C.R.S.), or under the laws of the United States or the State of Colorado.

**SECTION 3.06. Option to Prepay Loan Repayments.** The Governmental Agency may prepay the Loan Repayments, in whole or in part without penalty upon prior written notice (unless otherwise waived by the Authority) of not less than thirty (30) days. Prepayments shall be applied first to accrued interest and then to principal on the Loan. The Authority will amend Exhibit C to reflect any prepayment of the principal amount of the Loan.

**SECTION 3.07. Source of Payment of Governmental Agency's Obligations.** The Authority and the Governmental Agency agree that the amounts payable by the Governmental Agency under this Loan Agreement, including, without limitation, the amounts payable by the Governmental Agency pursuant to Section 3.03, Section 3.05, Section 3.06, and Section 5.04 of this Loan Agreement are payable solely from the Pledged Property, and are not payable from any other source whatsoever; provided, however, that the Governmental Agency at its option, may elect to make payment from any source available to it.

**SECTION 3.08. Loan Closing.** The Loan shall be closed and become effective as follows:

(a) The Governmental Agency will deliver each of the following items to the Authority:

- (i) executed counterparts of this Loan Agreement;
- (ii) the executed Governmental Agency Bond in the form attached hereto as Exhibit D.
- (iii) copies of the resolutions or ordinances of the governing body of the Governmental Agency authorizing the execution and delivery of this Loan Agreement and the Governmental Agency Bond, certified by an Authorized Officer of the Governmental Agency;
- (iv) an opinion of the Governmental Agency's counsel substantially in the form set forth in Exhibit E-1 hereto (such opinion or portions of such opinion may be given by one or more counsel); provided, however, that the Authority may in its discretion permit variances in such opinion from the form or substance of such Exhibit E-1 if such variances are not to the material detriment of the interests of the Authority;
- (v) an opinion of the Governmental Agency's Bond Counsel substantially in the form set forth in Exhibit E-2 hereto. Such opinion must be rendered by Bond Counsel listed in the Directory of Bond Counsel published by the Bond Buyer (the "Red Book"); and
- (vi) such other certificates, documents, opinions and information as the Authority may require.

(b) Upon receipt of the foregoing documents, the Authority shall obligate the amount of the Loan Commitment set forth in Paragraph (4) of Exhibit B, and make the amount of the Loan available for the Project in accordance with the terms of this Loan Agreement.

## ARTICLE IV

## ASSIGNMENT

**SECTION 4.01. Assignment and Transfer by Authority.** The Governmental Agency expressly acknowledges that other than the right, title, and interest of the Authority under Section 3.05, Section 5.04, and Section 5.07, all right, title, and interest of the Authority in, to, and under this Loan Agreement and the Governmental Agency Bond, including, without limitation, the right to receive payments required to be made by the Governmental Agency hereunder, and to compel or otherwise enforce observance and performance by the Governmental Agency of its other duties, covenants, obligations, and agreements hereunder, may be transferred, assigned, and reassigned in whole or in part by the Authority at its sole discretion to one or more assignees or subassignees at any time subsequent to their execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Governmental Agency.

The Authority shall retain the right to compel or otherwise enforce observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under Section 3.05 and Section 5.04.

**SECTION 4.02. Assignment by Governmental Agency.** Neither this Loan Agreement nor the Governmental Agency Bond may be assigned or delegated by the Governmental Agency for any reason, unless the following conditions shall be satisfied: (i) the Authority shall have approved said assignment in writing; (ii) the assignee shall be a governmental agency as defined by the Act, and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Governmental Agency's duties, covenants, agreements, and obligations under the Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations, or agreements of the Governmental Agency under the Loan Agreement; and (iv) the Authority shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority with, or condition of any grant received by the Authority from, the United States of America relating to the Federal Capitalization Agreement or any capitalization grant received by the Authority or the State under the Federal Clean Water Act.

No assignment or delegation shall relieve the Governmental Agency from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Governmental Agency shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

## ARTICLE V

### DEFAULTS AND REMEDIES

**SECTION 5.01. Event of Default.** If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) failure by the Governmental Agency to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due, which failure shall continue for a period of thirty (30) days;



(b) failure by the Governmental Agency to make, or cause to be made, any required payments of interest and principal, redemption premium, if any, and interest on any bonds, notes, or other obligations of the Governmental Agency for borrowed money (other than the Loan and the Governmental Agency Bond), after giving effect to the applicable grace period, the payments of which are secured by the Pledged Property;

(c) failure by the Governmental Agency to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement other than as referred to in Paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Governmental Agency; provided, however, that if the failure stated in such notice is correctable, but cannot be corrected within the applicable period, the Authority may consent to an extension of such time if corrective action is instituted by the Governmental Agency within the applicable period and diligently pursued until the Event of Default is corrected;

(d) any representation made by or on behalf of the Governmental Agency contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect; or

(e) (i) a petition is filed by or against the Governmental Agency under any federal or state bankruptcy or insolvency law, or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Governmental Agency such petition shall be dismissed within thirty (30) days after such filing, and such dismissal shall be final and not subject to appeal; or (ii) the Governmental Agency shall become insolvent, or bankrupt or make an assignment for the benefit of its creditors; or (iii) custodian (including, without limitation, a receiver, liquidator, or trustee of the Governmental Agency or any of its property) shall be appointed by court order, or take possession of the Governmental Agency, or its property or assets, if such order remains in effect, or such possession continues, for more than thirty (30) days.

**SECTION 5.02. Notice of Default.** The Governmental Agency shall give the Authority prompt telephonic notice of the occurrence of any Event of Default referred to in Section 5.01 at such time as any senior administrative or financial officer of the Governmental Agency becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 5.02 shall be confirmed by the Governmental Agency in writing as soon as practicable.

**SECTION 5.03. Remedies on Default.** Whenever an Event of Default referred to in Section 5.01 hereof shall have occurred and be continuing, the Authority shall have the right to withhold disbursement of Loan funds remaining, and take such other action at law or in equity as may appear necessary to enforce the performance and observance of any duty, covenant, obligation, or agreement of the Governmental Agency hereunder, including, without limitation, appointment ex parte of a receiver of the System.

**SECTION 5.04. Attorney's Fees and Other Expenses.** In the Event of Default, the Governmental Agency shall on demand pay to the Authority the reasonable fees and expenses of

attorneys, and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of Loan Repayments or any other sum due hereunder, or in the enforcement of the performance or observation of any other duties, covenants, obligations, or agreements of the Governmental Agency.

**SECTION 5.05. Application of Moneys.** Any moneys collected by the Authority pursuant to Section 5.03 hereof shall be applied (a) first, to pay any attorney's fees, or other fees and expenses owed by the Governmental Agency pursuant to Section 5.04 hereof, (b) second, to pay interest due and payable on the Loan, and (c) third, to pay principal due and payable on the Loan, and (d) fourth, to pay any other amounts due and payable under this Loan Agreement.

**SECTION 5.06. No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement, or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy, or power accruing upon any Event of Default shall impair any such right, remedy, or power, or shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

**SECTION 5.07. Retention of Authority's Rights.** Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Governmental Agency at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Governmental Agency to the Authority pursuant to Section 5.04, Section 3.03, and Section 3.05 hereof.

**SECTION 5.08. Default by the Authority.** In the event of any default by the Authority under any covenant, agreement, or obligation of this Loan Agreement, the Governmental Agency's remedy for such default shall be limited to injunction, special action, action for specific performance, or any other available equitable remedy, designed to enforce the performance or observance of any duty, covenant, obligation, or agreement of the Authority hereunder, as may be necessary or appropriate. The Authority shall on demand pay to the Governmental Agency the reasonable fees and expenses of attorneys, and other reasonable expenses, in the enforcement of such performance or observation.

## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.01. Notices.** All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when hand-delivered or mailed by registered or certified mail, postage prepaid, to the Governmental Agency at the address specified on Exhibit B attached hereto and made a part hereof, and to the Authority, at the following address:

Colorado Water Resources and Power  
Development Authority  
1580 N. Logan Street, Suite 820  
Denver, Colorado 80203-1939  
Attention: Executive Director

Such address may be changed by notice in writing.

**SECTION 6.02. Binding Effect.** This Loan Agreement shall inure to the benefit of, and shall be binding upon, the Authority and the Governmental Agency, and their respective successors and assigns.

**SECTION 6.03. Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect, any other provision hereof.

**SECTION 6.04. Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented, or modified without the prior written consent of the Authority and the Governmental Agency.

**SECTION 6.05. Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**SECTION 6.06. Applicable Law and Venue.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, including the Act. Venue for any action seeking to interpret or enforce the provisions of this Loan Agreement shall be in the Denver District Court.

**SECTION 6.07. Consents and Approvals.** Whenever the written consent or approval of the Authority shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Authority unless otherwise provided by law, or by rules, regulations or resolutions of the Authority.

**SECTION 6.08. Captions.** The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit, or describe, the scope or intent of any provisions or sections of this Loan Agreement.

**SECTION 6.09. Further Assurances.** The Governmental Agency shall, at the request of the Authority, authorize, execute, acknowledge, and deliver, such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments, as may be necessary or desirable for better assuring, conveying, granting, assigning, and confirming, the rights and

agreements, granted or intended to be granted, by this Loan Agreement and the Governmental Agency Bond.

**SECTION 6.10. Recitals.** This Loan Agreement is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Loan Agreement is authorized by the Governmental Agency pursuant to Title 37, Article 45.1 C.R.S., Title 32, Article 1, C.R.S. and Title 11, Article 57, Part 2, C.R.S and shall so recite in the Governmental Agency Bond. Such recitals shall conclusively impart full compliance with all provisions and limitations of such laws and shall be conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond, and the Governmental Agency Bond delivered by the Governmental Agency to the Authority containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

**IN WITNESS WHEREOF**, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, sealed and delivered, as of the Commencement Date set forth on Exhibit B hereto.

**COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY**

**(SEAL)**

By: \_\_\_\_\_  
Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Assistant Secretary

**CITY OF BOULDER, COLORADO, ACTING  
BY AND THROUGH ITS \_\_\_\_\_  
ENTERPRISE**

**(SEAL)**

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

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**IN WITNESS WHEREOF**, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, sealed and delivered, as of the Commencement Date set forth on Exhibit B hereto.

**COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY**

**(SEAL)**

By: \_\_\_\_\_  
Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Assistant Secretary

**CITY OF BOULDER, COLORADO, ACTING  
BY AND THROUGH ITS \_\_\_\_\_  
ENTERPRISE**

**(SEAL)**

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

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

## EXHIBIT A

### DESCRIPTION OF THE PROJECT, SYSTEM, AND PLEDGED PROPERTY

(1) **Description of the Project**

This project includes modifications to the existing treatment facility to improve nutrient removal, replacing aeration blowers, construction of a hydrocyclone facility, converting the existing pre-dewatering storage tank into a redundant post-aerobic tank, and replacing the internal mechanisms of the primary clarifier.

(2) **Description of the System**

"System" shall mean, (i) any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture or other real or personal property, relating to the collection, treatment, storage and distribution of water or the collection, treatment, transmission and disposal of wastewater that is owned, operated or controlled by the Governmental Agency, including, without limitation, the Project (ii) any renewal, replacement, addition, modification or improvement to (i) above, and (iii) all real or personal property and rights therein and appurtenances thereto necessary or useful or convenient for the effectiveness of the purposes of the Governmental Agency in the transmission, treatment, storage and distribution of water or the collection, treatment, transmission and disposal of wastewater.

(3) **Pledged Property**

The Pledged Property shall consist of Net Revenue, as defined below:

"*Net Revenue*" means the Gross Revenue after deducting the Operation and Maintenance Expenses.

"*Gross Revenue*" means all income and revenues directly or indirectly derived by the Governmental Agency from the operation and use of the System, or any part thereof, including without limitation, any rates, fees (including without limitation plant investment fees and availability fees), and charges for the services furnished by, or the use of, the System, and all income attributable to any past or future dispositions of property or rights, or related contracts, settlements, or judgments held or obtained in connection with the System or its operations, and including investment income accruing from such moneys; provided however, that there shall be excluded from Gross Revenue: ad valorem property taxes; any moneys borrowed and used for providing Capital Improvements; any money and securities, and investment income therefrom, in any refunding fund, escrow account, or similar account, pledged to the payment of any bonds or other obligations; and any moneys received as grants or appropriations from the United States, the State of Colorado or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered

thereby, the availability of any such service, or the disposal of any commodities therefrom.

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

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the Governmental Agency, paid or accrued, for operating, maintaining and repairing the System, including without limitation legal and overhead expenses of the Governmental Agency directly related to the administration of the System, insurance premiums, audits, professional services, salaries and administrative expenses, labor and the cost of materials and supplies for current operation; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, payments in lieu of taxes or franchise fees, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations, and expenses that are otherwise paid from ad valorem property taxes.



**EXHIBIT B**

**DESCRIPTION OF THE LOAN**

- (1) Commencement Date:
- (2) Name and Address of Governmental Agency:  
  
City of Boulder, Colorado, Acting By and Through Its \_\_\_\_\_ Enterprise  
1777 Broadway  
Boulder, CO 80301
- (3) Estimated Cost of the Project: \$25,728,000.00
- (4) Maximum Principal Amount of Loan Commitment: \$3,000,000.00
- (5) Loan Term: 20 years
- (6) Interest Rate: 0.50% annually, if the finally constructed Project is certified by the WQCD as a Green Project; 3.00% if the finally constructed Project is not certified by the WQCD as a Green Project.
- (7) Authorized Officers:  
(please list at least two people who will be authorized to take action on this loan, including requisitioning funds)
- (8) Loan Repayment Commencement Date: May 1, 2024
- (9) Execution Date:

**EXHIBIT C**

**REPAYMENT SCHEDULE**

**EXHIBIT C**  
**WATER POLLUTION CONTROL REVOLVING FUND**  
**LOAN REPAYMENT SCHEDULE**  
**CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS ENTERPRISE**

Loan Number: #W23----

On or before the first of each date, commencing on May 1, 2024, the  
Governmental Agency shall pay the amount set forth below:

<b>LOAN DATE:</b>	<b>TBD</b>
<b>LOAN AMOUNT:</b>	<b>\$3,000,000.00</b>
<b>INTEREST RATE:</b>	<b>0.500%</b>
<b>TERM (YEARS):</b>	<b>20</b>

<b>PAYMENT DATES</b>	<b>PAYMENT</b>	<b>PRINCIPAL</b>	<b>REMAINING PRINCIPAL</b>	<b>CALCULATED INTEREST</b>
			\$3,000,000.00	
5/1/2024	\$78,906.12	\$71,406.12	\$2,928,593.88	\$7,500.00
11/1/2024	\$78,906.12	\$71,584.64	\$2,857,009.24	\$7,321.48
5/1/2025	\$78,906.12	\$71,763.60	\$2,785,245.64	\$7,142.52
11/1/2025	\$78,906.12	\$71,943.01	\$2,713,302.63	\$6,963.11
5/1/2026	\$78,906.12	\$72,122.86	\$2,641,179.77	\$6,783.26
11/1/2026	\$78,906.12	\$72,303.17	\$2,568,876.60	\$6,602.95
5/1/2027	\$78,906.12	\$72,483.93	\$2,496,392.67	\$6,422.19
11/1/2027	\$78,906.12	\$72,665.14	\$2,423,727.53	\$6,240.98
5/1/2028	\$78,906.12	\$72,846.80	\$2,350,880.73	\$6,059.32
11/1/2028	\$78,906.12	\$73,028.92	\$2,277,851.81	\$5,877.20
5/1/2029	\$78,906.12	\$73,211.49	\$2,204,640.32	\$5,694.63
11/1/2029	\$78,906.12	\$73,394.52	\$2,131,245.80	\$5,511.60
5/1/2030	\$78,906.12	\$73,578.01	\$2,057,667.79	\$5,328.11
11/1/2030	\$78,906.12	\$73,761.95	\$1,983,905.84	\$5,144.17
5/1/2031	\$78,906.12	\$73,946.36	\$1,909,959.48	\$4,959.76
11/1/2031	\$78,906.12	\$74,131.22	\$1,835,828.26	\$4,774.90
5/1/2032	\$78,906.12	\$74,316.55	\$1,761,511.71	\$4,589.57
11/1/2032	\$78,906.12	\$74,502.34	\$1,687,009.37	\$4,403.78
5/1/2033	\$78,906.12	\$74,688.60	\$1,612,320.77	\$4,217.52
11/1/2033	\$78,906.12	\$74,875.32	\$1,537,445.45	\$4,030.80
5/1/2034	\$78,906.12	\$75,062.51	\$1,462,382.94	\$3,843.61
11/1/2034	\$78,906.12	\$75,250.16	\$1,387,132.78	\$3,655.96
5/1/2035	\$78,906.12	\$75,438.29	\$1,311,694.49	\$3,467.83
11/1/2035	\$78,906.12	\$75,626.88	\$1,236,067.61	\$3,279.24
5/1/2036	\$78,906.12	\$75,815.95	\$1,160,251.66	\$3,090.17
11/1/2036	\$78,906.12	\$76,005.49	\$1,084,246.17	\$2,900.63
5/1/2037	\$78,906.12	\$76,195.50	\$1,008,050.67	\$2,710.62
11/1/2037	\$78,906.12	\$76,385.99	\$931,664.68	\$2,520.13
5/1/2038	\$78,906.12	\$76,576.96	\$855,087.72	\$2,329.16
11/1/2038	\$78,906.12	\$76,768.40	\$778,319.32	\$2,137.72
5/1/2039	\$78,906.12	\$76,960.32	\$701,359.00	\$1,945.80
11/1/2039	\$78,906.12	\$77,152.72	\$624,206.28	\$1,753.40
5/1/2040	\$78,906.12	\$77,345.60	\$546,860.68	\$1,560.52
11/1/2040	\$78,906.12	\$77,538.97	\$469,321.71	\$1,367.15
5/1/2041	\$78,906.12	\$77,732.82	\$391,588.89	\$1,173.30
11/1/2041	\$78,906.12	\$77,927.15	\$313,661.74	\$978.97
5/1/2042	\$78,906.12	\$78,121.97	\$235,539.77	\$784.15
11/1/2042	\$78,906.12	\$78,317.27	\$157,222.50	\$588.85
5/1/2043	\$78,906.12	\$78,513.06	\$78,709.44	\$393.06
11/1/2043	\$78,906.21	\$78,709.44	\$0.00	\$196.77
<b>Total</b>	<b>\$3,156,244.89</b>	<b>\$3,000,000.00</b>		<b>\$156,244.89</b>

## EXHIBIT D

### GOVERNMENTAL AGENCY BOND

FOR VALUE RECEIVED, the undersigned **CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE** (the "Governmental Agency"), evidences the issuance of a loan from the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority") in the principal amount of Three Million and 00/100 Dollars (\$3,000,000.00), or such lesser amount as shall be loaned to the Governmental Agency pursuant to the Loan Agreement dated as of \_\_\_\_\_, 2023, by and between the Authority and the Governmental Agency (the "Loan Agreement"), at the times and in the amounts determined as provided in the Loan Agreement, at **one half** percent interest (if the final, constructed Project is certified as a Green Project by the WQCD), or at **three** percent interest (if the final, constructed Project is not certified as a Green Project by the WQCD), subject to late charges on late payments as provided in Section 3.03 (b) of the Loan Agreement, and payable on the dates and in the amounts determined as provided in the Loan Agreement.

This Governmental Agency Bond is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the "Loan") and to evidence the obligations of the Governmental Agency set forth in Section 3.03 thereof. This Governmental Agency Bond is subject to assignment or endorsement in accordance with the terms of the Loan Agreement. All of the definitions, terms, conditions, and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Governmental Agency Bond.

Pursuant to the Loan Agreement, disbursements to the Governmental Agency shall be made in accordance with written instructions upon the receipt by the Authority of requisitions from the Governmental Agency executed and delivered in accordance with the requirements set forth in Section 3.02 of the Loan Agreement.

This Governmental Agency Bond is entitled to the benefits, and is subject to the conditions, of the Loan Agreement. The obligations of the Governmental Agency to make the payments required hereunder ("Loan Repayments") shall be absolute and unconditional without any defense or right of set-off, counterclaim, or recoupment by reason of any default by the Authority under the Loan Agreement, or under any other agreement between the Governmental Agency and the Authority, or out of any indebtedness or liability at any time owing to the Governmental Agency by the Authority, or for any other reason.

This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts, provided in Section 3.06 of the Loan Agreement. The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is payable solely from the Pledged Property, except for reserves created in connection with the Loan.

This Governmental Agency Bond does not constitute a debt or an indebtedness of the Governmental Agency within the meaning of any constitutional or statutory limitation or provision, and shall not be considered or held to be a general obligation of the Governmental Agency. The payment of this Governmental Agency Bond and the interest thereon is not secured by an encumbrance, mortgage or other pledge of property except for such property and moneys pledged for the payment of the Governmental Agency Bond.

For the payment of this Governmental Agency Bond and the interest thereon, the Governmental Agency shall enforce the Rate Covenant set forth in Paragraph (1) of Exhibit F to the Loan Agreement, shall promptly collect all revenues of the System, and shall take all necessary action to collect any revenues that are in default.

If an "Event of Default" as defined in Section 5.01 of the Loan Agreement occurs, the remedies on default set forth in Section 5.03 of the Loan Agreement shall be available to enforce the obligations of the Governmental Agency that are evidenced by this Governmental Agency Bond.

This Governmental Agency Bond is issued under the authority of and in full conformity with the Constitution and laws of the State of Colorado, including without limitation, Article X, Section 20 of the Constitution, Title 31, Article 35, Part 4, C.R.S.; Title 37, Article 45.1; certain provisions of Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Public Securities Act"), and pursuant to the Loan Agreement. Pursuant to §11-57-210, of the Supplemental Public Securities Act, this recital is conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond after its delivery for value. Pursuant to §31-35-413, C.R.S., this recital conclusively imparts full compliance with all the provisions of said statutes, and this Governmental Agency Bond issued containing such recital is incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Governmental Agency has caused this Governmental Agency Bond to be duly executed, sealed and delivered, as of this \_\_\_\_ day of \_\_\_\_\_ 2023.

(SEAL)

**CITY OF BOULDER  
, COLORADO, ACTING BY AND  
THROUGH ITS \_\_\_\_\_  
ENTERPRISE**

ATTEST:

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

By: \_\_\_\_\_  
City Clerk

**EXHIBIT E-1**

**OPINION OF GOVERNMENTAL AGENCY COUNSEL**

**[LETTERHEAD OF COUNSEL TO GOVERNMENTAL AGENCY]**

**[DATED : Closing Date]**

Colorado Water Resources and  
Power Development Authority

Ladies and Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and [insert "I" or "we"] have acted as counsel to **TOWN OF \_\_\_\_\_, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE** (the "Governmental Agency"), of the State of Colorado, which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution and delivery by the Governmental Agency of its Loan Agreement and Governmental Agency Bond (as hereinafter defined).

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and the [charter/by-laws/proceedings relating to organization] of the Governmental Agency. [insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

- (a) the Loan Agreement, dated as of \_\_\_\_\_ (the "Loan Agreement") by and between the Authority and the Governmental Agency;
- (b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);
- (c) the Governmental Agency Bond, dated as of \_\_\_\_\_ (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan(as defined in the Loan Agreement);
- (d) the proceedings of the governing body of the Governmental Agency relating to the issuance of the Governmental Agency Bond and the execution, issuance and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents");

(e) all outstanding instruments relating to the bonds, notes or other indebtedness of or relating to the Governmental Agency.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "we are"] of the opinion that:

(1) The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation and is a (\_\_\_\_\_) of the State of Colorado with the full legal right and authority to execute the Loan Documents.

(2) The Governmental Agency has the full legal right and authority to carry on the business of the System (as defined in the Loan Agreement) as currently being conducted and as proposed to be conducted, and to undertake and complete the Project.

(3) The proceedings of the Governmental Agency's governing body authorizing the Governmental Agency to undertake and complete the Project were duly and lawfully adopted and approved in accordance with [applicable resolution] and applicable Colorado law at meetings duly called pursuant to necessary public notice and held in accordance with applicable Colorado law at which quorums were present and acting throughout and were published in accordance with applicable Colorado law.

(4) The proceedings of the Governmental Agency's governing body approving the Loan Documents and authorizing their execution, issuance and delivery on behalf of the Governmental Agency have been duly and lawfully adopted and approved in accordance with [the applicable resolution] applicable Colorado law, at meetings duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout and were published in accordance with applicable Colorado law.

(5) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, the authorization, execution and delivery of the Loan Documents by the Governmental Agency, the observation and performance by the Governmental Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Governmental Agency or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust, ordinance, order, or other agreement to which the Governmental Agency is a party or by which it, the System, or its property or assets is bound.

(6) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery and performance of the Loan Documents and the undertaking and completion of the Project, other than licenses and permits relating to the construction and acquisition of the Project which [insert "I" or "we"] expect the Governmental Agency to receive in the ordinary course of business, have been obtained or made.

(7) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Governmental Agency or of the validity, legality or enforceability of the Loan Documents or the undertaking or completion of the Project, except as disclosed in writing to the Authority, which if adversely determined, could (i) materially adversely affect (a) the financial position of the Governmental Agency, (b) the ability of the Governmental Agency to perform its obligations under the Loan Documents, (c) the security for the Loan Documents, or (d) the transactions contemplated by the Loan Documents or (ii) impair the ability of the Governmental Agency to maintain and operate the System.

This opinion is rendered on the basis of Federal law and the laws of the State of Colorado as enacted and construed on the date hereof. [insert "I" or "We"] express no opinion as to any matter not set forth in the numbered paragraphs herein.

[insert "I" or "We"] hereby authorize Carlson, Hammond, & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if [insert "I" or "we"] had addressed this opinion to them in addition to you.

Very truly yours,



**EXHIBIT E-2**

**OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL**

**[LETTERHEAD OF BOND COUNSEL TO GOVERNMENTAL AGENCY]**

**[DATED: Closing Date]**

Colorado Water Resources and  
Power Development Authority

Ladies and Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and [insert "I" or "we"] have acted as bond counsel for **TOWN OF \_\_\_\_\_, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE** (the "Governmental Agency"), of the State of Colorado, which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution, and delivery by the Governmental Agency of the Loan Agreement and Governmental Agency Bond (as hereinafter defined).

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and [charter/by-laws/proceedings relating to organization] of the Governmental Agency. [insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

(a) the Loan Agreement, dated as of \_\_\_\_\_ (the "Loan Agreement"), by and between the Authority and the Governmental Agency;

(b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement, and the execution, issuance, and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);

(c) the Governmental Agency Bond, dated as of \_\_\_\_\_ (the "Governmental Agency Bond"), issued by the Governmental Agency to the Authority to evidence the Loan (as defined in the Loan Agreement);

(d) the proceedings of the governing body of the Governmental Agency relating to the issuance, of the Governmental Agency Bond, and the execution, issuance, and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents"); and

(e) all outstanding instruments relating to the bonds, notes, or other indebtedness of, or relating to the Governmental Agency.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates, and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "we are"] of the opinion that:

(1) The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation.

(2) The Governmental Agency has full legal right and authority to execute the Loan Documents and the Governmental Agency has full legal right and authority to observe and perform its respective duties, covenants, obligations, and agreements thereunder; subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment, or other similar laws affecting creditors' rights generally (Creditor's Rights Limitations), heretofore or hereafter enacted.

(3) The Governmental Agency has pledged the Pledged Property described in Paragraph (3) of Exhibit A to the Loan Agreement for the punctual payment of the principal on the Loan and all other amounts due under the Loan Documents according to their respective terms, and the Authority has a first lien on such Pledged Property, but not an exclusive first lien. **\*\*\*Only include "but not an exclusive first lien" if there is parity debt\*\*\*** No filings or recordings are required under the Colorado Uniform Commercial Code in order to provide a first lien on such Pledged Property, and all actions have been taken as required under Colorado law to insure the priority, validity, and enforceability of such lien.

(4) The Loan Documents have been duly authorized, executed, and delivered by the authorized officers of the Governmental Agency; and, assuming in the case of the Loan Agreement, that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed, and delivered the Loan Agreement, the Loan Documents constitute the legal, valid, and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to the effect of, and to restrictions and limitations imposed by, or resulting from, Creditor's Rights Limitations or other laws, judicial decisions, and principles of equity relating to the enforcement of contractual obligations generally, provided that no opinion is expressed herein regarding the validity or enforceability of Section 3.05 of the Loan Agreement or any other provision thereof that purports to require the Governmental Agency to indemnify or hold any party harmless.

(5) To the best of our knowledge, after such investigation as we have deemed appropriate, the authorization, execution, and delivery of the Loan Documents by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions contemplated therein, do not and will not contravene any existing law, or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any outstanding

instruments relating to the bonds, notes, or other indebtedness of, or relating to, the Governmental Agency.

(6) To the best of our knowledge, after such investigation as we deemed appropriate, all approvals, consents, or authorizations of, or registrations of or filings with, any governmental or public agency, authority, or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery, and performance of the Loan Documents have been obtained or made.

**\*\*If the Governmental Agency constitutes an Enterprise under TABOR, the following paragraph should be included in the Bond Counsel opinion:**

(7) The execution and delivery of the Loan Documents are not subject to the limitations of Article X, Section 20 of the Colorado Constitution, since the Governmental Agency as defined in the Loan Agreement constitutes an enterprise under said Article X, Section 20 on the date of such execution and delivery. The performance of the Loan Documents is not subject to the limitations of said Article X, Section 20, as long as the Governmental Agency continues to qualify as an enterprise under said Article X, Section 20. If the Governmental Agency ceases to be an enterprise under said Article X, Section 20, during the Loan Term, the Loan Documents will continue to constitute legal, valid and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to (a) Creditor's Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual rights generally and (b) subject to the next sentence, the revenue and spending limitations of said Article X, Section 20. If the Governmental Agency at any time ceases to be an enterprise under said Article X, Section 20, (i) the **Town** may continue to impose and increase fees, rates and charges without voter approval; (ii) all revenues of the Governmental Agency used to pay Loan Repayments will be included in the Governmental Agency fiscal year spending limit under Section 7(d) of said Article X, Section 20 except that debt service changes and reductions are exceptions to, and not part of, the Governmental Agency revenue and spending bases and limits; and (iii) if the Governmental Agency is required to reduce spending in order to comply with its fiscal year spending limit under Section 7(b) of said Article X, Section 20, the Governmental Agency will first be required to reduce spending for purposes for which it does not have an obligation under law or by contract prior to reducing spending required to comply with the other covenants contained in the Loan Documents.

**\*\*If the Governmental Agency does not constitute an Enterprise under TABOR, the following paragraph should be included in the Bond Counsel opinion:**

(7) The Governmental Agency has complied with the requirements of Article x, Section 20 of the Colorado Constitution in connection with the execution and delivery of the loan documents.

This opinion is rendered on the basis of Federal law and the laws 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.

[insert "I" or "We"] hereby authorize Carlson, Hammond & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if [insert "I" or "we"] had addressed this opinion to them in addition to you.

Very truly yours,

## EXHIBIT F

### ADDITIONAL COVENANTS AND REQUIREMENTS

#### **(1) Rate Covenant**

The Governmental Agency shall establish and collect such rates, fees, and charges for the use or the sale of the products and services of the System as, together with other moneys available therefor, are expected to produce Gross Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) for each calendar year that will be at least sufficient for such calendar year to pay the sum of:

- (a) all amounts estimated to be required to pay Operation and Maintenance Expenses (as defined in Paragraph (3) of Exhibit A of this Loan Agreement) during such calendar year;
- (b) a sum equal to 110% of the debt service due on the Governmental Agency Bond for such calendar year and debt service coming due during such calendar year on any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property, in each case computed as of the beginning of such calendar year;
- (c) the amount, if any, to be paid during such calendar year into any debt service reserve account in connection with any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property;
- (d) a sum equal to the debt service on any obligations secured by a lien on the Pledged Property which lien is subordinate to the lien of this Loan Agreement on the Pledged Property for such calendar year computed as of the beginning of such calendar year; and
- (e) amounts necessary to pay and discharge all charges and liens or other indebtedness not described above payable out of the Gross Revenue during such calendar year.

#### **(2) Rate Study.**

In the event that Gross Revenue collected during a fiscal year is not sufficient to meet the requirements set forth in the Rate Covenant contained in Paragraph (1) of this Exhibit F to the Loan Agreement, the Governmental Agency shall, within 90 days of the end of such fiscal year, cause an independent firm of accountants or consulting engineers, to prepare a rate study for the purpose of recommending a schedule of rates, fees, and charges for the use of the System that, in the opinion of the firm conducting the study will be sufficient to provide Gross Revenue to be collected in the next succeeding fiscal year that will provide compliance with the Rate Covenant described in Paragraph (1) of this Exhibit F to this Loan Agreement. Such a study shall be delivered to the Authority. The Governmental Agency shall within six months of receipt of such study, adopt rates, fees, and charges for the use of the System, based upon the recommendations contained in such study, that provide compliance with said Rate Covenant. Notwithstanding the

foregoing, the Authority may, from time to time, in its sole and absolute discretion and pursuant to such terms and restrictions it may specify, waive in writing the requirement that a rate study be performed by the Governmental Agency.

### **(3) Additional Bonds.**

**(a) Senior Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge, on the Pledged Property that is superior to the lien or charge of this Loan Agreement on the Pledged Property.

**(b) Parity Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge, on the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued was at least equal to the sum of (a) 110% of the maximum annual debt service due in any one year on (i) this Loan Agreement and (ii) all other outstanding obligations of the Governmental Agency payable out of, or secured by a lien or charge on, the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, and (iii) such proposed obligations to be issued, and (b) the maximum annual debt service due in any one year on all obligations payable out of, or secured by a lien or charge on the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property.

**(c) Subordinate Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on, the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) was at least 100% of the maximum annual debt service due in any one year on (a) all obligations outstanding during such period that are payable out of, or secured by a lien or charge on, the Pledged Property and (b) such proposed obligations to be issued.

**(d) Net Revenue Adjustment.** In calculating revenue coverage for purposes of the issuance of additional parity or subordinate lien bonds, the Governmental Agency may adjust Net Revenue to reflect any rate increases adopted in connection with the issuance of additional obligations by adding to the actual Net Revenue for the period examined an estimated sum equal to 100% of the estimated increase in Net Revenue that would have been realized during such period had the adopted rate increase been in effect during all of such period.

**(e) Refunding Bonds.** Notwithstanding the foregoing, the Governmental Agency may issue refunding obligations payable out of, or secured by a lien or charge on, the Pledged Property, without compliance with the requirements stated above, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year.

### **(4) Lien Representation.**

The Governmental Agency has disclosed the following bonds, notes or other evidence of indebtedness of the Governmental Agency issued, or contractual obligations incurred, having a lien on the Source of Repayment of equal rank with the lien and charge on the Source of Repayment of the Governmental Agency Bond: {insert description of the parity lien obligations} (the “Parity Lien Obligations”). The Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, other than that of the Parity Lien Obligations, that is of equal rank with the obligation of the Governmental Agency Bond. Further, the Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, that is prior to the obligation of the Governmental Agency Bond.

**(5) Operation and Maintenance Reserve Fund.** The Governmental Agency shall maintain an operation and maintenance reserve in an amount equal to three months of operation and maintenance expenses, excluding depreciation, of the System as set forth in the annual budget for the current fiscal year. Said reserve may be in the form of unobligated fund balances, or other unobligated cash or securities (i.e. capital reserves), or may be in a separate segregated fund and shall be maintained as a continuing reserve for payment of any lawful purpose relating to the System. If the operation and maintenance reserve falls below this requirement, the shortfall shall be made up in 24 substantially equal monthly installments beginning the second month after such shortfall.

**(6) Davis Bacon & Related Acts.** The Governmental Agency will comply with the requirements of the Davis Bacon & Related Acts, codified at 40 U.S.C. §§ 3140 through 3148.

**(7) Cost Overruns.** Any cost overruns associated with the Project will be the responsibility of the Governmental Agency and any additional costs to defend against contract claims will not be reimbursed through this or any future funding.

**(8) Audit Requirements.** For each year in which the Governmental Agency requests a disbursement from the Project Loan Subaccount, the Governmental Agency shall conduct its annual audit in accordance with the federal Single Audit Act, 31 U.S.C. 7501 et seq.

**(9) American Iron and Steel Requirement.** The Governmental Agency will comply with all federal requirements applicable to the Loan, including Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014, (the “Appropriations Act”) and related State Revolving Fund Policy Guidelines, which require that all of the iron and steel products (as defined in the Appropriations Act and Guidelines) used in the Project must be produced in the United States unless the Governmental Agency has requested and received a waiver from the requirement pursuant to the “waiver process” described in the Appropriations Act and Guidelines.

**(10) Financial Sustainability Plan Requirement.** The Governmental Agency will comply with all federal requirements applicable to the Loan, including Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) as amended by the Water Resources Reform and Development Act (WRRDA), 2014, which will require that treatment works proposed for repair, replacement, or expansion, and eligible for assistance to develop and implement a fiscal sustainability plan due by the end of the Project that includes:

1. An inventory of critical assets that are a part of the treatment works.
2. An evaluation of the condition and performance of inventoried assets or asset groupings.

3. A certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan.
4. A plan for maintaining, repairing, and as necessary, replacing the treatment works and a plan for funding such activities.

**(11) Construction Schedule.** The Governmental Agency has provided the following estimated dates regarding the project:

1. Advertisement for Bids Publication Date:
2. Construction Contract Award Date:
3. Construction Start Date:
4. Construction Completion Date:



**EXHIBIT G**  
**WPCRF Form of Requisition**

**THE CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_**  
**ENTERPRISE (the “Governmental Agency”)**

**Please submit to the following addresses:**

Email To: [cdphe\\_grantsandloans@state.co.us](mailto:cdphe_grantsandloans@state.co.us) (preferred method)

Or Mail To: Colorado Department of Public Health and Environment  
Grants and Loans Unit WQCD-OA-B2  
Attn: Paul Young  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Or Fax To: 303-782-0390 (Call CDPHE Project Manager to confirm delivery)

Cc: CDPHE Project Manager

Cc: E-mail requisition form (Exhibit G) to the Colorado Water Resources and Power Development Authority at [requisitions@cwrpda.com](mailto:requisitions@cwrpda.com)

This requisition is made in accordance with Section 3.02 of the Loan Agreement executed by the Colorado Water Resources and Power Development Authority on \_\_\_\_\_, 2023. Terms defined in the Loan Agreement and not otherwise defined herein shall have the same meanings when used herein.

The Governmental Agency hereby states as follows:

1. This is Requisition No \_\_\_\_\_.
2. The amount requisitioned hereunder is \_\_\_\_\_.
3. The person, firm or corporation to whom the amount requisitioned is due, or to whom a reimbursable and advance has been made, is \_\_\_\_\_.
4. The payee of the requisitioned amount is \_\_\_\_\_.
5. The manner of payment to the payee is to be wire transferred to:

Bank:  
ABA No.:  
Account No.:  
Account Name:  
Contact:

6. Attached hereto is the appropriate documentation demonstrating that the amount requisitioned hereunder is currently due or has been advanced by the Governmental Agency.
7. The amount hereby requisitioned is a proper Cost of the Project to be paid only from amounts deposited in the Project Account established for the Governmental Agency in the **Water Pollution Control Revolving Fund**.

Attachment B - Colorado Water Resources and Power Development  
Authority Loan Agreement - Green Project Reserve Agreement

8. On the date hereof, there does not exist any Event of Default under the Loan Agreement nor any condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default thereunder.
9. Estimate of total project completion percentage: \_\_\_\_\_ %
10. The undersigned is an Authorized Officer of the Governmental Agency duly authorized in the Loan Agreement to submit the Requisition.
11. The Governmental Agency reaffirms that all representations made by it in the Loan Agreement are true and accurate as of the date of this requisition, and that it shall continue to observe and perform all of its duties, covenants, obligations and agreements thereunder, at all times during the entire term of said Loan Agreement.

Dated: \_\_\_\_\_.

**CITY OF BOULDER, COLORADO,  
ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE**

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

Title: \_\_\_\_\_ & Authorized Officer

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

**You should receive all payments no later than 10 working days after receipt of requisition unless otherwise notified.**

The undersigned approves the disbursement of the requisitioned amount from the Project Loan Account established in the **Water Pollution Control Revolving Fund** Project Account.

**COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Finance Director

Dated: \_\_\_\_\_

**For Colorado Department of Public Health and Environment, Water Quality Control Division purposes only:**

Payment approved by \_\_\_\_\_

Dated: \_\_\_\_\_

**WATER POLLUTION CONTROL REVOLVING FUND**

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**LOAN AGREEMENT**

**BETWEEN**

**COLORADO WATER RESOURCES AND POWER  
DEVELOPMENT AUTHORITY**

**AND**

**CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS  
\_\_\_\_\_ ENTERPRISE**

**DATED**  
\_\_\_\_\_

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Direct Loan - Revenue Pledge - BIL - Open Funded

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2023, by and between **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), a body corporate and political subdivision of the State of Colorado, and the **CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE** (the "Governmental Agency").

### WITNESSETH THAT:

**WHEREAS**, the United States of America, pursuant to the federal Water Quality Act of 1987, requires increased state and local participation in the financing of the costs of wastewater treatment projects and said federal Water Quality Act requires each state to establish a water pollution control revolving fund to be administered by an instrumentality of the state.

**WHEREAS**, the Authority was created to initiate, acquire, construct, maintain, repair, and operate or cause to be operated water management projects which include wastewater treatment facilities;

**WHEREAS**, Section 37-95-107.6, Colorado Revised Statutes has created a Water Pollution Control Revolving Fund to be administered by the Authority that will enable the State of Colorado to comply with the provisions of said federal Water Quality Act of 1987;

**WHEREAS**, the Authority and the United States Environmental Protection Agency have entered into an Operating Agreement and 1989 Capitalization Grant Agreement for the Water Pollution Control Revolving Fund;

**WHEREAS**, the Authority has determined to loan certain sums to governmental agencies in Colorado to finance all or a portion of the costs of certain water management projects, which loans are subject to the requirements of applicable federal law, regulations, and guidelines then in effect;

**WHEREAS**, the terms and conditions of currently applicable federal law, regulations, and guidelines allow the Authority to exercise its discretion to forgive a portion (up to 100%) of the loan principal for amounts loaned to qualifying governmental agencies for qualifying water management projects;

**WHEREAS**, the Governmental Agency has made timely application to the Authority for a loan to finance all or a portion of the cost of a wastewater treatment facility;

**WHEREAS**, the Colorado Legislature has approved a project eligibility list that includes the Project proposed by the Governmental Agency to be financed hereunder;

**WHEREAS**, the Authority has approved the Governmental Agency's application for a loan from funds available in the Water Pollution Control Revolving Fund in an amount not to exceed

the amount of the Loan Commitment set forth in Paragraph (4) of Exhibit B hereto to finance all or a portion of the cost of the Project of the Governmental Agency, and the Authority has approved the application of Principal Forgiveness funds to that portion of the Loan as set forth in Exhibit B;

**WHEREAS**, the Governmental Agency will issue its bond to the Authority to evidence said loan and its obligations hereunder to the Authority;

**NOW THEREFORE**, for and in consideration of the award of the loan by the Authority, the Governmental Agency agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

## **ARTICLE I**

### **DEFINITIONS**

**SECTION 1.01. Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

**"Act"** means the "Colorado Water Resources and Power Development Authority Act," being Section 37-95-101 et seq. of the Colorado Revised Statutes, as the same may from time to time be amended and supplemented.

**"Administrative Fee"** means the semi-annual fee for administration of the Loan as set forth on Exhibit C hereto, payable as a part of the Loan Repayment under paragraph 3.03.

**"Authority"** means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State of Colorado duly created and validly existing under and by virtue of the Act.

**"Authorized Officer"** means, in the case of the Governmental Agency, the person whose name is set forth in Paragraph (7) of Exhibit B hereto or such other person or persons authorized pursuant to a resolution or ordinance of the governing body of the Governmental Agency to act as an Authorized Officer of the Governmental Agency to perform any act or execute any document relating to the Loan, the Governmental Agency Bond, or this Loan Agreement, whose name is furnished in writing to the Authority.

**"Commencement Date"** means the date of commencement of the term of this Loan Agreement, as set forth in Paragraph (1) of Exhibit B attached hereto and made a part hereof.

**"Cost"** means those costs that are eligible to be funded are reasonable, necessary and allocable to the Project and are associated with the approved scope of work, the plans and specifications, and change orders and are permitted by generally accepted accounting principles to be costs of the Project.

**"Event of Default"** means any occurrence or event specified in Section 5.01 hereof.

**"Federal Capitalization Agreement"** means the instrument or agreement established or entered into by the United States of America Environmental Protection Agency and the Authority to make capitalization grant payments pursuant to the federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.)

**"Governmental Agency"** means the entity that is a party to and is described in the first paragraph of this Loan Agreement, and its successors and assigns.

**"Governmental Agency Bond"** means the bond executed and delivered by the Governmental Agency to the Authority to evidence the Loan and its obligations to the Authority pursuant to the Loan, the form of which is attached hereto as Exhibit D and made a part hereof.

**"Loan"** means the loan made by the Authority to the Governmental Agency to finance or refinance a portion of the Cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the principal amount of the Loan at any time shall be the amount of the Loan Commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part of this Loan Agreement.

**"Loan Agreement"** means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified, or amended from time to time in accordance with the terms hereof.

**"Loan Closing"** means the date upon which the Loan herein shall be closed as set forth in Paragraph 3.09.

**"Loan Repayments"** means the payments payable by the Governmental Agency pursuant to Section 3.03 of this Loan Agreement, including payments payable under the Governmental Agency Bond.

**"Loan Term"** means the term of this Loan Agreement provided in Paragraph (5) of Exhibit B attached hereto and made a part hereof, subject to the Principal Forgiveness clause set forth in Paragraph (10) of Exhibit B, if applicable. If the Loan is prepaid in its entirety pursuant to Section 3.07, the Loan Term shall automatically terminate.

**"Pledged Property"** means the source of repayment described in Paragraph (3) of Exhibit A to this Loan Agreement attached hereto and made a part hereof.

**"Prime Rate"** means the prevailing commercial interest rate announced by the Wall Street Journal from time to time, or, if the Wall Street Journal ceases announcing a prime rate, shall be the prevailing commercial interest rate announced by Citibank, N.A. as its prime lending rate.

**"Principal Forgiveness", "Up-Front Principal Forgiveness", and "Post-Closing Principal Forgiveness"** means forgiveness of the Governmental Agency's obligation to repay up to 100% of the principal amount of the Loan, whether contemporaneously with Loan Closing (Up-Front Principal Forgiveness, in the amount set forth in paragraph 4(a) of Exhibit B, if

applicable) or at any point subsequent to Closing (Post-Closing Principal Forgiveness), in a manner to be effectuated as provided in paragraph (10) of Exhibit B, attached hereto and made a part hereof.

**"Project"** means the project of the Governmental Agency described in Paragraph (1) of Exhibit A attached hereto and made a part hereof, all or a portion of the Cost of which is financed or refinanced by the Authority through the making of the Loan under this Loan Agreement.

**"Project Loan Account"** means the Project Loan Account established within the Water Pollution Control Revolving Fund.

**"System"** means the wastewater and water treatment system of the Governmental Agency, described in Paragraph (2) of Exhibit A, including the Project, described in Paragraph (1) of Exhibit A attached hereto and made a part hereof, for which the Governmental Agency is making the borrowing under this Loan Agreement, as such System may be modified, replaced, or expanded from time to time.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF GOVERNMENTAL AGENCY

**SECTION 2.01. Representations of Governmental Agency.** The Governmental Agency represents for the benefit of the Authority:

(a) Organization and Authority.

(i) The Governmental Agency is a governmental agency as defined in the Act and as described in the first paragraph of this Loan Agreement.

(ii) The Governmental Agency has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate, and maintain the System, other than licenses and permits relating to the construction and acquisition of the Project, that the Governmental Agency expects to receive in the ordinary course of business; to carry on its activities relating thereto; and to undertake and complete the Project. The Governmental Agency has full legal right and authority to execute and deliver this Loan Agreement to execute, issue, and deliver the Governmental Agency Bond; and to carry out and consummate all transactions contemplated by this Loan Agreement and the Governmental Agency Bond. The Project is on the water pollution control project eligibility list approved by the General Assembly of the State of Colorado pursuant to the Act and is a project that the Governmental Agency may undertake

pursuant to Colorado law, and for which the Governmental Agency is authorized by law to borrow money.

(iii) The proceedings of the Governmental Agency's governing members and voters, if a referendum is necessary, approving this Loan Agreement and the Governmental Agency Bond and authorizing their execution, issuance, and delivery on behalf of the Governmental Agency, and authorizing the Governmental Agency to undertake and complete the Project, or to cause the same to be undertaken and completed, have been duly and lawfully adopted and approved in accordance with the laws of Colorado, and such proceedings were duly approved and published, if necessary, in accordance with applicable Colorado law, at a meeting or meetings that were duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout.

(iv) This Loan Agreement has been, and the Governmental Agency Bond when delivered at the Loan Closing will have been, duly authorized, executed, and delivered by an Authorized Officer of the Governmental Agency; and, assuming that the Authority has all the requisite power and authority to authorize, execute, and deliver, and has duly authorized, executed, and delivered, this Loan Agreement, this Loan Agreement constitutes, and the Governmental Agency Bond when delivered to the Authority will constitute, the legal, valid, and binding obligations of the Governmental Agency in accordance with their respective terms; and the information contained under "Description of the Loan" on Exhibit B attached hereto and made a part hereof is true and accurate in all material respects.

(b) Full Disclosure.

There is no fact that the Governmental Agency has not disclosed to the Authority in writing on the Governmental Agency's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(c) Pending Litigation.

Except as disclosed to the Authority in writing, there are no proceedings pending, or, to the knowledge of the Governmental Agency threatened, against or affecting the Governmental Agency, in any court, or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.



(d) Compliance with Existing Laws and Agreements.

The authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions provided for in this Loan Agreement and in the Governmental Agency Bond; the compliance by the Governmental Agency with the provisions of this Loan Agreement and the Governmental Agency Bond; and the undertaking and completion of the Project; will not result in any breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon, any property or assets of the Governmental Agency pursuant to any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement, or other instrument (other than the lien and charge of this Loan Agreement and the Governmental Agency Bond) to which the Governmental Agency is a party or by which the Governmental Agency, the System, or any of the property or assets of the Governmental Agency may be bound, and such action will not result in any violation of the provisions of the charter or other document pursuant to which the Governmental Agency was established, or of any laws, ordinances, resolutions, governmental rules, regulations, or court orders to which the Governmental Agency, the System, or the properties or operations of the Governmental Agency are subject.

(e) No Defaults.

No event has occurred and no condition exists that, upon authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Governmental Agency is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party, or by which it, the System, or its property, may be bound, which violation would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(f) Governmental Consent.

The Governmental Agency has obtained all permits and approvals required to date by any governmental body or officer for the making, observance, and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond, or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Governmental Agency has complied with all applicable provisions of law requiring any notification, declaration, filing, or registration with any governmental body or officer in connection with the making, observance, and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond, or with the undertaking or completion of the Project and the financing or refinancing

thereof. Other than those relating to the construction and acquisition of the Project, which the Governmental Agency expects to receive in the ordinary course of business, no consent, approval, or authorization of, or filing, registration, or qualification with, any governmental body or officer that has not been obtained is required on the part of the Governmental Agency as a condition to the authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law.

The Governmental Agency:

(i) is in compliance with all laws, ordinances, governmental rules, and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Governmental Agency to conduct its activities or to undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System; and

(ii) has obtained all licenses, permits, franchises, or other governmental authorizations presently necessary for the ownership of its property, or for the conduct of its activities that, if not obtained, would materially adversely affect the ability of the Governmental Agency to conduct its activities or to undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System.

(h) Use of Proceeds.

The Governmental Agency will apply the proceeds of the Loan from the Authority as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Cost; and (ii) where applicable, to reimburse the Governmental Agency for a portion of the Cost, which portion was paid or incurred in anticipation of reimbursement by the Authority.

**SECTION 2.02. Particular Covenants of the Governmental Agency.**

(a) Pledge of Source of Repayment.

The Governmental Agency irrevocably pledges and grants a lien upon the source of repayment described in Paragraph (3) of Exhibit A for the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement and the Governmental Agency Bond according to their respective terms.

(b) Performance Under Loan Agreement; System Maintenance; Compliance with Covenants.

The Governmental Agency covenants and agrees to maintain the System in good repair and operating condition; to cooperate with the Authority in the observance and performance of the respective duties, covenants, obligations and agreements of the Governmental Agency and the Authority under this Loan Agreement; and, to comply with the covenants described in the Exhibits to this Loan Agreement.

(c) Completion of Project and Provision of Moneys Therefor.

The Governmental Agency covenants and agrees to exercise its best efforts in accordance with prudent wastewater utility practice to complete the Project and to provide from the Pledged Property or other sources available to it all moneys, in excess of the total amount of loan proceeds it receives under the Loan, required to complete the Project.

(d) Disposition of the System.

During the Loan Term, the Governmental Agency shall not sell, lease, abandon, or otherwise dispose of, all or substantially all, or any substantial portion, of the System or any other system that provides revenues to provide for the payment of this Loan Agreement or the Governmental Agency Bond, except on ninety (90) days' prior written notice to the Authority and, in any event, shall not so sell, lease, abandon, or otherwise dispose of the same unless the following conditions are met: (i) the Governmental Agency shall assign this Loan Agreement in accordance with Section 4.02 hereof and its rights and interests hereunder to the purchaser or lessee of the System, and such purchaser or lessee shall expressly assume all duties, covenants, obligations, and agreements of the Governmental Agency under this Loan Agreement in writing; and (ii) the Authority shall by appropriate action determine that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations, and agreements under the Act, the Federal Clean Water Act, the Safe Drinking Water Act, or any agreement between the Authority or the State of Colorado relating to any capitalization grant received by the Authority or the State of Colorado under the Federal Clean Water Act, the Safe Drinking Water Act, and in its sole discretion, approve such sale, lease, abandonment, or other disposition.

(e) Inspections; Information.

During the Loan Term, the Governmental Agency shall permit the Authority to examine, visit, and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of, any accounts, books, and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments, and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith. In addition, the Governmental Agency shall provide the Authority with copies of any official statements or other forms of offering prospectus relating to any other bonds, notes, or other indebtedness of the Governmental Agency secured from the Pledged Property and issued after the date of this Loan Agreement. At the discretion of the Authority, the Governmental Agency may be required to provide unaudited quarterly financial reports to the Authority.

(f) Cost of Project.

The Governmental Agency certifies that the Estimated Cost of the Project, as listed in Paragraph (3) of Exhibit B hereto and made a part hereof, is a reasonable and accurate estimation, and that upon direction of the Authority it shall supply the Authority with a certificate from its engineer stating that such cost is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project, and

other money that would, absent the Loan, have been used to pay the Estimated Cost of the Project.

(g) Reimbursement for Ineligible Costs.

The Governmental Agency shall promptly reimburse the Authority for any portion of the Loan that is determined not to be a Cost of the Project and that would not be eligible for funding from draws under the Water Pollution Control Revolving Fund. Such reimbursement shall be promptly repaid to the Authority upon written request of the Authority with interest on the amount to be reimbursed at the rate set forth for the Loan.

(h) Advertising.

The Governmental Agency agrees not to advertise the Project for bids until plans and specifications for the Project, if such plans and specifications require approval, have been approved by the State Department of Public Health and Environment.

(i) Commencement of Construction.

Within twelve (12) months after the Loan Closing, the Governmental Agency shall initiate construction of the Project.

(j) Interest in Project Site.

As a condition of the Loan, the Governmental Agency will demonstrate to the satisfaction of the Authority before advertising for bids for construction that the Governmental Agency has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and rights-of-way, as the Authority finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

(k) No Lobbying.

No portion of the Loan shall be used for lobbying or propaganda as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74.

(l) Operation and Maintenance of System.

The Governmental Agency covenants and agrees that it shall, in accordance with prudent water and wastewater utility practice: (i) at all times operate the properties of its System and any business in connection therewith in an efficient manner; (ii) maintain its System in good repair, working order and operating condition; (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments, and improvements with respect to its System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Governmental Agency to expend any funds that are derived from sources other than the operation of its System or other receipts of such System that are not

pledged under subsection (a) of this Section 2.02, and provided further that nothing herein shall be construed as preventing the Governmental Agency from doing so.

(m) Records; Accounts.

During the Loan Term, the Governmental Agency shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Records"). Such System Records, including project accounts, shall be maintained in accordance with generally accepted accounting principles, generally accepted government accounting standards, including standards related to the reporting of infrastructure assets and System Records and General Records shall be made available for inspection by the Authority at any reasonable time.

(n) Audits.

(i) If the Governmental Agency's System Records or General Records are audited annually by an independent accountant, then it must provide a copy of such annual audit(s) including all written comments and recommendations of the accountant preparing the audit to the Authority within 210 days of the close of the fiscal year audited, and the Governmental Agency shall cause its independent auditor to file with the Authority a report to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement, which report may be a part of the annual audit or a separate document.

(ii) If the Governmental Agency's annual revenues are greater than \$100,000 but less than or equal to \$750,000, then, within 210 days of the close of the fiscal year, the Governmental Agency must provide the Authority with a completed CPA Review that includes findings to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement.

(iii) If the Governmental Agency's annual revenues are less than or equal to \$100,000, then, within 210 days of the close of the fiscal year, the Governmental Agency must provide the Authority with a completed CPA Compilation that includes findings to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement.

(o) Insurance.

During the Loan Term, the Governmental Agency shall maintain or cause to be maintained in force, insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage, or destruction of its System, at least to the extent

that similar insurance is usually carried by utilities constructing, operating, and maintaining utility system facilities of the nature of the Governmental Agency's System, including liability coverage. The Governmental Agency shall pay all insurance premiums for coverage required hereby from revenues derived from the operation of the System. Nothing herein shall be deemed to preclude the Governmental Agency from asserting against any party, other than the Authority, a defense that may be available to the Governmental Agency, including, without limitation, a defense of governmental immunity.

(p) Notice of Material Adverse Change.

During the Loan Term, (i) the Governmental Agency shall promptly notify the Authority of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Governmental Agency relating to its System, or its ability to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement; (ii) the Governmental Agency shall promptly notify the Authority of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Governmental Agency relating to its ability to make all Loan Repayments from the Pledged Property, or its ability to otherwise observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(q) Hiring Requirements.

The Governmental Agency agrees to comply with all applicable state laws regarding hiring requirements.

(r) Continuing Representations.

The representations of the Governmental Agency contained herein shall be true at the time of the execution of this Loan Agreement and the Governmental Agency covenants not to take any action that would cause them not to be true at all times during the Loan Term.

(s) Archeological Artifacts.

In the event that archeological artifacts or historical resources are unearthed during construction excavation, the Governmental Agency shall stop or cause to be stopped, construction activities and will notify the State Historic Preservation Office and the Authority of such unearthing.

(t) Federal Clean Water Act.

The Governmental Agency covenants to meet the requirements of or otherwise be treated under Section 204(d)(2) of the Clean Water Act, which requires that, one year after the date of completion of construction and initiation of operation the owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit (40 CFR 35.2218(c), (d) and (e)(2): Project Performance).

(u) Additional Covenants and Requirements.

Additional covenants and requirements are included on Exhibit F attached hereto and made a part hereof. The Governmental Agency agrees to observe and comply with each such additional covenant and requirement included on Exhibit F.

### ARTICLE III

#### LOAN TO GOVERNMENTAL AGENCY; AMOUNTS PAYABLE; GENERAL AGREEMENTS

**SECTION 3.01. The Loan.** The Authority hereby agrees to loan and disburse to the Governmental Agency in accordance with Section 3.02 hereof, and the Governmental Agency agrees to borrow and accept from the Authority, the Loan in the principal amount equal to the Loan Commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part hereof as such Loan Commitment may be revised to reflect a reduction in the Cost of the Project prior to the initial Loan Repayment; provided, however, that the Authority shall be under no obligation to make the Loan if (i) the Governmental Agency does not deliver its Governmental Agency Bond to the Authority on the Loan Closing, or (ii) an Event of Default has occurred and is continuing under this Loan Agreement. The Governmental Agency shall use the proceeds of the Loan strictly in accordance with Section 2.01(h) hereof.

**SECTION 3.02. Disbursement of the Loan.** The Authority has created in the Water Pollution Control Revolving Fund a Project Loan Account for this Project from which the Costs of the Project shall be paid. Amounts shall be transferred into the Project Loan Account and disbursed to the Governmental Agency upon receipt of a requisition executed by an Authorized Officer, and approved by the Authority and the State Department of Public Health and Environment, in the form set forth in Exhibit G; provided that the Disbursement of the Loan may be withheld if the Governmental Agency is not complying with any of the covenants and conditions in the Loan Agreement.

#### **SECTION 3.03. Amounts Payable.**

(a) The Governmental Agency shall repay the principal of, interest on, and Administrative Fee on the Loan], after accounting for the reduction in the principal of the Loan due to application of Up-Front Principal Forgiveness at Closing, by making Loan Repayments **semi-annually on May 1st and November 1st** in accordance with the schedule set forth on Exhibit C attached hereto and made a part hereof, as the same may be amended or modified, commencing on the Loan Repayment Commencement Date set forth in Paragraph (9) of Exhibit B.

The Governmental Agency shall execute the Governmental Agency Bond to evidence its obligations to make Loan Repayments and the obligations of the Governmental Agency under the Governmental Agency Bond shall be deemed to be amounts payable under this Section 3.03. Each Loan Repayment shall be deemed to be a credit against the corresponding obligation of the Governmental Agency under this Section 3.03 and shall fulfill the Governmental Agency's obligation to pay such amount hereunder and under the

Governmental Agency Bond. Each payment made pursuant to this Section 3.03 shall be applied first to interest, then due and payable, as set forth in Exhibit C, then to the Administrative Fee, then due and payable, as set forth in Exhibit C, and then to principal as set forth in Exhibit C.

(b) In addition to the payments required by subsection (a) of this Section 3.03, the Governmental Agency shall pay a late charge for any payment that is received by the Authority later than the tenth (10th) day following its due date, in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on such late payment from its due date to the date it is actually paid; provided, however, that the interest rate payable on the Loan including such late charge shall not be in excess of the maximum rate permitted by law as of the date hereof.

(b) Loan Repayments pursuant to this Section 3.03 shall be made by electronic means (either by bank wire transfer or by Automated Clearing House “ACH” transfer).

**SECTION 3.04. Loan Repayment – Principal Forgiveness.** The Authority has determined to apply Up-Front Principal Forgiveness to the principal amount of the Loan in an amount identified in Exhibit B, Part (4)(a). The amount of Up-Front Principal Forgiveness set forth in Exhibit B, Part (4)(a), will not need to be repaid. Further, at the discretion of the Authority, and if such funds are available and the Governmental Agency is deemed eligible, the Loan may be forgiven in an amount up to 100% of the principal amount of the Loan pursuant to the terms and conditions of the current Capitalization Grant, in a manner to be effectuated as set forth in Paragraph 10 of Exhibit B attached hereto and made a part hereof. If 100% of the principal is forgiven, then at the Authority’s sole discretion and subject to Exhibit B, Paragraph 10(c), the Authority also may waive payment of any interest accrued on the principal through the Effective Date of 100% Principal Forgiveness (defined in Exhibit B, Paragraph 10(b)(i)).

**SECTION 3.05. Unconditional Obligations.** The Loan Repayments and all other payments required hereunder are payable solely from the Pledged Property. The obligation of the Governmental Agency to make the Loan Repayments and all other payments required hereunder shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments due under the Loan Agreement remain unpaid regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Colorado or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement or any rights of set-off, recoupment, abatement or counterclaim that the Governmental Agency might otherwise have against the Authority or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 3.06. Disclaimer of Warranties and Indemnification.** The Governmental Agency acknowledges and agrees that (i) the Authority makes no warranty or representation, either express or implied as to the value, design, condition, merchantability, or fitness for particular



purpose, or fitness for any use, of the Project or any portions thereof, or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or its agents be liable or responsible for any direct, incidental, indirect, special, or consequential damages in connection with or arising out of this Loan Agreement, or the Project, or the existence, furnishing, functioning, or use of the Project, or any item or products or services provided for in this Loan Agreement; and (iii) to the extent authorized by law, the Governmental Agency shall indemnify, save, and hold harmless the Authority against any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees incurred as a result of any act or omission by the Governmental Agency, or its employees, agents, or subcontractors pursuant to the terms of this Loan Agreement, provided, however, that the provisions of this clause (iii) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the Colorado Governmental Immunity Act (Section 24-10-101, et seq. C.R.S.), or under the laws of the United States or the State of Colorado.

**SECTION 3.07. Option to Prepay Loan Repayments.** The Governmental Agency may prepay the Loan Repayments, in whole or in part without penalty upon prior written notice (unless otherwise waived by the Authority) of not less than thirty (30) days. Prepayments shall be applied first to accrued interest and then to principal on the Loan. The Authority will amend Exhibit C to reflect any prepayment of the principal amount of the Loan.

**SECTION 3.08. Source of Payment of Governmental Agency's Obligations.** The Authority and the Governmental Agency agree that the amounts payable by the Governmental Agency under this Loan Agreement, including, without limitation, the amounts payable by the Governmental Agency pursuant to Section 3.03, Section 3.05, Section 3.06, and Section 5.04 of this Loan Agreement are payable solely from the Pledged Property, and are not payable from any other source whatsoever; provided, however, that the Governmental Agency at its option, may elect to make payment from any source available to it.

**SECTION 3.09. Loan Closing.** The Loan shall be closed and become effective as follows:

(a) The Governmental Agency will deliver each of the following items to the Authority:

(i) executed counterparts of this Loan Agreement;

(ii) the executed Governmental Agency Bond in the form attached hereto as Exhibit D.

(iii) copies of the resolutions or ordinances of the governing body of the Governmental Agency authorizing the execution and delivery of this Loan Agreement and the Governmental Agency Bond, certified by an Authorized Officer of the Governmental Agency;

(iv) an opinion of the Governmental Agency's counsel substantially in the form set forth in Exhibit E-1 hereto (such opinion or portions of such opinion may be given by one or more counsel); provided, however, that the Authority may in its discretion permit variances in such opinion from the form or substance of such Exhibit E-1 if such variances are not to the material detriment of the interests of the Authority;

- (v) an opinion of the Governmental Agency's Bond Counsel substantially in the form set forth in Exhibit E-2 hereto. Such opinion must be rendered by Bond Counsel listed in the Directory of Bond Counsel published by the Bond Buyer (the "Red Book"); and
  - (vi) such other certificates, documents, opinions and information as the Authority may require.
- (b) Upon receipt of the foregoing documents, the Authority shall obligate the amount of the Loan Commitment set forth in Paragraph (4) of Exhibit B, and make the amount of the Loan available for the Project in accordance with the terms of this Loan Agreement.

## ARTICLE IV

### ASSIGNMENT

**SECTION 4.01. Assignment and Transfer by Authority.** The Governmental Agency expressly acknowledges that other than the right, title, and interest of the Authority under Section 3.05, Section 5.04, and Section 5.07, all right, title, and interest of the Authority in, to, and under this Loan Agreement and the Governmental Agency Bond, including, without limitation, the right to receive payments required to be made by the Governmental Agency hereunder, and to compel or otherwise enforce observance and performance by the Governmental Agency of its other duties, covenants, obligations, and agreements hereunder, may be transferred, assigned, and reassigned in whole or in part by the Authority at its sole discretion to one or more assignees or subassignees at any time subsequent to their execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Governmental Agency.

The Authority shall retain the right to compel or otherwise enforce observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under Section 3.05 and Section 5.04.

**SECTION 4.02. Assignment by Governmental Agency.** Neither this Loan Agreement nor the Governmental Agency Bond may be assigned or delegated by the Governmental Agency for any reason, unless the following conditions shall be satisfied: (i) the Authority shall have approved said assignment in writing; (ii) the assignee shall be a governmental agency as defined by the Act, and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Governmental Agency's duties, covenants, agreements, and obligations under the Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations, or agreements of the Governmental Agency under the Loan Agreement; and (iv) the Authority shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority with, or condition of any grant received by the Authority from, the United States of America relating to the Federal Capitalization Agreement or any capitalization grant received by the Authority or the State under the Federal Clean Water Act.

No assignment or delegation shall relieve the Governmental Agency from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the

Governmental Agency shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

## ARTICLE V

### DEFAULTS AND REMEDIES

**SECTION 5.01. Event of Default.** If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) failure by the Governmental Agency to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due, which failure shall continue for a period of thirty (30) days;
- (b) failure by the Governmental Agency to make, or cause to be made, any required payments of interest and principal, redemption premium, if any, and interest on any bonds, notes, or other obligations of the Governmental Agency for borrowed money (other than the Loan and the Governmental Agency Bond), after giving effect to the applicable grace period, the payments of which are secured by the Pledged Property;
- (c) failure by the Governmental Agency to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement other than as referred to in Paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Governmental Agency; provided, however, that if the failure stated in such notice is correctable, but cannot be corrected within the applicable period, the Authority may consent to an extension of such time if corrective action is instituted by the Governmental Agency within the applicable period and diligently pursued until the Event of Default is corrected;
- (d) any representation made by or on behalf of the Governmental Agency contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect; or
- (e) (i) a petition is filed by or against the Governmental Agency under any federal or state bankruptcy or insolvency law, or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Governmental Agency such petition shall be dismissed within thirty (30) days after such filing, and such dismissal shall be final and not subject to appeal; or (ii) the Governmental Agency shall become insolvent, or bankrupt or make an assignment for the benefit of its creditors; or (iii) custodian (including, without limitation, a receiver, liquidator, or trustee of the Governmental Agency or any of its property) shall be appointed by court order, or take possession of the Governmental Agency, or its property or assets, if such order remains in effect, or such possession continues, for more than thirty (30) days.

**SECTION 5.02. Notice of Default.** The Governmental Agency shall give the Authority prompt telephonic notice of the occurrence of any Event of Default referred to in Section 5.01 at such time as any senior administrative or financial officer of the Governmental Agency becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 5.02 shall be confirmed by the Governmental Agency in writing as soon as practicable.

**SECTION 5.03. Remedies on Default.** Whenever an Event of Default referred to in Section 5.01 hereof shall have occurred and be continuing, the Authority shall have the right to withhold disbursement of Loan funds remaining, and take such other action at law or in equity as may appear necessary to enforce the performance and observance of any duty, covenant, obligation, or agreement of the Governmental Agency hereunder, including, without limitation, appointment ex parte of a receiver of the System.

**SECTION 5.04. Attorney's Fees and Other Expenses.** In the Event of Default, the Governmental Agency shall on demand pay to the Authority the reasonable fees and expenses of attorneys, and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of Loan Repayments or any other sum due hereunder, or in the enforcement of the performance or observation of any other duties, covenants, obligations, or agreements of the Governmental Agency.

**SECTION 5.05. Application of Moneys.** Any moneys collected by the Authority pursuant to Section 5.03 hereof shall be applied (a) first, to pay any attorney's fees, or other fees and expenses owed by the Governmental Agency pursuant to Section 5.04 hereof, (b) second, to pay interest due and payable on the Loan, and (c) third, to pay principal due and payable on the Loan, and (d) fourth, to pay any other amounts due and payable under this Loan Agreement.

**SECTION 5.06. No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement, or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy, or power accruing upon any Event of Default shall impair any such right, remedy, or power, or shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

**SECTION 5.07. Retention of Authority's Rights.** Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Governmental Agency at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Governmental Agency to the Authority pursuant to Section 5.04, Section 3.03, and Section 3.05 hereof.

**SECTION 5.08. Default by the Authority.** In the event of any default by the Authority under any covenant, agreement, or obligation of this Loan Agreement, the Governmental Agency's remedy for such default shall be limited to injunction, special action, action for specific performance, or any other available equitable remedy, designed to enforce the performance or observance of any duty, covenant, obligation, or agreement of the Authority hereunder, as may be necessary or appropriate. The Authority shall on demand pay to the Governmental Agency the reasonable fees and expenses of attorneys, and other reasonable expenses, in the enforcement of such performance or observation.

## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.01. Notices.** All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when hand-delivered or mailed by registered or certified mail, postage prepaid, to the Governmental Agency at the address specified on Exhibit B attached hereto and made a part hereof, and to the Authority, at the following address:

Colorado Water Resources and Power  
Development Authority  
1580 N. Logan Street, Suite 820  
Denver, Colorado 80203-1939  
Attention: Executive Director

Such address may be changed by notice in writing.

**SECTION 6.02. Binding Effect.** This Loan Agreement shall inure to the benefit of, and shall be binding upon, the Authority and the Governmental Agency, and their respective successors and assigns.

**SECTION 6.03. Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect, any other provision hereof.

**SECTION 6.04. Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented, or modified without the prior written consent of the Authority and the Governmental Agency.

**SECTION 6.05. Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**SECTION 6.06. Applicable Law and Venue.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, including the Act. Venue for any action seeking to interpret or enforce the provisions of this Loan Agreement shall be in the Denver District Court.

**SECTION 6.07. Consents and Approvals.** Whenever the written consent or approval of the Authority shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Authority unless otherwise provided by law, or by rules, regulations or resolutions of the Authority.

**SECTION 6.08. Captions.** The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit, or describe, the scope or intent of any provisions or sections of this Loan Agreement.

**SECTION 6.09. Further Assurances.** The Governmental Agency shall, at the request of the Authority, authorize, execute, acknowledge, and deliver, such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments, as may be necessary or desirable for better assuring, conveying, granting, assigning, and confirming, the rights and agreements, granted or intended to be granted, by this Loan Agreement and the Governmental Agency Bond.

**SECTION 6.10. Recitals.** This Loan Agreement is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Loan Agreement is authorized by the Governmental Agency pursuant to Title 37, Article 45.1 C.R.S., Title 32, Article 1, C.R.S. and Title 11, Article 57, Part 2, C.R.S and shall so recite in the Governmental Agency Bond. Such recitals shall conclusively impart full compliance with all provisions and limitations of such laws and shall be conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond, and the Governmental Agency Bond delivered by the Governmental Agency to the Authority containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

**IN WITNESS WHEREOF**, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, sealed and delivered, as of the Commencement Date set forth on Exhibit B hereto.

**COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY**

**(SEAL)**

By: \_\_\_\_\_  
Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Assistant Secretary

**CITY OF BOULDER, COLORADO, ACTING  
BY AND THROUGH ITS \_\_\_\_\_  
ENTERPRISE**

**(SEAL)**

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

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**IN WITNESS WHEREOF**, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, sealed and delivered, as of the Commencement Date set forth on Exhibit B hereto.

**COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY**

**(SEAL)**

By: \_\_\_\_\_  
Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Assistant Secretary

**CITY OF BOULDER, COLORADO, ACTING  
BY AND THROUGH ITS \_\_\_\_\_  
ENTERPRISE**

**(SEAL)**

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

**ATTEST:**

By: \_\_\_\_\_  
City Clerk/Secretary



## EXHIBIT A

### DESCRIPTION OF THE PROJECT, SYSTEM, AND PLEDGED PROPERTY

(1) **Description of the Project**

The project includes modifications to the existing treatment facility to improve nutrient removal, replacing aeration blowers, construction of a hydrocyclone facility, converting the existing pre-dewatering storage tank into a redundant post-aerobic tank, and replacing the internal mechanisms of the primary clarifier.

(2) **Description of the System**

"System" shall mean, (i) any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture or other real or personal property, relating to the collection, treatment, storage and distribution of water or the collection, treatment, transmission and disposal of wastewater that is owned, operated or controlled by the Governmental Agency, including, without limitation, the Project (ii) any renewal, replacement, addition, modification or improvement to (i) above, and (iii) all real or personal property and rights therein and appurtenances thereto necessary or useful or convenient for the effectiveness of the purposes of the Governmental Agency in the transmission, treatment, storage and distribution of water or the collection, treatment, transmission and disposal of wastewater.

(3) **Pledged Property**

The Pledged Property shall consist of Net Revenue, as defined below:

"*Net Revenue*" means the Gross Revenue after deducting the Operation and Maintenance Expenses.

"*Gross Revenue*" means all income and revenues directly or indirectly derived by the Governmental Agency from the operation and use of the System, or any part thereof, including without limitation, any rates, fees (including without limitation plant investment fees and availability fees), and charges for the services furnished by, or the use of, the System, and all income attributable to any past or future dispositions of property or rights, or related contracts, settlements, or judgments held or obtained in connection with the System or its operations, and including investment income accruing from such moneys; provided however, that there shall be excluded from Gross Revenue: ad valorem property taxes; any moneys borrowed and used for providing Capital Improvements; any money and securities, and investment income therefrom, in any refunding fund, escrow account, or similar account, pledged to the payment of any bonds or other obligations; and any moneys received as grants or appropriations from the United States, the State of Colorado or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such

moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

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

*“Operation and Maintenance Expenses”* means all reasonable and necessary current expenses of the Governmental Agency, paid or accrued, for operating, maintaining and repairing the System, including without limitation legal and overhead expenses of the Governmental Agency directly related to the administration of the System, insurance premiums, audits, professional services, salaries and administrative expenses, labor and the cost of materials and supplies for current operation; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, payments in lieu of taxes or franchise fees, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations, and expenses that are otherwise paid from ad valorem property taxes.

**EXHIBIT B**

**DESCRIPTION OF THE LOAN**

- (1) Commencement Date:
- (2) Name and Address of Governmental Agency:  
  
City of Boulder, Colorado, Acting By and Through Its \_\_\_\_\_ Enterprise  
1777 Broadway  
Boulder, CO 80301
- (3) Estimated Cost of the Project: \$25,728,000.00
- (4) Maximum Principal Amount of Loan Commitment: \$2,877,551.00
  - (a) Up-Front Principal Forgiveness to be Applied at Closing: \$1,500,000.00
  - (b) Maximum Total Principal to be Repaid after Application of Up-Front Principal Forgiveness: \$1,377,551.00
- (5) Loan Term: 20 years, subject to Paragraph (10), below, if applicable.
- (6) Interest Rate: 3.00% annually
- (7) Authorized Officers: (please list at least two people who will be authorized to take action on this loan, including requisitioning funds)
- (8) Loan Repayment Commencement Date: May 1, 2024
- (9) Execution Date:
- (10) Principal Forgiveness:
  - (a) **Up-Front Principal Forgiveness:** The amount of principal of the Loan identified as Up-Front Principal Forgiveness in Part (4)(a) above will be forgiven at Closing, provided the Governmental Agency has met each of its obligations and covenants necessary to effect Closing. Exhibit C to the Loan Agreement sets forth the repayment schedule after allowing for the reduction of total Loan principal by the amount of Up-Front Principal Forgiveness applied.

**(b) Post-Closing Principal Forgiveness:** At the discretion of the Authority, and if such funds are available and the Governmental Agency is deemed eligible, the Loan may be forgiven in an amount up to 100% of the outstanding principal amount of the Loan. At the Authority's sole discretion, and subject to subparagraph (10)(b)(i), below, and only if the amount forgiven is 100% of the outstanding principal of the Loan, the Authority also may waive payment of interest accrued on the amount of principal forgiven through the Effective Date of Post-Closing Principal Forgiveness (defined in Paragraph 10(b)(i)). The Authority will provide written notice (the "Notice of Post-Closing Principal Forgiveness") to the Governmental Agency once the Authority determines to exercise its discretion to grant Post-Closing Principal Forgiveness, that funds are available, and that the Governmental Agency is eligible for such action. The Notice of Post-Closing Principal Forgiveness will set forth the amount, up to 100%, of the outstanding principal amount of the Loan to be forgiven, and whether any accrued interest will be waived. Upon the Governmental Agency's receipt of the Notice of Post-Closing Principal Forgiveness from the Authority, the following terms shall apply:

- (i) If 100% of the principal amount of the Loan is forgiven, then:
  - A. The award of Post-Closing Principal Forgiveness shall be effective as of the date of the Notice of Post-Closing Principal Forgiveness (the "Effective Date of 100% Principal Forgiveness");
  - B. The Authority shall amend the repayment schedule set forth in Exhibit C to acknowledge the Post-Closing Principal Forgiveness award and the Effective Date of 100% Principal Forgiveness and the waiver of any accrued interest as applicable;
  - C. The Authority shall amend the Loan Term to extend from the date of Loan Execution until the date the Water Quality Control Division of the Colorado Department of Health and Environment (the "WQCD") issues certification that all required documents have been submitted and the Governmental Agency has met all Project and Loan requirements;
  - D. The Governmental Agency Bond will be released at the expiration of the Loan Term, as amended; and
  - E. As of the Effective Date of 100% Principal Forgiveness, the following Loan Agreement sections will no longer apply: Section 2.02. (n) Audits; Section 3.03. Amounts Payable; Exhibit A (3) Pledged Property; Exhibit F (1) Rate Covenant; Exhibit B (5) Loan Term; Exhibit B (6) Interest Rate; Exhibit B (8) Loan Repayment Commencement; Exhibit C Repayment Schedule; and all references thereof.
- (ii) If the Governmental Agency receives Post-Closing Principal Forgiveness for less than 100% of the outstanding principal amount of the Loan, then:
  - A. The effective date of the Post-Closing Principal Forgiveness shall be the date of the Notice of Post-Closing Principal Forgiveness from the Authority (the "Effective Date of Partial Principal Forgiveness"); and

- B. Upon the Effective Date of Partial Principal Forgiveness, the Loan Term shall remain as set forth in this Agreement, but the Authority shall amend the Loan Repayment Schedule set forth in Exhibit C to include a revised amortization schedule for the remaining principal amount.
- C. If the Effective Date of Principal Forgiveness, either 100% or Partial, occurs after the Loan Repayment Commencement Date, and the Governmental Agency has paid one or more of the scheduled payments, the Post-Closing Principal Forgiveness, as well as any waived interest accrued on the amount of principal forgiven through the Effective Date of Principal Forgiveness, will be net of any such payments. The Authority will not reimburse the Governmental Agency any amount paid by the Governmental Agency.

**EXHIBIT C**

**REPAYMENT SCHEDULE**

Attachment C - Colorado Water Resources and Power Development  
Authority Loan Agreement - Bipartisan Infrastructure Law Agreement

**EXHIBIT C**  
**WATER POLLUTION CONTROL REVOLVING FUND**  
**LOAN REPAYMENT SCHEDULE**  
**CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE**

Loan Number: #W23----

On or before the first of each date, commencing on May 1, 2024, the  
Governmental Agency shall pay the amount set forth below:

<b>LOAN DATE:</b>	<b>TBD</b>
<b>TOTAL LOAN AMOUNT:</b>	<b>\$2,877,551.00</b>
<b>UP-FRONT BIL PRINCIPAL</b>	
<b>FORGIVENESS:</b>	<b>\$1,500,000.00</b>
<b>PRINCIPAL AMOUNT:</b>	<b>\$1,377,551.00</b>
<b>INTEREST RATE:</b>	<b>3.00%</b>
<b>TERM (YEARS):</b>	<b>20</b>

<b>PAYMENT DATES</b>	<b>PAYMENT</b>	<b>PRINCIPAL</b>	<b>REMAINING PRINCIPAL</b>	<b>CALCULATED INTEREST</b>
			\$1,377,551.00	
5/1/2024	\$46,047.54	\$25,384.27	\$1,352,166.73	\$20,663.27
11/1/2024	\$46,047.54	\$25,765.04	\$1,326,401.69	\$20,282.50
5/1/2025	\$46,047.54	\$26,151.51	\$1,300,250.18	\$19,896.03
11/1/2025	\$46,047.54	\$26,543.79	\$1,273,706.39	\$19,503.75
5/1/2026	\$46,047.54	\$26,941.94	\$1,246,764.45	\$19,105.60
11/1/2026	\$46,047.54	\$27,346.07	\$1,219,418.38	\$18,701.47
5/1/2027	\$46,047.54	\$27,756.26	\$1,191,662.12	\$18,291.28
11/1/2027	\$46,047.54	\$28,172.61	\$1,163,489.51	\$17,874.93
5/1/2028	\$46,047.54	\$28,595.20	\$1,134,894.31	\$17,452.34
11/1/2028	\$46,047.54	\$29,024.13	\$1,105,870.18	\$17,023.41
5/1/2029	\$46,047.54	\$29,459.49	\$1,076,410.69	\$16,588.05
11/1/2029	\$46,047.54	\$29,901.38	\$1,046,509.31	\$16,146.16
5/1/2030	\$46,047.54	\$30,349.90	\$1,016,159.41	\$15,697.64
11/1/2030	\$46,047.54	\$30,805.15	\$985,354.26	\$15,242.39
5/1/2031	\$46,047.54	\$31,267.23	\$954,087.03	\$14,780.31
11/1/2031	\$46,047.54	\$31,736.23	\$922,350.80	\$14,311.31
5/1/2032	\$46,047.54	\$32,212.28	\$890,138.52	\$13,835.26
11/1/2032	\$46,047.54	\$32,695.46	\$857,443.06	\$13,352.08
5/1/2033	\$46,047.54	\$33,185.89	\$824,257.17	\$12,861.65
11/1/2033	\$46,047.54	\$33,683.68	\$790,573.49	\$12,363.86
5/1/2034	\$46,047.54	\$34,188.94	\$756,384.55	\$11,858.60
11/1/2034	\$46,047.54	\$34,701.77	\$721,682.78	\$11,345.77
5/1/2035	\$46,047.54	\$35,222.30	\$686,460.48	\$10,825.24
11/1/2035	\$46,047.54	\$35,750.63	\$650,709.85	\$10,296.91
5/1/2036	\$46,047.54	\$36,286.89	\$614,422.96	\$9,760.65
11/1/2036	\$46,047.54	\$36,831.20	\$577,591.76	\$9,216.34
5/1/2037	\$46,047.54	\$37,383.66	\$540,208.10	\$8,663.88
11/1/2037	\$46,047.54	\$37,944.42	\$502,263.68	\$8,103.12
5/1/2038	\$46,047.54	\$38,513.58	\$463,750.10	\$7,533.96
11/1/2038	\$46,047.54	\$39,091.29	\$424,658.81	\$6,956.25
5/1/2039	\$46,047.54	\$39,677.66	\$384,981.15	\$6,369.88
11/1/2039	\$46,047.54	\$40,272.82	\$344,708.33	\$5,774.72
5/1/2040	\$46,047.54	\$40,876.92	\$303,831.41	\$5,170.62
11/1/2040	\$46,047.54	\$41,490.07	\$262,341.34	\$4,557.47
5/1/2041	\$46,047.54	\$42,112.42	\$220,228.92	\$3,935.12
11/1/2041	\$46,047.54	\$42,744.11	\$177,484.81	\$3,303.43
5/1/2042	\$46,047.54	\$43,385.27	\$134,099.54	\$2,662.27
11/1/2042	\$46,047.54	\$44,036.05	\$90,063.49	\$2,011.49
5/1/2043	\$46,047.54	\$44,696.59	\$45,366.90	\$1,350.95
11/1/2043	\$46,047.40	\$45,366.90	\$0.00	\$680.50
<b>Total</b>	<b>\$1,841,901.46</b>	<b>\$1,377,551.00</b>		<b>\$464,350.46</b>

## EXHIBIT D

### GOVERNMENTAL AGENCY BOND

FOR VALUE RECEIVED, the undersigned **CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE** (the "Governmental Agency"), evidences the issuance of a loan from the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority") in the principal amount of Two Million Eight Hundred Seventy Seven Thousand Five Hundred Fifty One and 00/100 Dollars (\$2,877,551.00), less a \$1,500,000 reduction in the total principal of the Loan due to the application of Bipartisan Infrastructure Law ("BIL") Up-Front Principal Forgiveness as in the amount set forth in Exhibit B, Part (4)(a) of the Loan Agreement dated as of \_\_\_\_, 2023, by and between the Authority and the Governmental Agency (the "Loan Agreement"), making the Maximum Total Principal to be Repaid after Application of Up-Front Principal Forgiveness One Million Three Hundred Seventy Seven Thousand Five Hundred Fifty One and 00/100 Dollars (\$1,377,551.00) as set forth in Exhibit B, Part (4)(b) of the Loan Agreement, or such lesser amount as shall be loaned to the Governmental Agency pursuant to the Loan Agreement, at the times and in the amounts determined as provided in the Loan Agreement, at Three percent interest (3.00%), subject to late charges on late payments as provided in Section 3.03 (b) of the Loan Agreement, and payable on the dates and in the amounts determined as provided in the Loan Agreement.

This Governmental Agency Bond is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the "Loan") and to evidence the obligations of the Governmental Agency set forth in Section 3.03 thereof. This Governmental Agency Bond is subject to assignment or endorsement in accordance with the terms of the Loan Agreement. All of the definitions, terms, conditions, and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Governmental Agency Bond.

Pursuant to the Loan Agreement, disbursements to the Governmental Agency shall be made in accordance with written instructions upon the receipt by the Authority of requisitions from the Governmental Agency executed and delivered in accordance with the requirements set forth in Section 3.02 of the Loan Agreement.

This Governmental Agency Bond is entitled to the benefits, and is subject to the conditions, of the Loan Agreement. The obligations of the Governmental Agency to make the payments required hereunder ("Loan Repayments") shall be absolute and unconditional without any defense or right of set-off, counterclaim, or recoupment by reason of any default by the Authority under the Loan Agreement, or under any other agreement between the Governmental Agency and the Authority, or out of any indebtedness or liability at any time owing to the Governmental Agency by the Authority, or for any other reason.

This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts, provided in Section 3.07 of the Loan Agreement. The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is payable solely from the Pledged Property, except for reserves created in connection with the Loan.



This Governmental Agency Bond does not constitute a debt or an indebtedness of the Governmental Agency within the meaning of any constitutional or statutory limitation or provision, and shall not be considered or held to be a general obligation of the Governmental Agency. The payment of this Governmental Agency Bond and the interest thereon is not secured by an encumbrance, mortgage or other pledge of property except for such property and moneys pledged for the payment of the Governmental Agency Bond.

For the payment of this Governmental Agency Bond and the interest thereon, the Governmental Agency shall enforce the Rate Covenant set forth in Paragraph (1) of Exhibit F to the Loan Agreement, shall promptly collect all revenues of the System, and shall take all necessary action to collect any revenues that are in default.

If an “Event of Default” as defined in Section 5.01 of the Loan Agreement occurs, the remedies on default set forth in Section 5.03 of the Loan Agreement shall be available to enforce the obligations of the Governmental Agency that are evidenced by this Governmental Agency Bond.

This Governmental Agency Bond is issued under the authority of and in full conformity with the Constitution and laws of the State of Colorado, including without limitation, Article X, Section 20 of the Constitution, Title 31, Article 35, Part 4, C.R.S.; Title 37, Article 45.1; certain provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Public Securities Act”), and pursuant to the Loan Agreement. Pursuant to §11-57-210, of the Supplemental Public Securities Act, this recital is conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond after its delivery for value. Pursuant to §31-35-413, C.R.S., this recital conclusively imparts full compliance with all the provisions of said statutes, and this Governmental Agency Bond issued containing such recital is incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Governmental Agency has caused this Governmental Agency Bond to be duly executed, sealed and delivered, as of this \_\_\_\_ day of \_\_\_\_\_ 2023.

(SEAL)

**CITY OF BOULDER, COLORADO,  
ACTING BY AND THROUGH ITS  
\_\_\_\_\_ ENTERPRISE**

ATTEST:

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

By: \_\_\_\_\_  
City Clerk/

**EXHIBIT E-1**

**OPINION OF GOVERNMENTAL AGENCY COUNSEL**

**[LETTERHEAD OF COUNSEL TO GOVERNMENTAL AGENCY]**

**[DATED : Closing Date]**

Colorado Water Resources and  
Power Development Authority

Ladies and Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and [insert "I" or "we"] have acted as counsel to **TOWN OF \_\_\_\_\_, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE** (the "Governmental Agency"), of the State of Colorado, which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution and delivery by the Governmental Agency of its Loan Agreement and Governmental Agency Bond (as hereinafter defined).

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and the [charter/by-laws/proceedings relating to organization] of the Governmental Agency. [insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

- (a) the Loan Agreement, dated as of \_\_\_\_\_ (the "Loan Agreement") by and between the Authority and the Governmental Agency;
- (b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);
- (c) the Governmental Agency Bond, dated as of \_\_\_\_\_ (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan(as defined in the Loan Agreement);
- (d) the proceedings of the governing body of the Governmental Agency relating to the issuance of the Governmental Agency Bond and the execution, issuance and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents");

(e) all outstanding instruments relating to the bonds, notes or other indebtedness of or relating to the Governmental Agency.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "we are"] of the opinion that:

(1) The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation and is a (\_\_\_\_\_) of the State of Colorado with the full legal right and authority to execute the Loan Documents.

(2) The Governmental Agency has the full legal right and authority to carry on the business of the System (as defined in the Loan Agreement) as currently being conducted and as proposed to be conducted, and to undertake and complete the Project.

(3) The proceedings of the Governmental Agency's governing body authorizing the Governmental Agency to undertake and complete the Project were duly and lawfully adopted and approved in accordance with [applicable resolution] and applicable Colorado law at meetings duly called pursuant to necessary public notice and held in accordance with applicable Colorado law at which quorums were present and acting throughout and were published in accordance with applicable Colorado law.

(4) The proceedings of the Governmental Agency's governing body approving the Loan Documents and authorizing their execution, issuance and delivery on behalf of the Governmental Agency have been duly and lawfully adopted and approved in accordance with [the applicable resolution] applicable Colorado law, at meetings duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout and were published in accordance with applicable Colorado law.

(5) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, the authorization, execution and delivery of the Loan Documents by the Governmental Agency, the observation and performance by the Governmental Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Governmental Agency or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust, ordinance, order, or other agreement to which the Governmental Agency is a party or by which it, the System, or its property or assets is bound.

(6) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery and performance of the Loan Documents and the undertaking and completion of the Project, other than licenses and permits relating to the construction and acquisition of the Project which [insert "I" or "we"] expect the Governmental Agency to receive in the ordinary course of business, have been obtained or made.

(7) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Governmental Agency or of the validity, legality or enforceability of the Loan Documents or the undertaking or completion of the Project, except as disclosed in writing to the Authority, which if adversely determined, could (i) materially adversely affect (a) the financial position of the Governmental Agency, (b) the ability of the Governmental Agency to perform its obligations under the Loan Documents, (c) the security for the Loan Documents, or (d) the transactions contemplated by the Loan Documents or (ii) impair the ability of the Governmental Agency to maintain and operate the System.

This opinion is rendered on the basis of Federal law and the laws of the State of Colorado as enacted and construed on the date hereof. [insert "I" or "We"] express no opinion as to any matter not set forth in the numbered paragraphs herein.

[insert "I" or "We"] hereby authorize Carlson, Hammond, & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if [insert "I" or "we"] had addressed this opinion to them in addition to you.

Very truly yours,

**EXHIBIT E-2**

**OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL**

**[LETTERHEAD OF BOND COUNSEL TO GOVERNMENTAL AGENCY]**

**[DATED: Closing Date]**

Colorado Water Resources and  
Power Development Authority

Ladies and Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and [insert "I" or "we"] have acted as bond counsel for **TOWN OF \_\_\_\_\_, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE** (the "Governmental Agency"), of the State of Colorado, which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution, and delivery by the Governmental Agency of the Loan Agreement and Governmental Agency Bond (as hereinafter defined).

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and [charter/by-laws/proceedings relating to organization] of the Governmental Agency. [insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

(a) the Loan Agreement, dated as of \_\_\_\_\_ (the "Loan Agreement"), by and between the Authority and the Governmental Agency;

(b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement, and the execution, issuance, and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);

(c) the Governmental Agency Bond, dated as of \_\_\_\_\_ (the "Governmental Agency Bond"), issued by the Governmental Agency to the Authority to evidence the Loan (as defined in the Loan Agreement);

(d) the proceedings of the governing body of the Governmental Agency relating to the issuance, of the Governmental Agency Bond, and the execution, issuance, and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents"); and

(e) all outstanding instruments relating to the bonds, notes, or other indebtedness of, or relating to the Governmental Agency.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates, and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "we are"] of the opinion that:

(1) The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation.

(2) The Governmental Agency has full legal right and authority to execute the Loan Documents and the Governmental Agency has full legal right and authority to observe and perform its respective duties, covenants, obligations, and agreements thereunder; subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment, or other similar laws affecting creditors' rights generally (Creditor's Rights Limitations), heretofore or hereafter enacted.

(3) The Governmental Agency has pledged the Pledged Property described in Paragraph (3) of Exhibit A to the Loan Agreement for the punctual payment of the principal on the Loan and all other amounts due under the Loan Documents according to their respective terms, and the Authority has a first lien on such Pledged Property, but not an exclusive first lien. **\*\*\*Only include "but not an exclusive first lien" if there is parity debt\*\*\*** No filings or recordings are required under the Colorado Uniform Commercial Code in order to provide a first lien on such Pledged Property, and all actions have been taken as required under Colorado law to insure the priority, validity, and enforceability of such lien.

(4) The Loan Documents have been duly authorized, executed, and delivered by the authorized officers of the Governmental Agency; and, assuming in the case of the Loan Agreement, that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed, and delivered the Loan Agreement, the Loan Documents constitute the legal, valid, and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to the effect of, and to restrictions and limitations imposed by, or resulting from, Creditor's Rights Limitations or other laws, judicial decisions, and principles of equity relating to the enforcement of contractual obligations generally, provided that no opinion is expressed herein regarding the validity or enforceability of Section 3.05 of the Loan Agreement or any other provision thereof that purports to require the Governmental Agency to indemnify or hold any party harmless.

(5) To the best of our knowledge, after such investigation as we have deemed appropriate, the authorization, execution, and delivery of the Loan Documents by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions contemplated therein, do not and will not contravene any existing law, or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any outstanding

instruments relating to the bonds, notes, or other indebtedness of, or relating to, the Governmental Agency.

(6) To the best of our knowledge, after such investigation as we deemed appropriate, all approvals, consents, or authorizations of, or registrations of or filings with, any governmental or public agency, authority, or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery, and performance of the Loan Documents have been obtained or made.

**\*\*If the Governmental Agency constitutes an Enterprise under TABOR, the following paragraph should be included in the Bond Counsel opinion:**

(7) The execution and delivery of the Loan Documents are not subject to the limitations of Article X, Section 20 of the Colorado Constitution, since the Governmental Agency as defined in the Loan Agreement constitutes an enterprise under said Article X, Section 20 on the date of such execution and delivery. The performance of the Loan Documents is not subject to the limitations of said Article X, Section 20, as long as the Governmental Agency continues to qualify as an enterprise under said Article X, Section 20. If the Governmental Agency ceases to be an enterprise under said Article X, Section 20, during the Loan Term, the Loan Documents will continue to constitute legal, valid and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to (a) Creditor's Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual rights generally and (b) subject to the next sentence, the revenue and spending limitations of said Article X, Section 20. If the Governmental Agency at any time ceases to be an enterprise under said Article X, Section 20, (i) the **City/District/Town** may continue to impose and increase fees, rates and charges without voter approval; (ii) all revenues of the Governmental Agency used to pay Loan Repayments will be included in the Governmental Agency fiscal year spending limit under Section 7(d) of said Article X, Section 20 except that debt service changes and reductions are exceptions to, and not part of, the Governmental Agency revenue and spending bases and limits; and (iii) if the Governmental Agency is required to reduce spending in order to comply with its fiscal year spending limit under Section 7(b) of said Article X, Section 20, the Governmental Agency will first be required to reduce spending for purposes for which it does not have an obligation under law or by contract prior to reducing spending required to comply with the other covenants contained in the Loan Documents.

**\*\*If the Governmental Agency does not constitute an Enterprise under TABOR, the following paragraph should be included in the Bond Counsel opinion:**

(7) The Governmental Agency has complied with the requirements of Article x, Section 20 of the Colorado Constitution in connection with the execution and delivery of the loan documents.

This opinion is rendered on the basis of Federal law and the laws 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.

[insert "I" or "We"] hereby authorize Carlson, Hammond & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if [insert "I" or "we"] had addressed this opinion to them in addition to you.

Very truly yours,



## EXHIBIT F

### ADDITIONAL COVENANTS AND REQUIREMENTS

#### **(1) Rate Covenant**

The Governmental Agency shall establish and collect such rates, fees, and charges for the use or the sale of the products and services of the System as, together with other moneys available therefor, are expected to produce Gross Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) for each calendar year that will be at least sufficient for such calendar year to pay the sum of:

- (a) all amounts estimated to be required to pay Operation and Maintenance Expenses (as defined in Paragraph (3) of Exhibit A of this Loan Agreement) during such calendar year;
- (b) a sum equal to 110% of the debt service due on the Governmental Agency Bond for such calendar year and debt service coming due during such calendar year on any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property, in each case computed as of the beginning of such calendar year;
- (c) the amount, if any, to be paid during such calendar year into any debt service reserve account in connection with any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property;
- (d) a sum equal to the debt service on any obligations secured by a lien on the Pledged Property which lien is subordinate to the lien of this Loan Agreement on the Pledged Property for such calendar year computed as of the beginning of such calendar year; and
- (e) amounts necessary to pay and discharge all charges and liens or other indebtedness not described above payable out of the Gross Revenue during such calendar year.

#### **(2) Rate Study.**

In the event that Gross Revenue collected during a fiscal year is not sufficient to meet the requirements set forth in the Rate Covenant contained in Paragraph (1) of this Exhibit F to the Loan Agreement, the Governmental Agency shall, within 90 days of the end of such fiscal year, cause an independent firm of accountants or consulting engineers, to prepare a rate study for the purpose of recommending a schedule of rates, fees, and charges for the use of the System that, in the opinion of the firm conducting the study will be sufficient to provide Gross Revenue to be collected in the next succeeding fiscal year that will provide compliance with the Rate Covenant described in Paragraph (1) of this Exhibit F to this Loan Agreement. Such a study shall be delivered to the Authority. The Governmental Agency shall within six months of receipt of such

study, adopt rates, fees, and charges for the use of the System, based upon the recommendations contained in such study, that provide compliance with said Rate Covenant. Notwithstanding the foregoing, the Authority may, from time to time, in its sole and absolute discretion and pursuant to such terms and restrictions it may specify, waive in writing the requirement that a rate study be performed by the Governmental Agency.

### **(3) Additional Bonds.**

**(a) Senior Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge, on the Pledged Property that is superior to the lien or charge of this Loan Agreement on the Pledged Property.

**(b) Parity Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge, on the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued was at least equal to the sum of (a) 110% of the maximum annual debt service due in any one year on (i) this Loan Agreement and (ii) all other outstanding obligations of the Governmental Agency payable out of, or secured by a lien or charge on, the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, and (iii) such proposed obligations to be issued, and (b) the maximum annual debt service due in any one year on all obligations payable out of, or secured by a lien or charge on the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property.

**(c) Subordinate Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on, the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) was at least 100% of the maximum annual debt service due in any one year on (a) all obligations outstanding during such period that are payable out of, or secured by a lien or charge on, the Pledged Property and (b) such proposed obligations to be issued.

**(d) Net Revenue Adjustment.** In calculating revenue coverage for purposes of the issuance of additional parity or subordinate lien bonds, the Governmental Agency may adjust Net Revenue to reflect any rate increases adopted in connection with the issuance of additional obligations by adding to the actual Net Revenue for the period examined an estimated sum equal to 100% of the estimated increase in Net Revenue that would have been realized during such period had the adopted rate increase been in effect during all of such period.

**(e) Refunding Bonds.** Notwithstanding the foregoing, the Governmental Agency may issue refunding obligations payable out of, or secured by a lien or charge on, the Pledged Property, without compliance with the requirements stated above, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year.

**(4) Lien Representation.**

The Governmental Agency has disclosed the following bonds, notes or other evidence of indebtedness of the Governmental Agency issued, or contractual obligations incurred, having a lien on the Source of Repayment of equal rank with the lien and charge on the Source of Repayment of the Governmental Agency Bond: {insert description of the parity lien obligations} (the “Parity Lien Obligations”). The Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, other than that of the Parity Lien Obligations, that is of equal rank with the obligation of the Governmental Agency Bond. Further, the Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, that is prior to the obligation of the Governmental Agency Bond.

**(5) Operation and Maintenance Reserve Fund.** The Governmental Agency shall maintain an operation and maintenance reserve in an amount equal to three months of operation and maintenance expenses, excluding depreciation, of the System as set forth in the annual budget for the current fiscal year. Said reserve may be in the form of unobligated fund balances, or other

unobligated cash or securities (i.e. capital reserves), or may be in a separate segregated fund and shall be maintained as a continuing reserve for payment of any lawful purpose relating to the System. If the operation and maintenance reserve falls below this requirement, the shortfall shall be made up in 24 substantially equal monthly installments beginning the second month after such shortfall.

**(6) Davis Bacon & Related Acts.** The Governmental Agency will comply with the requirements of the Davis Bacon & Related Acts, codified at 40 U.S.C. §§ 3140 through 3148.

**(7) Cost Overruns.** Any cost overruns associated with the Project will be the responsibility of the Governmental Agency and any additional costs to defend against contract claims will not be reimbursed through this or any future funding.

**(8) Audit Requirements.** For each year in which the Governmental Agency requests a disbursement from the Project Loan Subaccount, the Governmental Agency shall conduct its annual audit in accordance with the federal Single Audit Act, 31 U.S.C. 7501 et seq.

**(9) American Iron and Steel Requirement.** The Governmental Agency will comply with all federal requirements applicable to the Loan, including Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014, (the “Appropriations Act”) and related State Revolving Fund Policy Guidelines, which require that all of the iron and steel products (as defined in the Appropriations Act and Guidelines) used in the Project must be produced in the United States unless the Governmental Agency has requested and received a waiver from the requirement pursuant to the “waiver process” described in the Appropriations Act and Guidelines.

**(10) Financial Sustainability Plan Requirement.** The Governmental Agency will comply with all federal requirements applicable to the Loan, including Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) as amended by the Water Resources Reform and Development Act (WRRDA), 2014, which will require that treatment works proposed for repair, replacement, or expansion, and eligible for assistance to develop and implement a fiscal sustainability plan due by the end of the Project that includes:

1. An inventory of critical assets that are a part of the treatment works.
2. An evaluation of the condition and performance of inventoried assets or asset groupings.
3. A certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan.
4. A plan for maintaining, repairing, and as necessary, replacing the treatment works and a plan for funding such activities.

**(11) Construction Schedule.** The Governmental Agency has provided the following estimated dates regarding the project:

1. Advertisement for Bids Publication Date:
2. Construction Contract Award Date:
3. Construction Start Date:
4. Construction Completion Date:

**(12) Build America, Buy America Act.** The Governmental Agency will comply with the terms of its waiver issued pursuant to the Build America Buy America Act, enacted as part of the Bipartisan Infrastructure Law, including guidance for implementing the BABA Act provided by the Office of Management and Budget, where applicable. BABA establishes domestic content procurement preference requirements for federal financial assistance provided through the Clean Water and Drinking Water State Revolving Funds including that iron, steel, manufactured products, and construction materials used in covered projects are produced in the United States.

**(13) Bipartisan Infrastructure Law.** The Governmental Agency will comply with all federal requirements applicable to the Bipartisan Infrastructure Law (the Infrastructure Investment and Jobs Act) (Public Law 117-58) and related regulations and guidance, during the Loan Term.

**EXHIBIT G**  
**WPCRF Form of Requisition**

**THE CITY OF BOULDER, COLORADO, ACTING BY AND THROUGH ITS \_\_\_\_\_**  
**ENTERPRISE** (the “Governmental Agency”)

**Please submit to the following addresses:**

Submit Online To:

[https://ceos.colorado.gov/CO/CEOS/Public/Client/CO\\_CIMPLE/Shared/Pages/Main/Login.aspx](https://ceos.colorado.gov/CO/CEOS/Public/Client/CO_CIMPLE/Shared/Pages/Main/Login.aspx)

If there are any questions or technical issues, please submit your backup document via one of the methods below.

Email To: [cdphe\\_grantsandloans@state.co.us](mailto:cdphe_grantsandloans@state.co.us) (preferred backup method)

Or Mail To: Colorado Department of Public Health and Environment  
Grants and Loans Unit WQCD-OA-B2  
Attn: Project Manager  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Or Fax To: 303-782-0390 (Call CDPHE Project Manager to confirm delivery)

Cc: CDPHE Project Manager

Cc: E-mail requisition form (Exhibit G) to the Colorado Water Resources and Power Development Authority at [requisitions@cwrpda.com](mailto:requisitions@cwrpda.com)

This requisition is made in accordance with Section 3.02 of the Loan Agreement executed by the Colorado Water Resources and Power Development Authority on \_\_\_\_\_, 2023. Terms defined in the Loan Agreement and not otherwise defined herein shall have the same meanings when used herein.

The Governmental Agency hereby states as follows:

1. This is Requisition No \_\_\_\_\_.
2. The amount requisitioned hereunder is \_\_\_\_\_.
3. The person, firm or corporation to whom the amount requisitioned is due, or to whom a reimbursable and advance has been made, is \_\_\_\_\_ see attached \_\_\_\_\_.
4. The payee of the requisitioned amount is \_\_\_\_\_.
5. The manner of payment to the payee is to be wire transferred to:

Bank:

ABA No.:

Account No.:

Account Name:

Contact:

6. Attached hereto is the appropriate documentation demonstrating that the amount requisitioned hereunder is currently due or has been advanced by the Governmental Agency.

Attachment C - Colorado Water Resources and Power Development  
Authority Loan Agreement - Bipartisan Infrastructure Law Agreement

7. The amount hereby requisitioned is a proper Cost of the Project to be paid only from amounts deposited in the Project Account established for the Governmental Agency in the **Water Pollution Control Revolving Fund**.
8. On the date hereof, there does not exist any Event of Default under the Loan Agreement nor any condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default thereunder.
9. Estimate of total project completion percentage: \_\_\_\_\_%
10. The undersigned is an Authorized Officer of the Governmental Agency duly authorized in the Loan Agreement to submit the Requisition.
11. The Governmental Agency reaffirms that all representations made by it in the Loan Agreement are true and accurate as of the date of this requisition, and that it shall continue to observe and perform all of its duties, covenants, obligations and agreements thereunder, at all times during the entire term of said Loan Agreement.

Dated: \_\_\_\_\_.

**CITY OF BOULDER, COLORADO,  
ACTING BY AND THROUGH ITS \_\_\_\_\_ ENTERPRISE**

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

Title: \_\_\_\_\_ & Authorized Officer

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

**You should receive all payments no later than 10 working days after receipt of requisition unless otherwise notified.**

The undersigned approves the disbursement of the requisitioned amount from the Project Loan Account established in the **Water Pollution Control Revolving Fund** Project Account.

**COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Finance Director

Dated: \_\_\_\_\_

**For Colorado Department of Public Health and Environment, Water Quality Control Division purposes only:**

Payment approved by \_\_\_\_\_

Dated: \_\_\_\_\_

**WATER POLLUTION CONTROL REVOLVING FUND**

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**LOAN AGREEMENT**

**BETWEEN**

**COLORADO WATER RESOURCES AND**

**POWER DEVELOPMENT AUTHORITY**

**AND**

**CITY OF BOULDER, COLORADO (ACTING BY AND THROUGH ITS WATER  
UTILITY ENTERPRISE AND WASTEWATER UTILITY ENTERPRISE)**

**DATED AS OF NOVEMBER 1, 2023**

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**THIS LOAN AGREEMENT**, made and entered into as of November 1, 2023, by and between **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the “Authority”), a body corporate and political subdivision of the State of Colorado, and **CITY OF BOULDER, COLORADO (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND WASTEWATER UTILITY ENTERPRISE)** (the “Governmental Agency”);

**WITNESSETH THAT:**

**WHEREAS**, the United States of America, pursuant to the federal Water Quality Act of 1987 (the “Water Quality Act”), as amended, requires each state, as a condition to the receipt of certain funds, to establish water pollution control revolving fund to be administered by an instrumentality of the state before the state may receive capitalization grants to finance the costs of infrastructure needed to achieve or maintain compliance with federal water pollution control requirements for such projects;

**WHEREAS**, the Authority was created to initiate, acquire, construct, maintain, repair and operate or cause to be operated water management projects which include water and wastewater treatment facilities and to issue its bonds to pay the cost of such projects;

**WHEREAS**, Section 37-95-107.6 of the Colorado Revised Statutes has created a water pollution control revolving fund to be administered by the Authority which will enable the State of Colorado to comply with the provisions of the Water Quality Act, as amended;

**WHEREAS**, the Authority has determined to issue its bonds and to loan the proceeds of such bonds to public entities in Colorado to finance the costs of wastewater treatment facilities, and to use moneys on deposit in the Water Pollution Control Revolving Fund to assist such public entities in connection with the financing of such facilities;

**WHEREAS**, the Authority, in accordance with the Act and the Bond Resolution (as such terms are hereinafter defined), will issue its bonds for the purpose of making loans from the proceeds thereof to public entities, including the Governmental Agency, to finance all or any portion of the cost of wastewater treatment facilities;

**WHEREAS**, the Governmental Agency has made timely application to the Authority for a loan to finance all or any portion of the cost of a wastewater treatment facility;

**WHEREAS**, the General Assembly of the State of Colorado has approved a project eligibility list which includes the wastewater treatment facilities proposed to be financed hereunder;

**WHEREAS**, the Authority has approved the Governmental Agency’s application for a loan from available proceeds of the bonds of the Authority in an amount not to exceed the amount of the loan commitment set forth in paragraph (3) of Exhibit B hereto to finance all or any portion of the cost of a wastewater treatment facility of the Governmental Agency;

**WHEREAS**, the Governmental Agency will issue its bond to the Authority to evidence said loan from the Authority;

**NOW, THEREFORE**, for and in consideration of the award of the loan by the Authority and of the mutual covenants herein, the Authority and the Governmental Agency each agree to perform their respective obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

## **ARTICLE I.**

### **DEFINITIONS**

**SECTION 1.01 Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

**“Act”** means the “Colorado Water Resources and Power Development Authority Act,” being Section 37-95-101 et. seq. of the Colorado Revised Statutes, as the same may from time to time be amended and supplemented.

**“Additional Parity Obligations”** means one or more series of additional bonds, notes, interim securities or other obligations issued by the Governmental Agency having a lien on the Net Income which is on a parity with the lien of the Governmental Agency Bond and the Outstanding Parity Obligations.

**“Administrative Fee”** means the fee payable pursuant to subsection (b) of Section 3.03 hereof which is calculated on the basis of an annual fee of eight tenths of one percent (0.8%) of the initial principal amount of the Loan, or such lesser amount, if any, as the Authority may approve from time to time.

**“Allocable Investment Income”** means the interest earnings or accrual thereof on the Project Loan Subaccount which are to be credited to the Loan Repayments in accordance with subsection (c) of Section 3.03.

**“Allocable Percentage”** means the percentage allocated to the Governmental Agency under the definition of “Allocable Share” contained in Section 1.01 of the Bond Resolution.

**“Annual Information”** means the information specified in Section 2.03 in this Loan Agreement.

**“Authority”** means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State of Colorado with corporate succession duly created and validly existing under and by virtue of the Act.

**“Authority Bonds”** means bonds authorized by the Bond Resolution, together with any refunding bonds authenticated and delivered pursuant to the Bond Resolution, in each case in order to provide the source of funding of the Loan, including the particular Project Loan Subaccount from which the amounts loaned to the Governmental Agency pursuant to this Loan Agreement are taken.

**“Authorized Officer”** means, in the case of the Governmental Agency, the person or persons whose name is set forth in Exhibit B hereto or such other person or persons authorized pursuant to

a resolution of the governing body of the Governmental Agency to act as an Authorized Officer of the Governmental Agency to perform any act or execute any document relating to the Loan, the Governmental Agency Bond or this Loan Agreement whose name is furnished in writing to the Authority.

**“Bond Resolution”** means the State Revolving Fund 2023 Series A Revenue Bond Resolution, as adopted by the Authority on October 6, 2023, authorizing the issuance of the Authority Bonds, and all further amendments and supplements thereto adopted in accordance with the provisions thereof.

**“City”** means the City of Boulder, Colorado, a municipal Corporation of the State of Colorado.

**“Code”** means the “Internal Revenue Code of 1986,” as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder and any administrative or judicial interpretations thereof.

**“Cost”** means those costs that are eligible to be funded from draws under the Federal Capitalization Agreement and are reasonable, necessary and allocable to the Project and are permitted by GAAP to be costs of the Project. Cost shall also include Costs of Issuance (as defined in the Bond Resolution).

**“Event of Default”** means any occurrence or event specified in Section 5.01 hereof.

**“Facilities”** means the Sewer System and the Water System of the Governmental Agency including the Project, described in paragraph (2) of Exhibit A attached hereto and made a part hereof for which the Governmental Agency is making the borrowing under this Loan Agreement, as such Facilities may be modified or expanded from time to time.

**“Federal Capitalization Agreement”** means the instrument or agreement established or entered into by the United States of America Environmental Protection Agency with the Authority to make capitalization grant payments pursuant to the federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et. seq.)

**“Fiscal Year”** means the fiscal year of the Governmental Agency.

**“GAAP”** means generally accepted accounting principles as in effect from time to time in the United States.

**“Governmental Agency”** means the public entity that is a party to and is described in the first paragraph of this Loan Agreement, and its successors and assigns.

**“Governmental Agency Bond”** means the bond executed and delivered by the Governmental Agency to the Authority to evidence the Loan, dated the date of the Loan Closing, the form of which is attached hereto as Exhibit D and made a part hereof.

**“Governmental Agencies”** means the Governmental Agency and any other governmental agencies permitted by the Act that have entered into Loan Agreements with the Authority pursuant

to which the Authority will make Loans to such Governmental Agencies from moneys on deposit in the Project Account financed with the proceeds of the Authority Bonds.

**“Holder”** means any holder of Authority Bonds as defined under the Bond Resolution and, for the purposes of Section 2.03 of this Loan Agreement, shall also mean any beneficial owner of Authority Bonds within the meaning of Rule 13-d under the Securities Exchange Act of 1934, as amended.

**“Loan”** means the loan made by the Authority to the Governmental Agency to finance or refinance all or any portion of the Cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the principal amount of the Loan at any time shall be equal to the amount of the loan commitment set forth in paragraph (3) of Exhibit B attached hereto and made a part of this Loan Agreement (which loan commitment amount equals the sum of (i) the amount actually deposited in the Project Loan Subaccount from the proceeds of the Authority Bonds, moneys of the Authority and moneys drawn by the Authority pursuant to the Federal Capitalization Agreement, (ii) the Governmental Agency’s Allocable Percentage of the Costs of Issuance, original issue discount and underwriter’s discount for all Authority Bonds issued in connection with the making of the Loan and the deposit to the 2023 Series A Matching Account, and (iii) capitalized interest during the Project construction period to be paid with the proceeds of Authority Bonds), less any portion of such principal amount as has been repaid by the Governmental Agency under this Loan Agreement.

**“Loan Agreement”** means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof and of the Bond Resolution.

**“Loan Agreements”** means this Loan Agreement and any other loan agreements entered into between the Authority and one or more of the Governmental Agencies pursuant to which the Authority will make Loans to such Governmental Agencies from moneys on deposit in the Project Account financed with the proceeds of certain of the Authority Bonds and funds of the Authority.

**“Loan Closing”** means the date upon which the Authority shall issue and deliver the initial Authority Bonds.

**“Loan Repayments”** means the payments payable by the Governmental Agency pursuant to Section 3.03 of this Loan Agreement, including payments payable under the Governmental Agency Bond.

**“Loan Servicer”** means the Loan Servicer for the Loans, duly appointed and designated as such pursuant to the Loan Servicing Agreement, dated as of the dated date of the Authority Bonds, between the Authority and the Loan Servicer, and its successors as Loan Servicer under the Loan Servicing Agreement.

**“Loans”** means the Loan and loans made by the Authority to other Governmental Agencies under the Loan Agreements.

**“Loan Term”** means the defined term set forth in paragraph (4) of Exhibit B attached hereto and made a part hereof.

**“Minimum Bond Reserve”** means an amount equal to not less than the average annual debt service on the Governmental Agency Bond; provided, however that upon satisfaction of the conditions set forth in Exhibit F hereto, the requirement of establishing and maintaining the Reserve Fund and the Minimum Bond Reserve, if any, for the Governmental Agency Bond shall be at the election of the Governmental Agency, in its sole discretion. **“MSRB”** means the Municipal Securities Rulemaking Board established in accordance with the provisions of Section 15B(b)(1) of the Securities Exchange Act of 1934.

**“Net Income”** means the defined term of this Loan Agreement set forth in paragraph (3) of Exhibit A attached hereto and made a part hereof.

**“Outstanding Parity Obligations”** means, collectively, the bonds designated as (a) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2012 (the “2012 Bonds”) issued in the original principal amount of \$24,325,000 and currently outstanding in the aggregate principal amount of \$8,740,000; (b) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2015 (the “2015 Bonds”) issued in the original principal amount of \$10,075,000 and currently outstanding in the aggregate principal amount of \$7,145,000; (c) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2016 (the “2016 Bonds”) issued in the original principal amount of \$34,145,000 and currently outstanding in the aggregate principal amount of \$24,340,000; (d) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2018 (the “2018 Bonds”) issued in the original principal amount of \$38,260,000 and currently outstanding in the aggregate principal amount of \$32,760,000; (e) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Refunding Note, Series 2020 (the “2020 Note”) issued in the original principal amount of \$5,100,000 and currently outstanding in the aggregate principal amount of \$4,150,000; (f) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2022 (the “2022 Bonds”) issued in the original principal amount of \$44,140,000 and currently outstanding in the aggregate principal amount of \$41,950,000; (g) the Green Project Reserve Loan Agreement and Governmental Agency Bond in the original principal amount of \$3,000,000 dated November [ ], 2023 and (h) the Bipartisan Infrastructure Law Loan Agreement and Governmental Agency Bond in the original principal amount of \$2,870,000 with \$1,500,000 in up-front principal forgiveness dated November [ ], 2023.

**“Pledged Property”** means the defined term set forth in paragraph (3) of Exhibit A attached hereto and made a part hereof.

**“Prime Rate”** means the prevailing commercial interest rate announced by the Trustee from time to time as its prime lending rate.

**“Prior Ordinances”** means, collectively, the ordinances adopted by the City authorizing the execution and delivery of the Outstanding Parity Obligations. **“Project”** means the wastewater treatment system project of the Governmental Agency described in paragraph (1) of Exhibit A

attached hereto and made a part hereof, all or any portion of the Cost of which is financed or refinanced by the Authority through the making of the Loan under this Loan Agreement.

**“Project Account”** means the 2023 Series A Project Account created under the Bond Resolution.

**“Project Loan Subaccount”** means the 2023 Series A Project Loan Subaccount established on behalf of the Governmental Agency in the Project Account in accordance with the Bond Resolution.

**“Reserve Fund”** means the debt service reserve fund for Governmental Agency Bond established in Exhibit F hereto.

**“Reserve Policy”** means a municipal bond debt service reserve insurance policy issued by a provider guaranteeing certain payments from the Reserve Fund with respect to the Governmental Agency Bond, which shall be credited to the Reserve Fund.

**“Rule 15c2-12”** means Rule 15c2-12 under the Securities Exchange Act of 1934, as amended through the date of adoption of the Bond Resolution, together with all interpretive guidances or other official interpretations and explanations thereof that are promulgated by the SEC.

**“SEC”** means the United States Securities and Exchange Commission.

**“2023 Series A Matching Account”** means the 2023 Series A Matching Account created under the Bond Resolution.

**“Trustee”** means the Trustee appointed by the Authority pursuant to the Bond Resolution and its successor or successors and any other corporation which may at any time be substituted in its place as Trustee pursuant to the Bond Resolution.

Terms not otherwise defined in this Section 1.01 or in Exhibits A and B hereto shall have the meanings ascribed to them in the Bond Resolution.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

## **ARTICLE II.**

### **REPRESENTATIONS AND COVENANTS OF GOVERNMENTAL AGENCY**

**SECTION 2.01 Representations of Governmental Agency.** The Governmental Agency represents for the benefit of the Authority and the holders of the Authority Bonds as follows:

- (a) Organization and Authority.
  - (i) The Governmental Agency is a governmental agency as defined in the Act and as described in the first paragraph of this Loan Agreement.
  - (ii) The Facilities are comprised of certain properties and facilities for the for the collection, treatment, transmission, and disposition of sewage or storm, flood, or surface drainage waters, which facilities are combined, operated, and maintained as a single public utility and income-producing project.
  - (iii) The portion of the Facilities comprised of certain properties and facilities for the treatment, transmission, distribution, and disposition of sewage has at least fifteen service connections or regularly serves at least twenty-five individuals.
  - (iv) The Governmental Agency has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Facilities, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to execute, issue and deliver the Governmental Agency Bond, to undertake the Project (other than licenses, permits, and approvals relating to the construction and acquisition of the Project which the Governmental Agency expects to receive in the ordinary course of business), and to carry out and consummate all transactions contemplated by this Loan Agreement. The Project is on the water pollution project eligibility list approved by the General Assembly of the State of Colorado pursuant to the Act and is a project which the Governmental Agency may undertake pursuant to Colorado law and for which the Governmental Agency is authorized by law to borrow money.
  - (v) The proceedings of the Governmental Agency's governing body and voters, if a referendum is necessary, approving this Loan Agreement and the Governmental Agency Bond and authorizing their execution, issuance and delivery on behalf of the Governmental Agency, and authorizing the Governmental Agency to undertake the Project have been duly and lawfully adopted in accordance with the laws of Colorado and such proceedings were duly approved and published, if necessary, in accordance with applicable Colorado law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout.
  - (vi) This Loan Agreement and the Governmental Agency Bond, when delivered at the Loan Closing, will have been, duly authorized, executed and delivered by an Authorized Officer of the Governmental Agency; and, assuming that

the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement, this Loan Agreement constitutes, and the Governmental Agency Bond when delivered to the Authority will constitute, the legal, valid and binding obligations of the Governmental Agency in accordance with their respective terms, and the information contained under “Description of the Loan” on Exhibit B attached hereto and made a part hereof is true and accurate in all respects.

(b) Full Disclosure.

There is no fact that the Governmental Agency has not disclosed to the Authority in writing on the Governmental Agency’s application for the Loan or otherwise that materially adversely affects the properties, activities or condition (financial or otherwise) of the Governmental Agency or the Facilities, or the ability of the Governmental Agency to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Governmental Agency Bond.

(c) Pending Litigation.

There are no proceedings pending, or, to the knowledge of the Governmental Agency threatened, against or affecting the Governmental Agency, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities or condition (financial or otherwise) of the Governmental Agency or the Facilities, or the ability of the Governmental Agency to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Governmental Agency Bond, that have not been disclosed in writing to the Authority in the Governmental Agency’s application for the Loan or otherwise to the Authority.

(d) Compliance with Existing Laws and Agreements.

The authorization, execution and delivery of this Loan Agreement and the Governmental Agency Bond by the Governmental Agency, the observation and performance by the Governmental Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions provided for in this Loan Agreement and the Governmental Agency Bond, the compliance by the Governmental Agency with the provisions of this Loan Agreement and the Governmental Agency Bond and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Governmental Agency pursuant to any existing ordinance, resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than the lien and charge of (i) this Loan Agreement and the Governmental Agency Bond and (ii) any ordinance, resolution or indenture which authorized outstanding debt obligations of the Governmental Agency that are at parity with, or superior to, the Governmental Agency Bond as to lien on, and source and security for, payment thereon from the Pledged



Property) to which the Governmental Agency is a party or by which the Governmental Agency, the Facilities or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Governmental Agency was established or any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Governmental Agency, the Facilities or its properties or operations is subject.

(e) No Defaults.

No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement and the Governmental Agency Bond or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Governmental Agency is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, the Facilities or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Governmental Agency or the Facilities or the ability of the Governmental Agency to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Governmental Agency Bond.

(f) Governmental Consent.

Other than those relating to the construction and acquisition of the Project, which the Governmental Agency expects to receive in the ordinary course of business, the Governmental Agency has obtained all permits and approvals required to date by any governmental body or officer (and reasonably expects to receive all permits required in the future by any governmental body or officer) for the making, observance and performance by the Governmental Agency of its duties, covenants, obligations and agreements under this Loan Agreement and the Governmental Agency Bond or for the undertaking of the Project and the financing or refinancing thereof; and the Governmental Agency has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Governmental Agency of its duties, covenants, obligations and agreements under this Loan Agreement and the Governmental Agency Bond or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained (or that is not reasonably expected to be obtained) is required on the part of the Governmental Agency as a condition to the authorization, execution and delivery of this Loan Agreement and the Governmental Agency Bond, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law.

The Governmental Agency (i) is in compliance with all laws, ordinances, resolutions, governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Governmental Agency to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Governmental Agency or the Facilities; and (ii) has obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Governmental Agency to conduct its activities or undertake the Project or the condition (financial or otherwise) of the Governmental Agency or the Facilities (other than licenses, permits, franchises or other governmental authorizations relating to the construction and acquisition of the Project which the Governmental Agency expects to receive in the ordinary course of business).

(h) Use of Proceeds.

The Governmental Agency will apply the proceeds of the Loan from the Authority (i) to finance or refinance all or any portion of the Cost of the Project; and (ii) where applicable, to reimburse the Governmental Agency for all or any portion of the Cost of the Project, which portion was paid or incurred in anticipation of reimbursement by the Authority.

**SECTION 2.02 Particular Covenants of the Governmental Agency.**

(a) Repayment Pledge.

The Governmental Agency irrevocably pledges and grants a lien on the Pledged Property for the punctual payment of the Loan Repayments.

(b) Performance Under Loan Agreement.

The Governmental Agency covenants and agrees (i) to maintain the Facilities in good repair and operating condition; (ii) to cooperate with the Authority in the observance and performance of the respective duties, covenants, obligations and agreements of such Governmental Agency and the Authority under this Loan Agreement; and (iii) to comply with the covenants described in the Exhibits to this Loan Agreement.

(c) Completion of Project and Provision of Moneys Therefor.

The Governmental Agency covenants and agrees (i) to exercise its best efforts in accordance with prudent wastewater treatment utility practice to complete the Project and to so accomplish such completion on or before the estimated Project Completion Date set forth in Exhibit B hereto and made a part hereof; and (ii) to the extent legally available, to provide from the Gross Income all moneys, in excess of the total amount of Loan proceeds it receives under the Loan, required to complete the Project.

(d) Disposition of the Facilities.

Except for the disposal of any portion of the Facilities which the Governmental Agency determines is no longer necessary for the operation of the Facilities, during the Loan Term,

the Governmental Agency shall not sell, lease, abandon or otherwise dispose of all or substantially all of the Facilities, or any other component of the Facilities which provides Gross Incomes to provide for the payment of this Loan Agreement or the Governmental Agency Bond except on ninety (90) days' prior written notice to the Authority and, in any event, shall not so sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Governmental Agency shall assign this Loan Agreement in accordance with Section 4.02 hereof and its rights and interests hereunder to the purchaser or lessee of the Facilities and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Governmental Agency under this Loan Agreement; and (ii) the Authority shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations and agreements under the Bond Resolution, and will not adversely affect the value of this Loan Agreement as security for the payment of Authority Bonds and interest thereon, adversely affect the eligibility of interest on Authority Bonds then outstanding for exclusion from gross income for purposes of Federal income taxation or adversely affect any agreement entered into by the Authority or the State with, or condition of any grant received by the Authority or the State from, the United States of America, which is related to the Federal Capitalization Agreement or any capitalization grant received by the Authority or the State under the federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.)

(e) Exclusion of Interest from Federal Gross Income and Compliance with Code.

- (i) The Governmental Agency covenants and agrees that it shall not take or permit any action or fail to take any action which action or omission would result in the loss of the exclusion of the interest on any Authority Bonds (assuming solely for this purpose that the proceeds of the Authority Bonds loaned to the Governmental Agency represent all of the proceeds of the Authority Bonds) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.
- (ii) The Governmental Agency covenants and agrees that it shall not take or permit any action or fail to take any action, which action or omission would cause the Authority Bonds (assuming solely for this purpose that the proceeds of the Authority Bonds loaned to the Governmental Agency represent all of the proceeds of the Authority Bonds) to be "private activity bonds" within the meaning of section 141(a) of the Code. Accordingly, unless the Governmental Agency receives the prior written approval of the Authority, and subject to the conditions of Section 2.02(d)(ii), the Governmental Agency shall neither (A) permit in excess of 10 percent of either (1) the proceeds (as such term is used in Section 141 of the Code) of the Authority Bonds loaned to the Governmental Agency or (2) the Project financed (or refinanced) with the proceeds of the Authority Bonds loaned to the Governmental Agency, to be used directly or indirectly in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, nor (B) use directly or indirectly any of the proceeds of the Authority Bonds loaned to the Governmental Agency to make or

finance loans to persons other than governmental units (as such term is used in section 141(c) of the Code); provided further, that more than one half of the private business use permitted by clause (A) shall be neither (1) disproportionate related business use, nor (2) private business use not related to the government use of such proceeds of the Authority Bonds, as those terms are used in Section 141(b)(3) of the Code.

- (iii) The Governmental Agency covenants and agrees that it shall not directly or indirectly use or permit the use of any proceeds of the Authority Bonds (or amounts treated as replaced with such proceeds) or any other funds, or take or permit any action or fail to take any action, which use, action or omission would cause the Authority Bonds (assuming solely for this purpose that the proceeds of the Authority Bonds in the hands of the Governmental Agency represent all of the proceeds of the Authority Bonds) to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.
- (iv) The Governmental Agency covenants and agrees that it shall not use or permit the use of any portion of the proceeds of the Authority Bonds to retire any other obligations of the Governmental Agency or any other entity, unless the Governmental Agency obtains the written consent of the Authority, which consent may be given or withheld in the Authority’s sole discretion.
- (v) The Governmental Agency covenants and agrees to maintain records of its investments, if any, of proceeds of the Authority Bonds loaned to the Governmental Agency which are held by the Governmental Agency and earnings thereon, and will maintain records of expenditures of such proceeds. The Governmental Agency will pay to the Authority any earnings on proceeds of the Authority Bonds loaned to the Governmental Agency which are held by the Governmental Agency (including earnings on such earnings) which, in the opinion of the Authority, are required to be rebated to the United States Treasury Department. The Governmental Agency will provide copies of all records of its investment of such proceeds and of its expenditures to the Authority on a periodic basis upon request by the Authority and will furnish to the Authority, in writing, information regarding any facilities financed or refinanced therewith.
- (vi) Notwithstanding anything herein to the contrary, as long as is necessary to maintain the exclusion of interest on the Authority Bonds from gross income for Federal income tax purposes, the covenants contained in this subsection (e) shall survive the payment of the Authority Bonds and the interest thereon, including any payment pursuant to Section 12.01 of the Bond Resolution or prepayment pursuant to Section 3.08 of this Loan Agreement, respectively.

- (vii) The Governmental Agency shall not, pursuant to any arrangement formal or informal, purchase Authority Bonds in an amount related to the amount of the Loan.
- (viii) The Governmental Agency hereby certifies and represents that it has complied with the requirements of Treasury Regulation Section 1.150-2 in its authorizing resolution or other official action with regard to proceeds of the Authority Bonds, if any, to be used to reimburse the Governmental Agency for expenses incurred by the Governmental Agency prior to the issuance of the Authority Bonds. In the event that any of the proceeds of the Authority Bonds are to be used to pay debt service on any prior issue of the Governmental Agency, and any of the proceeds of such prior issue (or any obligations refinanced by such prior issue) were used to reimburse the Governmental Agency for expenditures incurred prior to the issuance of the prior issue (or refinanced obligations, as the case may be), the Governmental Agency hereby certifies and represents that the allocation of such proceeds to the reimbursed expenditure was a valid expenditure under the applicable law on reimbursement expenditures on the date of issue of the prior issue (or the refinanced obligations), as required by Federal Income Tax Regulation Section 1.150-2(g)(2).
- (ix) By executing this Loan Agreement, the Governmental Agency hereby certifies, represents and agrees that:
  - (1) The proceeds of the Authority Bonds to be loaned to the Governmental Agency pursuant to this Loan Agreement do not, taking into account available earnings thereon, exceed the amount necessary to pay for the Cost of the Project.
  - (2) The Governmental Agency has entered into (or will enter into within six months from the date hereof) a binding commitment for the acquisition, construction or accomplishment of the Project, and will, within six months from the date of the Loan Closing, expend at least five percent of the proceeds of the Authority Bonds loaned to the Governmental Agency.
  - (3) The Governmental Agency reasonably expects that 85% of the proceeds of the Loan will be expended within three years from the date of delivery of the initial series of Authority Bonds. Work on the acquisition, construction or accomplishment of the Project will proceed with due diligence to completion.
  - (4) The total proceeds of the sale of all obligations issued to date for the Project do not exceed the total Cost of the Project, taking into account available earnings thereon.

- (5) The Governmental Agency does not expect that the Project will be sold, leased or otherwise disposed of in whole or in part during the term of the Loan or of the Authority Bonds or for any portion of the term of the Loan or of the Authority Bonds. The Governmental Agency shall not sell, lease or otherwise dispose of the Project in whole or in part during the term of the Loan or of the Authority Bonds or for any portion of the term of the Loan or of the Authority Bonds unless the conditions of Section 2.02(d)(ii) have been satisfied.
- (6) Any fund established, utilized or held by or on behalf of the Governmental Agency to pay debt service on the Loan will be used to achieve a proper matching of revenues and debt service and will be depleted at least annually except for a reasonable carryover amount not to exceed earnings on the fund for the immediately preceding year or 1/12 of the annual debt service on the Loan for the immediately preceding year.
- (7) No portion of the amounts received from the Loan will be used as a substitute for other funds which were otherwise to be used as a source of financing for the Project and which have been or will be used to acquire, directly or indirectly, obligations producing a yield in excess of the yield on the Authority Bonds. The Governmental Agency does not expect to receive any amounts in the future that are intended to finance the portion of the Project being financed with proceeds of the Loan. No portion of the amounts received from the Loan will be used to finance working capital expenditures. The Loan has a weighted average maturity that does not exceed 120 percent of the average reasonably expected economic life of the capital projects financed or refinanced by the Loan.
- (8) No portion of the proceeds of the Loan which are held by the Governmental Agency will be invested, directly or indirectly, in federally-insured deposits or accounts, or federally-guaranteed investments, other than amounts of unexpended Loan proceeds invested in the debt service fund, in any reasonably required reserve or replacement fund, or investments of unexpended Loan proceeds for any remaining initial temporary period (e.g., no later than three years after the date of the Loan Closing) until the proceeds are needed for the Project.
- (9) No other obligations of the Governmental Agency (1) are reasonably expected to be paid out of substantially the same source of funds (or will have substantially the same claim to be paid out of substantially the same source of funds) as will be used to pay the Loan; and (2) are being sold at substantially the same time as the

Loan (i.e., less than 15 days apart); and (3) were sold pursuant to the same plan of financing with the Loan.

- (10) The Governmental Agency has neither received notice that its certifications as to expectations may not be relied upon with respect to its obligations nor has it been advised that any adverse action by the Commissioner of the Internal Revenue Service is contemplated.
- (11) To the best of the knowledge and belief of the undersigned officer of the Governmental Agency, the facts and estimates set forth in this subsection of the Loan Agreement on which the Governmental Agency's expectations as to the application of the proceeds of the Authority Bonds loaned to the Governmental Agency are based, are reasonable.
- (12) None of the proceeds of the Authority Bonds loaned to the Governmental Agency which are held by the Governmental Agency will be invested in investments having a substantially guaranteed yield of four years or more.

(f) Operation and Maintenance of the Facilities.

The Governmental Agency covenants and agrees that it shall, in accordance with prudent utility practice, (i) at all times operate the properties of the Facilities and any business in connection therewith in an efficient manner, (ii) maintain the Facilities in good repair, working order and operating condition, (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the Facilities so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Governmental Agency to expend any funds which are derived from sources other than the Gross Income, and provided further that nothing herein shall be construed as preventing the Governmental Agency from doing so.

(g) Records; Accounts.

The Governmental Agency shall keep accurate records and accounts for the Facilities (the "Facilities Records"), separate and distinct from its other records and accounts (the "General Records"). Such Facilities Records shall be maintained in accordance with GAAP and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Governmental Agency. Such Facilities Records and General Records shall be made available for inspection by the Authority at any reasonable time, and a copy of such annual audit(s) therefor, including all written comments and recommendations of such accountant, shall be furnished to the Authority within 210 days of the close of the fiscal year being so audited.

(h) Inspections; Information.

The Governmental Agency shall permit the Authority, and any party designated by the Authority, to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith.

(i) Insurance.

The Governmental Agency shall maintain or cause to be maintained, in force, insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage or destruction of the Facilities, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining utility system facilities of the nature of the Facilities, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the Governmental Agency from asserting against any party, other than the Authority, a defense which may be available to the Governmental Agency, including, without limitation, a defense of sovereign immunity.

(j) Cost of Project.

The Governmental Agency certifies that the Cost of the Project, as listed in paragraph (2) of Exhibit B hereto and made a part hereof, is a reasonable and accurate estimation and upon direction of the Authority will supply the same with a certificate from its engineer stating that such Cost is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project and other money that would, absent the Loan, have been used to pay the Cost of the Project.

(k) Notice of Material Adverse Change.

The Governmental Agency shall promptly notify the Authority of any material adverse change in the activities or condition (financial or otherwise) of the Governmental Agency relating to the Facilities, or in the ability of the Governmental Agency to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Governmental Agency Bond from the Gross Income. The Governmental Agency shall provide such financial information relating to the Governmental Agency as the Authority may require in connection with the issuance of Authority Bonds pursuant to the Bond Resolution.

(l) Reimbursement for Ineligible Costs.

The Governmental Agency shall promptly reimburse the Authority, solely from the Net Gross Income, for the portion of the Loan which is determined to be a Cost of the Project which is not eligible for funding from draws under the Federal Capitalization Agreement. Such reimbursement shall be promptly repaid to the Authority upon written request of the Authority with interest on the amount to be reimbursed at the rate borne by the Authority Bonds from the date of the Loan. Any such reimbursement shall be applied by the



Authority to reduce the Loan Repayments due pursuant to Section 3.03(a). Eligible costs are costs associated with the approved scope of work, the plans and specifications and any change of orders.

(m) Construction.

The Governmental Agency agrees to construct the Project pursuant to plans and specifications for the Project that have been approved by the State Department of Public Health and Environment, and shall not begin construction until such approval has been provided.

(n) Plan of Operation.

The Governmental Agency shall submit to the State Department of Public Health and Environment, with the construction plans and specifications, a preliminary plan of operation, which shall provide a concise, sequential description of an implementation schedule for those activities necessary to assure efficient and reliable start-up and continual operation of the Project. The Governmental Agency agrees to implement the approved plan of operation.

The Governmental Agency shall also submit a draft operation and maintenance manual prior to 50 percent of the Project being constructed. The final manual must be submitted prior to 90 percent of the Project being constructed.

In addition, one year after commencement of operation, the Governmental Agency shall submit to the State, certification of achievement of the applicable Project performance certification standards.

(o) Commencement of Construction.

Within twelve (12) months after the Loan Closing, the Governmental Agency shall initiate construction of the Project.

(p) Interest in Project Site.

As a condition of the Loan, and prior to beginning construction of the Project, the Governmental Agency will demonstrate to the satisfaction of the Authority that the Governmental Agency has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and rights-of-way, as the Authority finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

(q) Archeological Artifacts.

In the event that archeological artifacts or historical sources are unearthed during construction excavation of the Project, the Governmental Agency shall stop or cause to be stopped, construction activities and will notify the State Historic Conservation Office and the Authority of such unearthing.

(r) No Lobbying.

No portion of the Loan may be used for lobbying or propaganda as prohibited by 18 U.S.C. § 1913 or Section 607(a) of Public Law 96-74.

(s) Federal Requirements Act.

The Governmental Agency covenants to meet the requirements or otherwise be treated under 204(d)(2) of the federal Water Pollution Act, as amended.

(t) Continuing Representations.

The representations of the Governmental Agency contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

(u) Tax Compliance Questionnaire.

The Governmental Agency agrees to furnish to the Authority, no later than June 30 of each year, an executed copy of the Tax Compliance Questionnaire set forth in Exhibit G to this Loan Agreement.

(v) Additional Covenants and Requirements.

If necessary, in connection with the Authority's issuance of the Authority Bonds or the making of the Loan, additional covenants and requirements will be included on Exhibit F hereto and made a part hereof. The Governmental Agency agrees to observe and comply with each such additional covenant and requirement, if any, included on Exhibit F on the date of the Loan Closing.

**SECTION 2.03 Obligation to Provide Continuing Disclosure.**

(a) If the Governmental Agency is advised in writing by the Authority that the Governmental Agency is required to comply with the provisions of this Section 2.03, the Governmental Agency shall undertake, for the benefit of Holders of the Authority Bonds, to provide or cause to be provided through the Authority:

- (i) to the MSRB no later than 210 days after the end of each Fiscal Year, commencing with the end of the first Fiscal Year following receipt of such advice from the Authority, the Annual Information relating to such Fiscal Year;
- (ii) if not submitted as part of or with the Annual Information, to the MSRB audited financial statements of the Governmental Agency for such Fiscal Year when and if they become available; provided that if the Governmental Agency's audited financial statements are not available by the date set forth in (i) above, the Annual Information shall contain unaudited financial statements in a format similar to the Governmental Agency's audited

financial statements prepared for its most recent Fiscal Year, and the audited financial statements shall be filed in the same manner as the Annual Information when and if they become available; and

- (iii) to the MSRB, in a timely manner, notice of a failure to provide any Annual Information required by subsections (d), (e) and (f) of this Section 2.03.

(b) The obligations of the Governmental Agency pursuant to subsection (a) of this Section 2.03 may be terminated as to such Governmental Agency pursuant to subsection (k) of this Section 2.03. Upon any such termination, the Governmental Agency shall provide notice of such termination to the MSRB.

(c) Nothing herein shall be deemed to prevent the Governmental Agency from disseminating or require the Governmental Agency to disseminate any other information in addition to that required hereby in the manner set forth herein or in any other manner. If the Governmental Agency disseminates any such additional information, the Governmental Agency shall have no obligation to update such information or include it in any future materials disseminated hereunder.

(d) The required Annual Information shall consist of the Governmental Agency's audited financial statements for the most recent Fiscal Year as provided in subsection (a)(2) of this Section 2.03, and such other information that the Authority may require in and to provide compliance with Rule 15(c)2-12.

(e) All or any portion of the Annual Information may be incorporated in the Annual Information by cross reference to any other documents which have been filed with the MSRB or the SEC.

(f) Annual Information for any Fiscal Year containing any modified operating data or financial information (as contemplated by subsection (j)(v) of this Section 2.03) for such Fiscal Year shall explain, in narrative form, the reasons for such modification and the effect of such modification on the Annual Information being provided for such Fiscal Year. If a change in accounting principles is included in any such modification, such Annual Information shall present a comparison between the financial statements or information prepared on the basis of the modified accounting principles and those prepared on the basis of the former accounting principles.

(g) The Governmental Agency's annual financial statements for each Fiscal Year shall be prepared in accordance with GAAP as in effect from time to time. Such financial statements shall be audited by an independent accounting firm.

(h) If the Governmental Agency shall fail to comply with any provision of this Section 2.03, then the Authority or any Holder of the Authority's Bonds may enforce, for the equal benefit and protection of all Holders similarly situated, by mandamus or other suit or proceeding at law or in equity, this Section 2.03 against the Governmental Agency and any of the officers, agents and employees of the Governmental Agency, and may compel the Governmental Agency or any such officers, agents or employees to perform and carry out their duties under this Section 2.03; provided that the sole and exclusive remedy for breach

of this Section 2.03 shall be an action to compel specific performance of the obligations of the Governmental Agency hereunder and no person or entity shall be entitled to recover monetary damages hereunder under any circumstances, and, provided further, that any challenge to the adequacy of any information provided pursuant to subsection (a) of this Section 2.03 shall be brought only by the Authority or the Holders of 25% in aggregate principal amount of the Authority's Bonds at the time outstanding which are affected thereby. The failure of the Governmental Agency to comply with the provisions of this Section 2.03 shall not be deemed an Event of Default hereunder and the only remedies available to the Holders or the Authority for such failure to comply are the remedies contained in this subsection (h).

(i) The provisions of this Section 2.03 are executed and delivered solely for the benefit of the Holders. No other person (other than the Authority) shall have any right to enforce the provisions of this Section 2.03 or any other rights under this Section 2.03.

(j) Without the consent of any Holders of Authority Bonds, the Authority and the Governmental Agency at any time and from time to time may enter into any amendments or changes to this Section 2.03 for any of the following purposes:

- (i) to comply with or conform to Rule 15c2-12 or any amendments thereto (whether required or optional);
- (ii) to add a dissemination agent for the information required to be provided hereby and to make any necessary or desirable provisions with respect thereto;
- (iii) to evidence the succession of another person to the Governmental Agency and the assumption by any such successor of the covenants of the Governmental Agency under this Section 2.03;
- (iv) to add to the covenants of the Governmental Agency for the benefit of the Holders, or to surrender any right or power conferred upon the Governmental Agency pursuant to this Section 2.03;
- (v) to modify the contents, presentation and format of the Annual Information from time to time as a result of a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the Governmental Agency, or type of business conducted; provided that, (a) there is filed with the Trustee an opinion of counsel having expertise with respect to securities laws of the United States of America or expertise with respect to the issuance of indebtedness by states and political subdivisions thereof, that (i) this Section 2.03, as amended, would have complied with the requirements of Rule 15c2-12 at the time of the offering of the Authority Bonds, after taking into account any amendments or authoritative interpretations of the Rule 15c2-12, as well as any change in circumstances; and (ii) the amendment or change does not materially impair the interests of Holders, or (b) such change or amendment is approved by

the vote or consent of Holders of a majority in outstanding principal amount of the Authority Bonds affected thereby at or prior to the time of such amendment or change.

(k) This Section 2.03 shall remain in full force and effect until the earlier of (i) the Authority provides notice to the MSRB that the Governmental Agency is no longer an “obligated person” within the meaning of Rule 15c2-12 or (ii) all principal, redemption premiums, if any, and interest on the Authority Bonds shall have been paid in full or the Authority Bonds shall have otherwise been paid in full or legally defeased pursuant to Section 12.01 of the Bond Resolution. In the event of such payment or legal defeasance, the Authority shall promptly give written notice thereof to the Governmental Agency.

(l) Any notices to or filing with the MSRB shall be effected in an electronic format accompanied by identifying information prescribed by the MSRB.

### **ARTICLE III.**

#### **LOAN TO GOVERNMENTAL AGENCY; AMOUNTS PAYABLE; GENERAL AGREEMENTS**

**SECTION 3.01 The Loan.** The Authority hereby agrees to loan and disburse to the Governmental Agency in accordance with Section 3.02 hereof, and the Governmental Agency agrees to borrow and accept from the Authority, the Loan in the principal amount equal to the loan commitment set forth in paragraph (3) of Exhibit B attached hereto and made a part hereof; provided, however, that (i) the Authority shall be under no obligation to make the Loan if the Governmental Agency does not deliver a Governmental Agency Bond to the Authority on the Loan Closing or an Event of Default has occurred and is continuing under the Bond Resolution or this Loan Agreement, and (ii) the proceeds of Authority Bonds shall be available for disbursement, as determined solely by the Authority, to finance the Cost of the Project. The Governmental Agency shall use the proceeds of the Loan strictly in accordance with Section 2.01(h) hereof, to finance the Cost of the Project.

**SECTION 3.02 Disbursement of Loan Proceeds.** The Trustee, as the agent of the Authority, shall disburse the amounts on deposit in the Project Loan Subaccount to the Governmental Agency upon receipt of a requisition executed by an Authorized Officer thereof and approved by the Authority, and if deemed necessary by the Authority, approved by the Colorado Water Quality Control Division, in the form set forth in the Bond Resolution.

The Authority covenants to direct the Trustee to provide all periodic written reports (as required by the provisions of the Bond Resolution) of all moneys on deposit under the Bond Resolution and to furnish such reports to the Governmental Agency as soon as practicable after receipt by the Authority.

The Authority hereby agrees that in the event that moneys on deposit in the Project Loan Subaccount are lost due to the negligence or misconduct of the Trustee, the Authority on behalf of the Governmental Agency, shall, upon the written request of the Governmental Agency, pursue its

remedies against the Trustee, including, but not limited to, equitable actions or actions for money damages.

If there are moneys on deposit in the Project Loan Subaccount upon completion of the Project, the Governmental Agency shall advise the Authority in writing that no further requisitions are to be submitted to the Authority for disbursement of moneys from the Project Loan Subaccount. Upon receipt of such written advice, the Authority shall file with the Trustee the Certificate required by Section 5.03 of the Bond Resolution and use such moneys to redeem, purchase or provide for the payment of the Authority Bonds. The Authority shall credit ensuing Loan Repayments or portions thereof of the Governmental Agency chosen by the Authority as a result of the use of such moneys to purchase, redeem or pay Authority Bonds.

### **SECTION 3.03 Amounts Payable.**

(a) The Governmental Agency shall repay by electronic means the principal of and interest on the Loan in accordance with the schedule set forth on Exhibit C attached hereto and made a part hereof, as the same may be amended or modified, pursuant to Section 6.04 hereof.

(b) The Governmental Agency shall execute the Governmental Agency Bond to evidence the Loan and the obligations of the Governmental Agency under the Governmental Agency Bond shall be deemed to be amounts payable under this Section 3.03. Each portion of the Loan Repayment payable under this subsection (a), whether satisfied entirely through a direct payment by the Governmental Agency to the Loan Servicer or through a combination of a direct payment and the use of Allocable Investment Income as described in subsection (c) of this Section 3.03 to pay interest on the Authority Bonds (and to the extent moneys are available therefor, principal of the Authority Bonds), shall be deemed to be a credit against the corresponding obligation of the Governmental Agency under this subsection (a) and shall fulfill the Governmental Agency's obligation to pay such amount hereunder and under the Governmental Agency Bond. Each payment made to the Loan Servicer pursuant to this subsection shall be applied first to interest then due and payable on the Loan, then to the principal of the Loan.

(c) In addition to the amounts payable under subsection (a) of this Section 3.03, the Governmental Agency shall pay the Administrative Fee in the amounts and on the dates set forth in Exhibit C attached hereto and made a part hereof. Each payment made pursuant to this subsection (b) shall, for purposes of the Loan and the Governmental Agency Bond, be considered as interest on the principal amount thereof.

(d) The Governmental Agency shall receive as a credit against each of its semiannual interest payment obligations set forth on Exhibit C attached hereto and made a part hereof (and, as applicable under the Bond Resolution, its annual principal obligations to the extent moneys are available therefor), (i) the amount of capitalized interest available to be applied against such obligations, as footnoted on such Exhibit C, and (ii) the amount of Allocable Investment Income, if any, to be credited against such obligations, as set forth in each billing statement to be mailed by the Loan Servicer to the Governmental Agency approximately thirty (30) days prior to each Loan Repayment due date.

(e) In addition to the payments required by subsections (a) and (b) of this Section 3.03, the Governmental Agency shall pay a late charge for any payment that is received by the Loan Servicer later than the fifth (5th) day following its due date, in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on such late payment from its due date to when it is actually paid; provided, however, that the interest rate payable on the Loan including such late charge shall not be in excess of the maximum rate permitted by law as of the date hereof.

(f) The Governmental Agency acknowledges that payment of the Authority Bonds by the Authority, including payment from moneys drawn by the Trustee from the 2023 Series A Matching Account, other than from the investment income thereon, does not constitute payment of the amounts due under this Loan Agreement or the Governmental Agency Bond. If at any time the amounts on deposit in the 2023 Series A Matching Account shall be less than the requirement of such Account, as the result of any transfer of moneys from the 2023 Series A Matching Account to the Debt Service Fund as the result of failure by the Governmental Agency to make any Loan Repayments required hereunder, the Governmental Agency agrees to (i) replenish such moneys so transferred, and (ii) replenish any deficiency arising from losses incurred in making such transfer as the result of the liquidation by the Authority of investment securities acquired as an investment of moneys in the 2023 Series A Matching Account, by making payments to the Authority in equal monthly installments for the lesser of six (6) months or the remaining term of the Loan at an interest rate to be determined by the Authority necessary to make up any loss caused by such deficiency.

(g) Loan Repayments pursuant to this Section 3.03 shall be made by electronic means (either by bank wire transfer or by Automated Clearing House "ACH" transfer.)

**SECTION 3.04 Unconditional Obligations.** The obligation of the Governmental Agency to make the Loan Repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein is payable solely from the Net Income and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments under this Loan Agreement remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or the Facilities, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Colorado or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project, this Loan Agreement or the Bond Resolution or any rights of set off, recoupment, abatement or counterclaim that the Governmental Agency might otherwise have against the Authority, the Trustee, the Loan Servicer or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Governmental Agency shall not be obligated to make any payments required to be made by any other Governmental Agencies under separate Loan Agreements or the Bond Resolution.

**SECTION 3.05 Loan Agreement to Survive Bond Resolution and Authority Bonds.** The Governmental Agency acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of the Bond Resolution and payment of the principal of, redemption premium, if any, and interest on the Authority Bonds. The Authority acknowledges that all duties, covenants, obligations and agreements of the Governmental Agency shall (except as and to the extent preserved in subsection (e)(vi) of Section 2.02 hereof) terminate upon the date of payment of all amounts payable to the Authority hereunder.

**SECTION 3.06 Disclaimer of Warranties and Indemnification.** The Governmental Agency acknowledges and agrees that (i) neither the Authority nor the Trustee makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Facilities or the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) except as provided herein, in no event shall the Authority or the Trustee or their respective agents be liable or responsible for any direct, incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Facilities or the Project or any item or products or services provided for in this Loan Agreement; and (iii) to the extent authorized by law, the Governmental Agency shall indemnify, save and hold harmless the Authority against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Governmental Agency, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement, provided however that the provisions of this clause (iii) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the Colorado Governmental Immunity Act (Section 24-10-101, et seq., C.R.S.), or under the laws of the United States or other laws of the State of Colorado.

**SECTION 3.07 Limited Recourse.** No recourse shall be had for the payment of the principal of or interest on the Governmental Agency Bond or for any claim based thereon or upon any obligation, covenant or agreement contained in this Loan Agreement against any past, present or future officer, employee or agent of the Governmental Agency, or of any successor public corporation, as such, either directly or through the Governmental Agency or any successor public corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the Governmental Agency's execution of this Loan Agreement and the issuance of the Governmental Agency Bond.

**SECTION 3.08 Option to Prepay Loan Repayments.** Subject in all instances to the prior written approval of the Authority and satisfaction of the requirements, if any, of the Bond Resolution relating to Loan prepayments, the Governmental Agency may prepay the principal portion of the Loan Repayments set forth in Exhibit C, in whole or in part (but if in part, in the amount of \$100,000 or any integral multiple of \$100,000), upon prior written notice not less than ninety (90) days in addition to the number of days advance notice to the Trustee required for any optional or special redemption of the Authority Bonds, to the Authority and the Trustee and upon payment by the Governmental Agency to the Trustee of the principal amount of the Loan Repayments to be prepaid, plus the interest to accrue on such amount to the date of the next succeeding optional redemption of the Authority Bonds allocable to such Loan Repayment to be



prepaid; provided, however, that (i) if the Governmental Agency proposes to prepay in full the Loan Repayments set forth in Exhibit C, such prepayment shall be conditioned upon the simultaneous prepayment in full of all Administrative Fees due to and including the date of such redemption plus one year after the date of such redemption or (ii) if the Governmental Agency proposes to prepay any portion of the Loan Repayments set forth in Exhibit C, such prepayment shall be conditioned upon the simultaneous prepayment of such portion of the Administrative Fees due to and including the date of such redemption plus one year after the date of such redemption, as shall be determined by the Authority. In addition, if at the time of such prepayment, the Authority Bonds may only be redeemed at the option of the Authority upon payment of a redemption premium, the Governmental Agency shall add to its prepayment an amount, as determined by the Authority, equal to such redemption premium allocable to such Authority Bonds to be redeemed as a result of the Governmental Agency's prepayment. Prepayments shall be applied first to accrued interest on the portion of the Loan to be prepaid and then to the payment of Administrative Fees and then to principal payments (including redemption premium, if any) on the Loan in inverse order of Loan Repayments.

The Governmental Agency, in the sole discretion of the Authority, and upon terms and conditions satisfactory to the Authority, may provide for the prepayment in full of the Loan Repayments by depositing with the Authority an amount which, when added to the investment income to be derived from such amount to be deposited with the Authority, shall provide for the full payment of all such Loan Repayments in the manner provided in this Section 3.08. Any amounts so deposited with the Authority shall be invested solely in direct obligations of the United States of America.

#### **SECTION 3.09 Source of Payment of Governmental Agency's Obligations.**

The Authority and the Governmental Agency agree that the amounts payable by the Governmental Agency under this Loan Agreement, including, without limitation, the amounts payable by the Governmental Agency pursuant to Section 3.03, Section 3.06, Section 3.08 and Section 5.04 of this Loan Agreement are payable solely from the Net Income and are not payable from any other source whatsoever. Nothing herein shall be deemed to prevent the Governmental Agency from paying the amounts payable under this Loan Agreement from any other legally available source.

**SECTION 3.10 Delivery of Documents.** Concurrently with the execution and delivery of this Loan Agreement, the Governmental Agency will cause to be delivered to the Authority each of the following items:

- (a) opinions of the Governmental Agency's counsel or bond counsel substantially in the form set forth in Exhibit E-1 and E-2 hereto (such opinion may be given by one or more counsel); provided, however, that the Authority may permit variances in such opinion from the form or substance of such Exhibit E if such variances are not to the material detriment of the interests of the holders of the Authority Bonds;
- (b) executed counterparts of this Loan Agreement;
- (c) copies of the resolution or ordinance of the governing body of the Governmental Agency authorizing the execution and delivery of this Loan Agreement and Governmental Agency Bond, certified by an Authorized Officer of the Governmental Agency; and

- (d) such other certificates, documents, opinions and information as the Authority may require.

Concurrently with the delivery at the Loan Closing of this Loan Agreement, the Governmental Agency shall also deliver its Governmental Agency Bond to the Authority upon the receipt of a written certification of the Authority that the moneys to be deposited in the Project Loan Subaccount to fund the Loan shall be so deposited simultaneously with the delivery of the Governmental Agency Bond.

**SECTION 3.11. Limited Recourse.** No recourse shall be had for the payment of the principal of or interest on the Governmental Agency Bond or for any claim based thereon or upon any obligation, covenant or agreement contained in this Loan Agreement against any past, present or future officer, employee or agent of the Governmental Agency, or of any successor public corporation, as such, either directly or through the Governmental Agency or any successor public corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the Governmental Agency's execution of this Loan Agreement and the issuance of the Governmental Agency Bond.

## **ARTICLE IV.**

### **ASSIGNMENT**

#### **SECTION 4.01 Assignment and Transfer by Authority.**

- (a) The Governmental Agency expressly acknowledges that, other than Administrative Fees payable pursuant to subsection (b) of Section 3.03 and the right, title and interest of the Authority under Sections 3.06, 5.04 and 5.07, all right, title and interest of the Authority in, to and under this Loan Agreement and the Governmental Agency Bond has been assigned to the Trustee as security for the Authority Bonds, as applicable, as provided in the Bond Resolution, and that if any Event of Default shall occur, the Trustee, pursuant to the Bond Resolution, shall be entitled to act hereunder in the place and stead of the Authority. The Governmental Agency hereby acknowledges the requirements of the Bond Resolution applicable to the Authority Bonds and consents to such assignment and appointment.

The Authority shall retain the right to compel or otherwise enforce observance and performance by the Governmental Agency of its duties, covenants, obligations and agreements under subsection (b) of Section 3.03 to pay Administrative Fees and under Section 3.06 and Section 5.04.

- (b) The Governmental Agency hereby approves and consents to any assignment or transfer of this Loan Agreement and the Governmental Agency Bond that the Authority deems to be necessary in connection with any refunding of the Authority Bonds or the issuance of additional bonds under the Bond Resolution or otherwise, in connection with the wastewater treatment pooled loan program of the Authority.

**SECTION 4.02 Assignment by Governmental Agency.** Neither this Loan Agreement nor the Governmental Agency Bond may be assigned by the Governmental Agency for any reason, unless the following conditions shall be satisfied: (i) the Authority and the Trustee shall have approved said assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Code and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Governmental Agency's duties, covenants, agreements and obligations under the Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Governmental Agency under the Loan Agreement; (iv) the Authority shall have received an opinion of bond counsel to the effect that such assignment will not adversely affect the exclusion of interest on the Authority Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code; and (v) the Authority shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of the Bond Resolution or any agreement entered into by the Authority with, or condition of any grant received by the Authority from, the United States of America relating to the Federal Capitalization Agreement or any capitalization grant received by the Authority or the State under the federal Water Pollution Control Act of 1996, as amended.

No assignment shall relieve the Governmental Agency from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Governmental Agency shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

## **ARTICLE V.**

### **DEFAULTS AND REMEDIES**

**SECTION 5.01 Event of Default.** If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) failure by the Governmental Agency to pay, or cause to be paid, any Loan Repayment set forth in Schedule C, required to be paid hereunder when due, which failure shall continue for a period of ten (10) days;
- (b) failure by the Governmental Agency to make, or cause to be made, any required payments of principal of, redemption premium, if any, and interest on any bonds, notes or other obligations of the Governmental Agency for borrowed money (other than the Loan and the Governmental Agency Bond), after giving effect to the applicable grace period, the payments of which are secured by the Pledged Property;
- (c) failure by the Governmental Agency to pay, or cause to be paid, the Administrative Fee or any portion thereof when due or to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section 5.01 and other than a failure to comply with the provisions of Section 2.03 hereof, which failure shall continue for a period

of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Governmental Agency by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Trustee may not unreasonably withhold its consent to an extension of such time up to sixty (60) days from the delivery of the written notice referred to above if corrective action is instituted by the Governmental Agency within the applicable period and diligently pursued until the Event of Default is corrected;

(d) a petition is filed by or against the Governmental Agency under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Governmental Agency such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the Governmental Agency shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of the Governmental Agency or any of its property) shall be appointed by court order to take possession of the Governmental Agency or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 5.02 Notice of Default.** The Governmental Agency shall give the Trustee and the Authority prompt telephonic notice of the occurrence of any Event of Default referred to in Section 5.01(d) hereof, and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Governmental Agency becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 5.02 shall be confirmed in writing by the end of the next Business Day (as defined in the Bond Resolution).

**SECTION 5.03 Remedies on Default.** Whenever an Event of Default referred to in Section 5.01 hereof shall have occurred and be continuing, the Authority shall have the right to take or to direct the Trustee to take any action permitted or required pursuant to the Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Governmental Agency hereunder, including, without limitation, to obtain ex parte the appointment of a receiver of the Facilities.

**SECTION 5.04 Attorney's Fees and Other Expenses.** The Governmental Agency shall on demand pay to the Authority or the Trustee the reasonable fees and expenses of attorneys and other reasonable fees and expenses (including without limitation the reasonably allocated costs of in-house counsel and legal staff) incurred by either of them in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Governmental Agency.

**SECTION 5.05 Application of Moneys.** Any moneys collected by the Authority or the Trustee pursuant to Section 5.03 hereof shall be applied (a) first, to pay any attorney's fees

or other fees and expenses owed by the Governmental Agency pursuant to Section 5.04 hereof, (b) second, to pay interest due and payable on the Loan, (c) third, to pay principal due and payable on the Loan, (d) fourth, to pay any other amounts due and payable under this Loan Agreement; and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

**SECTION 5.06 No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the Authority or the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

**SECTION 5.07 Retention of Authority's Rights.** Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of the Bond Resolution, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Governmental Agency at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Governmental Agency to the Authority pursuant to Section 3.03, Section 3.06 and Section 5.04 hereof.

**SECTION 5.08 Default by the Authority.** In the event of any default by the Authority under any duty, covenant, agreement or obligation of this Loan Agreement, the Governmental Agency's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the Authority hereunder as may be necessary or appropriate. The Authority shall on demand pay to the Governmental Agency the reasonable fees and expenses of attorneys and other reasonable expenses in the enforcement of such performance or observation.

## **ARTICLE VI.**

### **MISCELLANEOUS**

**SECTION 6.01 Notices.** Any notice, demand, or request required or authorized by this Agreement to be given to another notice recipient listed below, or in Exhibit B in the case of the Governmental Agency (including overnight delivery service) to each of the notice recipients and addresses below or in Exhibit B for the receiving notice recipient. Any such notice, demand, or request shall be deemed to be given (i) when sent by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each addressee listed below and the Governmental Agency shall have the right, upon 10 days' prior written notice to the other notice recipient, to change its list of notice recipients and addresses

listed below or in Exhibit A in the case of the Governmental Agency. The notice recipients below and the Governmental Agency may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods, such as electronic:

- (a) Authority: Colorado Water Resources and  
Power Development Authority  
1580 Logan Street, Suite 620  
Denver, Colorado 80203  
Attention: Executive Director  
  
Email Address: kmclaughlin@cwrpda.com
- (b) Trustee: U.S. Bank Trust Company, National Association.  
Denver Tower  
950 17<sup>th</sup> Street  
Denver, Colorado 80202  
Attention: Corporate Trust Services  
  
Email Address: jennifer.petruno@usbank.com
- (c) Loan Servicer: U.S. Bank Trust Company, National Association.  
Denver Tower  
950 17<sup>th</sup> Street  
Denver, Colorado 80202  
Attention: Corporate Trust Services  
  
Email Address: jennifer.petruno@usbank.com

Any electronically signed document shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature. Paper copies or “printouts”, if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. .

**SECTION 6.02 Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Authority and the Governmental Agency and their respective successors and assigns.

**SECTION 6.03 Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

**SECTION 6.04 Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority and the Governmental Agency.

**SECTION 6.05 Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 6.06 Applicable Law and Venue.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, including the Act. Venue for any action seeking to interpret or enforce the provisions of this Loan Agreement shall be in the Denver District Court.

**SECTION 6.07 Consents and Approvals.** Whenever the written consent or approval of the Authority shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Authority unless otherwise provided by law or by rules, regulations or resolutions of the Authority or unless expressly delegated to the Trustee.

**SECTION 6.08 Captions.** The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

**SECTION 6.09 Compliance with Bond Resolution.** The Governmental Agency covenants and agrees to take such action as the Authority shall reasonably request so as to enable the Authority to observe and comply with, all duties, covenants, obligations and agreements contained in the Bond Resolution insofar as such duties, covenants, obligations and agreements relate to the obligations of the Governmental Agency under this Loan Agreement.

**SECTION 6.10 Further Assurances.** The Governmental Agency shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Loan Agreement and the Governmental Agency Bond.

**SECTION 6.11 Recital.** This Loan Agreement is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Loan Agreement is authorized by the Governmental Agency pursuant to Title 31, Article 35, Part 4, C.R.S. Title 32, Article 1, C.R.S., Title 37, Article 45.1, C.R.S. and Title 11, Article 57, Part 2, C.R.S and shall so recite in the Governmental Agency Bond. Such recitals shall conclusively impart full compliance with all provisions and limitations of such laws and shall be conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond, and the Governmental Agency

Bond delivered by the Governmental Agency to the Authority containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, and delivered, as of the Loan Closing.

**COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Executive Director

(SEAL)

**CITY OF BOULDER, COLORADO (ACTING  
BY AND THROUGH ITS WATER UTILITY  
ENTERPRISE AND WASTEWATER UTILITY  
ENTERPRISE)**

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

ATTEST:



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City Clerk

**EXHIBIT A**

**SECURITY DESCRIPTION**

**(1) Description of the Project**

This project includes modifications to the existing treatment facility to improve nutrient removal, replacing aeration blowers, construction of a hydrocyclone facility, converting the existing pre-dewatering storage tank into a redundant post-aerobic tank, and replacing the internal mechanisms of the primary clarifier.

**(2) Description of Facilities**

“**Facilities**” means the Sewer System and the Water System of the Governmental Agency including the Project, described in paragraph (2) of Exhibit A attached hereto and made a part hereof for which the Governmental Agency is making the borrowing under this Loan Agreement, as such Facilities may be modified or expanded from time to time.

**(3) Pledged Property**

The Pledged Property shall consist of Net Income, as defined below:

“*Gross Income*” means all income and revenues derived directly or indirectly by the City from the operation and use of the Facilities, as may be designated, or any part thereof, whether resulting from improvements, extensions, enlargements, repairs or betterments thereto, or otherwise, including interest earnings on moneys in any fund or account created by this Instrument and includes all revenues earned by the City therefrom, including without limiting the generality of the foregoing, all rentals, fees, rates and other charges for the use thereof, or for any service rendered by the City in the operation thereof, but excluding any moneys received as grants, appropriations or gifts from the United States of America, the State, or other sources, the use of which is limited by the grantor or donor

to the construction of capital improvements therefor, except to the extent any such moneys shall be received as payments for the use of the Facilities, or any part thereof.

“*Net Income*” means the Gross Income after deducting the Operations and Maintenance Expenses.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the City, paid or accrued, for operating, maintaining and repairing the Water System and the Sewer System as may be designated; and the term may include at the City’s option (except as limited by law), without limiting the generality of the foregoing, (a) engineering, auditing, reporting, legal and other overhead expenses of the City directly related to the administration, operation and maintenance thereof; (b) insurance and fidelity bond premiums; (c) the reasonable charges of any paying agent and any other depositary bank appertaining thereto; (d) payments to pension, retirement, health and hospitalization funds; (e) any taxes, assessments or other charges which may be lawfully imposed on the City or its income or operations of any properties under its control and appertaining thereto; (f) ordinary and current rentals of equipment or other property; (g) refunds of any revenues lawfully due to others; (h) expenses in connection with the issuance of bonds or other securities evidencing any loan to the City and payable from Gross Income; (i) the expenses and compensation of any trustee or other fiduciary; (j) contractual services and professional services required by this Instrument; (k) salaries, labor and the cost of materials and supplies used for current operation; and (l) all other third party administrative, general and commercial expenses, but:

- (i) excluding any allowance for depreciation or any amounts for capital replacements;
- (ii) excluding the costs of improvements, extensions, enlargements and betterments (or any combination thereof) that qualify as capital items in accordance with generally accepted accounting principles, or any reserves therefor;
- (iii) excluding any reserves for operation, maintenance or repair of the Facilities;
- (iv) excluding any allowance for the redemption of any bond or other security evidencing a loan, or the payment of any interest thereon, or any reserve therefor; and
- (v) excluding liabilities incurred by the City as the result of its negligence in the operation of the Facilities or other ground of legal liability not based on contract, or any reserve therefor.

“*Sewer System*” means the City’s municipally-owned sanitary sewer system, consisting of all properties, real, personal, mixed, or otherwise, now owned or hereafter acquired by the City through purchase, construction, or otherwise, or reasonably necessary for the operation of the sanitary sewer system regardless of ownership of the capital asset, and used in connection with the sanitary sewer system of the City, and in any way

appertaining thereto, whether situated within or without the corporate boundaries of the City, or both within and without the corporate boundaries of the City.

“*Water System*” means the City’s municipally-owned water system, consisting of all properties, real personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, construction, or otherwise, or reasonably necessary for the operation of the water system regardless of ownership of the capital asset, and used in connection with the water system of the City, and in any way appertaining thereto, whether situated within or without the City limits, or both within and without the City limits.

**(4) Lien Representation**

The Pledged Property is free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto which is superior to the lien of this Loan Agreement and the Governmental Agency Bond on the Pledged Property, and all corporate or other action on the part of the Governmental Agency to that end has been and will be duly and validly taken. As of the date of this Loan Agreement there are outstanding no bonds, notes or evidences of indebtedness or contractual obligations secured by a lien on the Pledged Property which are on a parity with the lien of the Loan Agreement and Governmental Agency Bond, except the Outstanding Parity Obligations. Except as permitted by Exhibit F hereto, the Governmental Agency shall not issue any bonds or other evidences of indebtedness of a similar nature secured by a pledge, lien or assignment on the Pledged Property or create a lien or charge thereon.

**(5) Rate Covenant**

During the Loan Term, the Governmental Agency shall establish and collect such rates and charges for the use or the sale of the products and services of the Facilities as, together with other moneys available therefor, are expected to produce Gross Income (as defined in Paragraph (3) of this Exhibit A to this Loan Agreement) for each calendar year that will be at least sufficient for such calendar year to pay the sum of:

- (a) all amounts estimated to be required to pay Operations and Maintenance Expenses (as defined in paragraph (3) of this Exhibit A of this Loan Agreement) during such calendar year;
- (b) 110% of the debt service coming due during the calendar year on: (i) the Governmental Agency Bond, and (ii) any other obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property, in each case computed as of the beginning of such calendar

year (except to the extent the Governmental Agency has by binding ordinance committed reserves to the payment of such debt service);

- (c) the amount, if any, to be paid during such calendar year into any debt service reserve account in connection with any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property;
- (d) all debt service coming due during the calendar year on any obligations secured by a lien on the Pledged Property which lien is subordinate to the lien of this Loan Agreement on the Pledged Property computed as of the beginning of such calendar year; and
- (e) amounts necessary to pay and discharge all charges and liens or other indebtedness not described above payable out of the Gross Income during such calendar year.

Notwithstanding anything contained above, amounts deposited in a rate stabilization account shall not be deemed Gross Income (as defined in Paragraph (3) of this Exhibit A to this Loan Agreement) in the calendar year deposited and amounts withdrawn from the rate stabilization account shall be deemed Gross Income (as defined in Paragraph (3) of this Exhibit A to this Loan Agreement) in the year withdrawn.

**EXHIBIT B**

**DESCRIPTION OF THE LOAN**

**1. Address of Governmental Agency:**

City of Boulder, Colorado (Acting By and Through its Water Utility Enterprise  
and Wastewater Utility Enterprise  
3170 Broadway  
Boulder, Colorado 80304  
Attention:  
Email Address:

**2. Cost of Project:** Approximately \$\_\_\_\_\_

**3. Principal Amount of Loan Commitment:** \$\_\_\_\_\_ (and \$\_\_\_\_\_ is the  
amount of funds available to be drawn and spent on the project)

**4. Loan Term:** The date commencing on the Loan Closing and ending on the final  
Loan Repayment date set forth in Exhibit C.

**5. Description of the Project:** See Exhibit A, 1.

**6. Authorized Officer(s):**

Aaron Brockett, Mayor  
Mark Wallach, Mayor Pro Tem  
Nuria Rivera-Vandermyde, City Manager  
Kara Skinner, Chief Financial Officer

**7. Project Completion Date:** \_\_\_\_\_

**EXHIBIT C**

**LOAN REPAYMENT SCHEDULE**

**EXHIBIT D**

**GOVERNMENTAL AGENCY BOND**

**FOR VALUE RECEIVED**, the undersigned, **CITY OF BOULDER, COLORADO (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND WASTEWATER UTILITY ENTERPRISE)** (the “Governmental Agency”) hereby promises to pay to the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the “Authority”), or \_\_\_\_\_ registered \_\_\_\_\_ assigns, \_\_\_\_\_ the \_\_\_\_\_ principal \_\_\_\_\_ amount \_\_\_\_\_ of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), at the times and in the amounts determined as provided in the Loan Agreement dated as of November 1, 2023, by and between the Authority and the Governmental Agency (the “Loan Agreement”), together with interest thereon in the amount calculated as provided in the Loan Agreement, payable on the dates and in the amounts determined as provided in the Loan Agreement.

This Governmental Agency Bond is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the “Loan”) and to evidence the obligations of the Governmental Agency thereunder to make the Loan Repayments (as defined in the Loan Agreement). This Governmental Agency Bond has been assigned to U.S. Bank Trust Company, National Association., as trustee (the “Trustee”) under the Bond Resolution (as defined in the Loan Agreement) and payments hereunder shall, except as otherwise provided in the Loan Agreement, be made directly to the Loan Servicer (as defined in the Bond Resolution) for the account of the Authority pursuant to such assignment. Such assignment has been made as security for the payment of the Authority Bonds (as defined in the Bond Resolution) issued to finance or refinance, and in connection with, the Loan and as otherwise described in the Loan Agreement. All of the terms, conditions and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Governmental Agency Bond.

This Governmental Agency Bond is entitled to the benefits and is subject to the conditions of the Loan Agreement. The obligations of the Governmental Agency to make the payments required hereunder shall be absolute and unconditional without any defense or right of setoff, counterclaim or recoupment by reason of any default by the Authority under the Loan Agreement or under any other agreement between the Governmental Agency and the Authority or out of any indebtedness or liability at any time owing to the Governmental Agency by the Authority or for any other reason.

This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts provided in Section 3.08 of the Loan Agreement.

The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is a special and limited obligation of the Government Agency and is payable solely from the repayment source described in the Loan Agreement and the obligation of the Governmental Agency to pay the Loan Repayments is secured by an irrevocable pledge and lien (but not necessarily an exclusive lien) upon the Pledged Property (as defined in paragraph 3. of Exhibit A of the Loan Agreement). This Governmental Agency Bond does not constitute a debt or an indebtedness of the Governmental Agency within the meaning of any constitutional, charter or statutory provision or limitation. This Governmental Agency Bond is not payable in whole or in part from the proceeds of general property taxes, and the full faith and credit of the Governmental Agency is not pledged for the payment of the principal of or interest on this Governmental Agency Bond.

This Governmental Agency Bond is issued under the authority of and in full conformity with the Constitution and laws of the State of Colorado including, without limitation, Article X, Section 20 of the Constitution, Title 32, Article 1, C.R.S., Title 31, Article 35, part 4, Title 37, Article 45.1, Part 1, C.R.S., and certain provisions of Title 11, Article 57, Part 2, Colorado Revised Statutes, and pursuant to the Loan Agreement. Pursuant to §11-57-210, Colorado Revised Statutes, such recital shall be conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond after its delivery for value. This Governmental Agency Bond shall be incontestable for any cause whatsoever after its delivery for value.

**IN WITNESS WHEREOF**, the Governmental Agency has caused this Governmental Agency Bond to be duly executed, sealed and delivered, as of the \_\_\_\_ day of November, 2023.

(SEAL)

**CITY OF BOULDER, COLORADO (ACTING  
THROUGH ITS WATER UTILITY  
ENTERPRISE AND WASTEWATER UTILITY  
ENTERPRISE)**

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

ATTEST:

\_\_\_\_\_  
City Clerk



**EXHIBIT E-1**

**OPINION OF GOVERNMENTAL AGENCY COUNSEL**

[LETTERHEAD OF COUNSEL TO GOVERNMENTAL AGENCY]

(Date of Closing)

Colorado Water Resources and  
Power Development Authority

U.S. Bank Trust Company, National Association  
as Trustee

\_\_\_\_\_,  
as Representative of the Underwriters

Ladies and Gentlemen:

We are attorneys admitted to practice in the State of Colorado and We have acted as counsel to the **CITY OF BOULDER, COLORADO (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND WASTEWATER UTILITY ENTERPRISE)** (the “Governmental Agency”), which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the “Authority”), and have acted as such in connection with the authorization, execution and delivery by the Governmental Agency of the Loan Agreement and its Governmental Agency Bond (as hereinafter defined).

In so acting we have examined the Constitution and laws of the State of Colorado and by-laws of the Governmental Agency. We have also examined originals, or copies certified or otherwise identified to our satisfaction, of the following:

1. the Authority’s State Revolving Fund 2023 Series A Revenue Bond Resolution, adopted by the Authority on October 6, 2023 (the “Bond Resolution”);
2. the Loan Agreement, dated as of November 1, 2023 (the “Loan Agreement”) by and between the Authority and the Governmental Agency;
3. proceedings of the governing members of the Governmental Agency relating to the approval of the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);

4. the Governmental Agency Bond, dated November \_\_, 2023 (the “Governmental Agency Bond”) issued by the Governmental Agency to the Authority to evidence the Loan;
5. proceedings of the governing body of the Governmental Agency relating to the issuance of the Governmental Agency Bond and the execution, issuance and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the “Loan Documents”); and
6. all outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Governmental Agency.

We have also examined and relied upon originals, or copies certified or otherwise authenticated to our satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in our judgment we have deemed necessary or appropriate to enable us to render the opinions expressed below.

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

1. The Governmental Agency is a “governmental agency” within the meaning of the Authority’s enabling legislation with the legal right to carry on the business of the Facilities (as defined in the Loan Agreement) as currently being conducted and as proposed to be conducted.
2. The Governmental Agency has full legal right and authority to execute the Loan Documents and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project; subject, however, to the effect of, restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment or other similar laws affecting creditors’ rights generally (Creditor’s Rights Limitations) heretofore or hereafter enacted.
3. The proceedings of the Governmental Agency’s governing members approving the Loan Documents and authorizing their execution, issuance and delivery on behalf of the Governmental Agency, and authorizing the Governmental Agency to undertake and complete the Project have been duly and lawfully adopted and authorized in accordance with applicable Colorado law (hereinafter collectively called the “Authorizing Ordinance”), which Authorizing Ordinance was duly approved and published in accordance with applicable Colorado law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which a quorum was present acting throughout.
4. To the best of our knowledge, after such investigation as we have deemed appropriate, the authorization, execution and delivery of the Loan Documents by the Governmental Agency, the observation and performance by the Governmental Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking of the

Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Governmental Agency or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Governmental Agency is a party or by which it, the Facilities (as defined in the Loan Agreement) or its property or assets is bound.

5. To the best of our knowledge, after such investigation as we have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery and performance of the Loan Documents and, other than authorizations, licenses and permits relating to the siting, construction and acquisition of the Project which we expect to receive in the ordinary course of business, the undertaking and completion of the Project have been obtained or made.
6. To the best of our knowledge, after such investigation as we have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Governmental Agency or the validity, legality or enforceability of the Loan Documents or the undertaking or completion of the Project or which if adversely determined, could (a) materially adversely affect (i) the financial position of the Governmental Agency, (ii) the ability of the Governmental Agency to perform its obligations under the Loan Documents, (iii) the security for the Loan Documents, or (iv) the transactions contemplated by the Loan Documents, or (b) impair the ability of the Governmental Agency to maintain and operate its Facilities.

The opinions expressed in this opinion letter are subject to the following:

The obligations of the Governmental Agency pursuant to the Loan Documents are subject to the application of equitable principles, to the reasonable exercise in the future by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado, and to the exercise by the United States of America of the powers delegated to it by the Federal Constitution, including without limitation, bankruptcy powers.

No opinion is expressed herein regarding the validity or enforceability of Section 3.06 of the Loan Agreement or any other provision thereof which purports to require the Governmental Agency to indemnify or hold any person harmless.

We are opining only upon those matters set forth herein, and we are not passing upon the accuracy, adequacy, or completeness of any statements made in connection with any offer or sale of the Authority Bonds, the Governmental Agency Bond, or on any other security, or upon any

Federal or State tax consequences arising from the receipt or accrual of interest on or the ownership or disposition thereof, except those specifically addressed herein. This opinion letter is rendered on the basis of Federal law and the laws of the State of Colorado as enacted and construed on the date hereof, and we express no opinion as to any matter not set forth in the numbered paragraphs herein. This opinion letter is issued as of the date hereof and we assume no obligation to revise or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or changes in law that may hereafter occur.

In connection with the execution and delivery of the Loan Documents, we have represented the Governmental Agency which is our sole client in this transaction. Delivery of this letter to you does not establish an attorney-client relationship between any of the addressees and this firm.

We hereby authorize Norton Rose Fulbright US LLP, Bond Counsel to the Authority, and Carlson, Hammond & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion letter as if we had addressed this opinion to them in addition to you. This opinion letter is furnished to you solely for your information and benefit in connection with the initial execution and delivery of the Loan Documents and may not be relied upon by you for any other purpose or relied upon by any other person (other than the Authority's Bond Counsel and General Counsel identified above) without the prior written consent of this firm.

Very truly yours,

**EXHIBIT E-2**

**OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL**

[LETTERHEAD OF BOND COUNSEL TO GOVERNMENTAL AGENCY]

(Date of Closing)

Colorado Water Resources and Power  
Development Authority  
1580 Logan Street, Suite 620  
Denver, Colorado 80203  
U.S. Bank, Trust Company, as Trustee  
\_\_\_\_\_, as Purchaser \_\_\_\_\_

**CITY OF BOULDER COLORADO (ACTING BY AND THROUGH ITS WATER  
UTILITY AND WASTEWATER UTILITY ENTERPRISE)  
Loan Agreement dated as of November 1, 2023 with the  
Colorado Water Resources and Power Development Authority**

Ladies and Gentlemen:

We have acted as bond counsel to CITY OF BOULDER, COLORADO (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND WASTEWATER UTILITY ENTERPRISE) (the “Governmental Agency”), in connection with its authorization, execution, and delivery of a Loan Agreement (the “Loan Agreement”) dated as of November 1, 2023, between the Governmental Agency and the Colorado Water Resources and Power Development Authority (the “Authority”) and its issuance to the Authority of a governmental agency bond in the initial principal amount of \$\_\_\_\_\_ (the “Bond”) in connection therewith, as authorized by a resolution adopted by the City Council of the Governmental Agency on \_\_\_\_\_, 2023. In such capacity, we have examined the Governmental Agency’s certified proceedings and such other documents and such law of the State of Colorado and of the United States of America as we have deemed necessary to render this opinion letter. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them by the Loan Agreement. The Loan Agreement and the Bond are collectively referred to herein as the “Loan Documents.”

Regarding questions of fact material to our opinions, we have relied upon the certified proceedings of the Governmental Agency and other representations and certifications of public officials and others furnished to us without undertaking to verify the same by independent investigation.

Based upon such examination, it is our opinion as bond counsel that:

1. The Governmental Agency is a “governmental agency” within the meaning of the Authority’s enabling legislation.

2. The Governmental Agency has full legal right and authority to execute the Loan Documents and to observe and perform its duties, covenants, obligations and agreements thereunder.

3. The Governmental Agency has pledged the Pledged Property for the punctual payment of the principal of and interest on the Loan and all other amounts due under the Loan Documents according to their respective terms, and the Loan Agreement creates a valid lien on such Pledged Property on a parity with [add additional liens] No filings or recordings are required under the Colorado Uniform Commercial Code in order to create or perfect a lien on the Pledged Property, and all actions have been taken as required by Section 11-57-208, Colorado Revised Statutes.

4. The Loan Documents have been duly authorized, executed and delivered by authorized officers of the Governmental Agency; and, assuming in the case of the Loan Agreement, that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered the Loan Agreement, the Loan Documents constitute legal, valid and binding obligations of the Governmental Agency enforceable in accordance with their respective terms. The execution and delivery of the Loan Documents are not subject to the limitations of Article X, Section 20 of the Colorado Constitution ("TABOR") because the water, wastewater, and storm drainage system of the Governmental Agency constitutes an enterprise under TABOR as of the date hereof. The performance of the obligations of the Governmental Agency under the Loan Documents is not subject to the limitations of TABOR as long as the Governmental Agency continues to qualify as an enterprise under TABOR. If the Governmental Agency ceases to qualify as an enterprise under TABOR, the Loan Documents will continue to constitute legal, valid and binding obligations of the Governmental Agency enforceable in accordance with their respective terms subject to the revenue and spending limitations of TABOR; provided, however, that if the Governmental Agency at any time ceases to qualify as an enterprise under TABOR, (a) the Governmental Agency may impose any increased fees, rates and charges of the Facilities without voter approval; (b) all revenues of the Governmental Agency used to pay Loan Repayments by the Governmental Agency are to be included in the Governmental Agency's fiscal year spending limit under Section 7(d) of TABOR, except that creation of bonded debt increases fiscal year spending by the amount of debt service so funded and debt service changes and reductions are exceptions to, and not part of, the Governmental Agency's revenue and spending base and limits; and (c) if the Governmental Agency is required to reduce spending in order to comply with its fiscal year spending limit under Section 7(b) of TABOR, the Governmental Agency will first be required to reduce spending for purposes for which it does not have an obligation under law or by contract prior to reducing spending required to comply with the other covenants contained in the Loan Documents documents.

- 6. Assuming continuous compliance with the covenants contained in the Loan Agreement, the Governmental Agency is not, directly or indirectly, (a) using in excess of ten

percent of the proceeds of the Authority Bonds (as defined in the Loan Agreement) loaned to the Governmental Agency or the Project in a manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended (the "Code"), and at least one-half of such private business use permitted by clause (a) is neither unrelated to the governmental use of the proceeds of the Authority Bonds loaned to the Governmental Agency (within the meaning of Section 141(b)(3)(A)(ii)(I) or (III) of the Code) nor disproportionate related business use (within the meaning of Section 141(b)(3)(A)(ii)(II) or (III) of the Code) nor (B) using, directly or indirectly, any of the proceeds of the Authority Bonds loaned to the Governmental Agency to make or finance loans to persons other than governmental units (as such terms is used in Section 141(c) of the Code).

The opinions expressed in this opinion letter are subject to the following:

The obligations of the Governmental Agency pursuant to the Loan Documents are limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

No opinion is expressed herein regarding the validity or enforceability of Section 3.06 of the Loan Agreement or any other provision thereof which purports to require the Governmental Agency to indemnify or hold any person harmless.

We are opining only upon those matters set forth herein, and we are not passing upon the accuracy, adequacy or completeness of any statements made in connection with the Loan Documents or any federal or state tax consequences arising from the receipt or accrual of interest on or the ownership or disposition of the Loan Documents, except those specifically addressed herein.

This opinion letter is issued as of the date hereof and we assume no obligation to revise or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or changes in law that may hereafter occur.

In connection with the execution and delivery of the Loan Documents, we have represented the Governmental Agency which is our sole client in this transaction. Delivery of this letter to you does not establish an attorney-client relationship between the Authority and this firm. In connection with the Loan, the Authority has been represented by Carlson, Hammond & Paddock, L.L.C., as General Counsel, which is hereby authorized to rely on the legal conclusions expressed herein in its capacity as General Counsel to the Authority.

This opinion letter is furnished to you solely for your information and benefit in connection with the initial execution and delivery of the Loan Documents and may not be relied upon by you for any other purpose or relied upon by any other person (other than the Authority's General Counsel) without the prior written consent of this firm.

Respectfully submitted,



**EXHIBIT F**

**ADDITIONAL COVENANTS AND REQUIREMENTS**

**Audit Requirements.** For each year in which the Governmental Agency requests a disbursement from the Project Loan Subaccount, the Governmental Agency shall conduct its annual audit in accordance with the federal Single Audit Act, 31 U.S.C. § 7501 et seq.

**Additional Senior, Parity and Subordinate Lien Bonds.**

**(a) Senior Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on the Pledged Property which is superior to the lien or charge of this Loan Agreement on the Pledged Property.

**(b) Parity Lien Bonds.** In addition, the Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on the Pledged Property which is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, [ except as provided in the next succeeding paragraph with respect to obligations issued to finance the cost of completion of the Project (as defined in paragraph 1. of Exhibit A to this Loan Agreement), ] unless the Governmental Agency certifies to the Authority that Net Income (as defined in paragraph 3. of Exhibit A to this Loan Agreement and subject to the next sentence) for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued is at least equal to the sum of (a) 110% of the maximum annual debt service of (i) this Loan Agreement and all outstanding obligations of the Governmental Agency payable out of, or secured by a lien or charge on the Pledged Property which is on a parity with the lien or charge of the Governmental Agency Bond on the Pledged Property, and (ii) such proposed obligations to be issued, and (b) 100% of the maximum annual debt service of all obligations payable out of, or secured by a lien or charge on the Pledged Property which is subordinate to the lien or charge of the Loan Agreement on the Pledged Property.

**(c) Subordinate Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on the Pledged Property which is subordinate to this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued Net Income were at least 100% of the maximum annual debt service on all obligations payable out of, or secured by a lien or charge on the Pledged Property, which are outstanding during such period.

**(d) Net Income Adjustment.** In calculating revenue coverage for purposes of the issuance of additional parity or subordinate lien bonds, Net Income may be adjusted to reflect any rate increases prior to the issuance of such additional obligations by adding to the actual Net Income for such period an estimated sum equal to 100% of the estimated increase in Net Income which would have been realized during such period had such rate increase been in effect during all of such period.

(e) **Refunding Bonds.** Notwithstanding the foregoing, the Governmental Agency may issue refunding obligations payable out of, or secured by a lien or charge on the Pledged Property, without compliance with the requirements stated above, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year.

**Operations and Maintenance Reserve Fund.** The Governmental Agency shall maintain an operations and maintenance reserve in an amount equal to three months of Operations and Maintenance Expenses excluding depreciation of the Facilities as set forth in the annual budget for the current fiscal year but in no event greater than \$1,250,000. Said reserve may be in the form of unobligated fund balances or other unobligated cash or securities (i.e., capital reserves) or may be in a separate segregated fund and shall be maintained as a continuing reserve for payment of any lawful purpose relating to the Facilities. If the operations and maintenance reserves fall below this requirement, the shortfall shall be made up in 24 substantially equal monthly installments beginning the second month after such shortfall or the date of delivery.

**Rate Study.** In the event that Gross Income collected during a fiscal year are not sufficient to meet the requirements set forth in the Rate Covenant contained in paragraph 5. of Exhibit A of this Loan Agreement, the Governmental Agency shall, within 90 days of the end of such fiscal year, cause an independent firm of accountants or consulting engineers, to prepare a rate study for the purpose of recommending a schedule of rates, fees and charges for the use of the Facilities which in the opinion of the firm conducting the study will be sufficient to provide Gross Income to be collected in the next succeeding fiscal year which will provide compliance with the Rate Covenant described in paragraph 5. of Exhibit A of this Loan Agreement. Such a study shall be delivered to the Authority and the Trustee. The Governmental Agency shall within six months of receipt of such study, adopt rates, fees and charges for the use of the Facilities, based upon the recommendations contained in such study, which provide compliance with said Rate Covenant.

**Special Fund.** The Governmental Agency covenants to create a special fund into which shall be deposited the Gross Income (as defined in paragraph 3. of Exhibit A to this Loan Agreement). The Gross Income shall be applied, on or before the last day of each month, first to the payment of the Operations and Maintenance Expenses (as defined in paragraph 3. of Exhibit A to this Loan Agreement) and then applied to the payment of the Loan Repayments and other amounts payable on a parity with the Loan Repayments. Any further application shall be as provided by ordinance of the Governmental Agency.

**Davis Bacon & Related Acts (DBRA).** The Governmental Agency will comply with the requirements of the Davis Bacon & Related Acts, codified at 40 U.S.C. §§ 3140 through 3148.

**American Iron and Steel Requirement.** The Governmental Agency will comply with all federal requirements applicable to the Loan, including Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014, (the “Appropriations Act”) and related State Revolving Fund Policy

Guidelines, which require that all of the iron and steel products (as defined in the Appropriations Act and Guidelines) used in the Project must be produced in the United States unless the Governmental Agency has requested and received a waiver from the requirement pursuant to the “waiver process” described in the Appropriations Act and Guidelines.

**Signage.** The Governmental Agency will comply with all federal requirements applicable to the Loan, including the Guidelines for Enhancing Public Awareness of SRF Assistance Agreements as issued by the United States Environmental Protection Agency in the Memorandum dated June 3, 2015. The Governmental Agency will provide project signage consistent with the guidelines in one or more of the listed strategies including:

1. Standard signage
2. Posters or wall signage in a public building or location
3. Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility
4. Online signage place on a community website or social media outlet
5. Press release

**Debt Service Reserve Fund.** The Governmental Agency shall maintain a debt service reserve fund (the “Reserve Fund”) for the Governmental Bond funded in an amount equal to the Minimum Bond Reserve. The Reserve Fund may be funded by any legally available moneys of the Governmental Agency or by a Reserve Policy. At such time as (i) each series of Outstanding Parity Obligations issued by the City prior to the issuance of the 2022 Bonds (as specified in the definition of Outstanding Parity Obligations) is no longer outstanding (through maturity, refunding, redemption, defeasance or otherwise) or (ii) the holders of more than 50% of the remaining Outstanding Parity Obligations issued by the Governmental Agency prior to the issuance of the 2022 Bonds shall have consented to the following clauses (A) and (B) as proposed amendments to the Prior Ordinances, then: (A) the requirement of establishing or maintaining the Reserve Fund for the Governmental Bond and the amount of the Minimum Bond Reserve, if any, for the Governmental Bond shall be at the election of the Governmental Agency, in its sole discretion, and (B) the requirement to establish and maintain a reserve fund, if any, for Additional Parity Obligations and the minimum amount of any such reserve fund, if established, shall be at the election of the Governmental Agency, in its sole discretion.

**EXHIBIT G**

**COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY**

**TAX COMPLIANCE QUESTIONNAIRE  
REGARDING USE OF FACILITIES FINANCED WITH  
TAX-EXEMPT BONDS**

**BOND ISSUE:** State Revolving Fund Revenue Bonds 2023 Series A.

**NAME OF GOVERNMENT AGENCY:** CITY OF BOULDER, COLORADO (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND WASTEWATER UTILITY ENTERPRISE) (the “Government Agency”)

Please provide the information requested below with respect to the Government Agency’s facilities (the “Bond-Financed Facilities”) financed with the above-referenced issue of tax-exempt obligations (“Bonds”) issued by the Colorado Water Resources and Power Development Authority (the “Authority”).

1. (a) Are all of the Bond-Financed Facilities owned by a governmental person? (For purposes of this Questionnaire, a “governmental person” is a state or local governmental unit or any instrumentality thereof and a “nongovernmental person” is any person or entity other than a governmental person.) ☐ Yes ☐ No  
  
(b) If the answer to 1(a) is “No,” provide a brief description of the owner, the properties it owns and the ownership arrangement.
2. (a) Are any of the Bond-Financed Facilities leased to a nongovernmental person? ☐ Yes ☐ No  
  
(b) If the answer to 2(a) is “Yes,” provide a brief description of the lease.
3. (a) Has the Government Agency entered into a contract with a nongovernmental person for the operation or management of the Bond-Financed Facilities? ☐ Yes ☐ No  
  
(b) If the answer to 3(a) is “Yes,” provide a brief description of the contract.
4. (a) Has the Government Agency entered into any wholesale contract with a nongovernmental person for the sale, exchange, pooling or other use of the capacity or output of the Bond-Financed Facilities? ☐ Yes ☐ No  
  
(b) If the answer to 4(a) is “Yes,” provide a brief description of the contract.
5. (a) Are the Bond-Financed Facilities used to serve any retail customer under an arrangement other than (1) a general rate schedule or tariff or (2) a requirements contract

under which the purchaser is obligated to make payments only to the extent it has output requirements served under the contract?    \_\_\_ Yes        \_\_\_ No

(b)    If the answer to 5(a) is “Yes,” provide a brief description of the contract or other arrangement.

6.    (a)    To the best of its knowledge, is the Government Agency in compliance with its covenants in the Loan Agreement executed by the Government Agency in connection with the issuance of the Bonds?    \_\_\_ Yes        \_\_\_ No

(b)    If the answer to 6(a) is “No,” provide a brief explanation.

Provide the name, title and contact information for the person(s) who completed this Questionnaire:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

CITY OF BOULDER, COLORADO (ACTING  
THROUGH ITS WATER UTILITY  
ENTERPRISE AND WASTEWATER UTILITY  
ENTERPRISE)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_