

CWR02WAT

TYPE OF RECORD: ACTIVE NON-PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: COLORADO WATER RESOURCES AND POWER  
DEVELOPMENT AUTHORITY

SUBJECT/PROJECT: DRINKING WATER REVOLVING FUND

CITY DEPARTMENT: ADMINISTRATIVE SERVICES

YEAR: 2002

EXPIRATION DATE: 8/1/2022

DESTRUCTION DATE: 1/28

DRINKING WATER REVOLVING FUND

---

LOAN AGREEMENT

BETWEEN

COLORADO WATER RESOURCES  
AND  
POWER DEVELOPMENT AUTHORITY

AND

CITY OF GRAND JUNCTION, COLORADO

Dated as of April 1, 2002

---

TABLE OF CONTENTS

Page

ARTICLE I.  
DEFINITIONS

SECTION 1.01. Definitions .....2

ARTICLE II.  
REPRESENTATIONS AND COVENANTS OF GOVERNMENTAL AGENCY

SECTION 2.01. Representations of Governmental Agency .....7  
SECTION 2.02. Particular Covenants of the Governmental Agency ....9  
SECTION 2.03. Obligation to Provide Continuing Disclosure .....20

ARTICLE III.  
LOAN TO GOVERNMENTAL AGENCY; AMOUNTS PAYABLE; GENERAL AGREEMENTS

SECTION 3.01. The Loan .....23  
SECTION 3.02. Disbursement of Loan Proceeds .....24  
SECTION 3.03. Amounts Payable .....24  
SECTION 3.04. Unconditional Obligations .....26  
SECTION 3.05. Loan Agreement to Survive Bond Resolution and  
Authority Bonds .....27  
SECTION 3.06. Disclaimer of Warranties and Indemnification .....27  
SECTION 3.07. Option to Prepay Loan Repayments .....28  
SECTION 3.08. Source of Payment of Governmental Agency's  
Obligations .....29  
SECTION 3.09. Delivery of Documents .....29

ARTICLE IV.  
ASSIGNMENT

SECTION 4.01. Assignment and Transfer by Authority .....30  
SECTION 4.02. Assignment by Governmental Agency .....31

ARTICLE V.  
DEFAULTS AND REMEDIES

SECTION 5.01. Event of Default .....31  
SECTION 5.02. Notice of Default .....33  
SECTION 5.03. Remedies on Default .....33  
SECTION 5.04. Attorney's Fees and Other Expenses .....33  
SECTION 5.05. Application of Moneys .....33  
SECTION 5.06. No Remedy Exclusive; Waiver; Notice .....33  
SECTION 5.07. Retention of Authority's Rights .....34  
SECTION 5.08. Default by the Authority .....34

ARTICLE VI.  
MISCELLANEOUS

SECTION 6.01. Notices .....34

TABLE OF CONTENTS  
(cont'd)

	<u>Page</u>
SECTION 6.02. Binding Effect .....	35
SECTION 6.03. Severability .....	35
SECTION 6.04. Amendments, Supplements and Modifications .....	35
SECTION 6.05. Execution in Counterparts .....	35
SECTION 6.06. Applicable Law and Venue .....	35
SECTION 6.07. Consents and Approvals .....	35
SECTION 6.08. Captions .....	36
SECTION 6.09. Compliance with Bond Resolution .....	36
SECTION 6.10. Further Assurances .....	36
SECTION 6.11. Recital .....	36

**EXHIBITS**

<b>EXHIBIT A</b>	SECURITY DESCRIPTION .....	A-1
<b>EXHIBIT B</b>	DESCRIPTION OF THE LOAN .....	B-1
<b>EXHIBIT C</b>	LOAN REPAYMENT SCHEDULE .....	C-1
<b>EXHIBIT D</b>	GOVERNMENTAL AGENCY BOND .....	D-1
<b>EXHIBIT E-1</b>	OPINION OF GOVERNMENTAL AGENCY COUNSEL .....	E-1-1
<b>EXHIBIT E-2</b>	OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL .....	E-2-1
<b>EXHIBIT F</b>	ADDITIONAL COVENANTS AND REQUIREMENTS .....	F-1

**THIS LOAN AGREEMENT**, made and entered into as of this 1st day of April 2002, 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 GRAND JUNCTION, COLORADO** (the "Governmental Agency"), a municipal corporation of the State of Colorado;

**WITNESSETH THAT:**

**WHEREAS**, the United States of America, pursuant to the federal Safe Drinking Water Act Amendments of 1996, requires each state, as a condition to the receipt of certain funds, to establish a drinking water 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 drinking requirements;

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

**WHEREAS**, Section 37-95-107.8 of the Colorado Revised Statutes has created a drinking water revolving fund to be administered by the Authority which will enable the State of Colorado to comply with the provisions of said federal Safe Drinking Water Act Amendments of 1996;

**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 water facilities, and to use moneys on deposit in the drinking water 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 a portion of the cost of water facilities;

**WHEREAS** the Governmental Agency has made timely application to the Authority for a loan to finance a portion of the cost of water facilities;

**WHEREAS**, the General Assembly of the State of Colorado has approved a project eligibility list which includes the water 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 (4) of Exhibit B hereto to finance a portion of the cost of water facilities 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.

"**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 (.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, if any, 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 of 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 whose name is set forth in 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.

**"Bond Resolution"** means the Drinking Water Revolving Fund 2002 Series A Revenue Bond Resolution, as adopted by the Authority on March 1, 2002, authorizing the issuance of the Authority Bonds, and all further amendments and supplements thereto adopted in accordance with the provisions thereof.

**"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.

**"Commencement Date"** means the date of commencement of the term of this Loan Agreement, as set forth in Exhibit B attached hereto and made a part hereof, which date shall be the dated date of the Authority Bonds authorized by the Bond Resolution.

**"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.

**"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 Safe Drinking Water Act Amendments of 1996, as amended (Pub. L. 104-182).

**"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, 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 13d-3 under the Securities Exchange Act of 1934.

**"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 equal to the amount of the loan commitment set forth in paragraph (4) 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 and moneys of the Authority, (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 (iii) capitalized interest, if any, 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 certain of the proceeds 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.

**"Loan Term"** means the period commencing on the Commencement Date, and terminating on the final Loan Repayment date set forth in Exhibit C.

**"Loans"** means the Loan and loans made by the Authority to other Governmental Agencies under Loan Agreements from moneys on deposit in the Project Account financed with the proceeds of certain of the Authority Bonds and funds of the Authority.

**"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.

**"Pledged Property"** means the defined term of this Loan Agreement set forth in paragraph (4) 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.

**"Project"** means the water facilities 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 Account"** means the 2002 Series A Project Account created under the Bond Resolution.

**"Project Loan Subaccount"** means the 2002 Series A Project Loan Subaccount established on behalf of the Governmental Agency in the Project Account in accordance with the Bond Resolution.

**"Repository"** means any nationally recognized municipal securities information repository within the meaning of Rule 15c2-12.

**"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.

**"2002 Series A Matching Account"** means the 2002 Series A Matching Account created under the Bond Resolution.

**"State Information Depository"** means any public or private repository designated by the State of Colorado, and recognized as such by the SEC for the purposes of Rule 15c2-12.

**"SEC"** means the United States Securities and Exchange Commission.

**"System"** means the drinking 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 System may be modified or expanded from time to time.

**"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 herein 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 System is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances which has at least fifteen service connections or regularly serves at least twenty-five individuals.

(iii) 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 which the Governmental Agency expects to receive in the ordinary course of business), to execute, deliver and perform its obligations under this Loan Agreement and the Governmental Agency Bond. The Project is on the project eligibility list approved by the General Assembly of the State of Colorado pursuant to the Act.

(iv) 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, 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 and otherwise to 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, prospects or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to observe and perform its 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 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 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 to which the Governmental Agency is a party or by which the Governmental Agency, the System 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 System or its properties or operations is subject.

(e) Governmental Consent.

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 and approvals required in the future by any governmental agency) 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; 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. 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, delivery and performance of this Loan Agreement and the Governmental Agency Bond.

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

(a) Source of Repayment Pledge.

The Governmental Agency irrevocably pledges the Pledged Property 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.

The Governmental Agency covenants and agrees (i) to maintain the System 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 water utility practice to complete the Project and to so accomplish such completion on or before the estimated Completion Date set forth in Exhibit B hereto and made a part hereof; and (ii) subject to appropriation, to provide from its own fiscal resources 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.

Other than facilities which the Governmental Agency determines are no longer necessary for the operation of the System, the Governmental Agency shall not sell, lease, abandon or otherwise dispose of all or substantially all of the System, or any other component of the System which 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 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 Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182), as amended.

(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 (i) the proceeds (as such term is used in Section 141 of the Code) of the Authority Bonds loaned to the Governmental Agency or (ii) 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 (i) disproportionate related business use, nor (ii) 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 and earnings thereon, and will maintain records of expenditures of such amounts. The Governmental Agency will pay to the Authority any earnings on proceeds of the Authority Bonds loaned to 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 moneys 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 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 3.07 of this Loan Agreement, respectively.

(vii) Neither the Governmental Agency nor any of its agencies shall, 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). In the case of refunding of a prior issue issued before July 1, 1993, the proceeds of which were used to reimburse original expenditures, the Governmental Agency (A) made an official intent prior to July 1, 1993 which satisfied the applicable provisions of Treasury Regulation Section 1.103-8(a)(5) as in effect prior to July 1, 1993 or (B) made an official intent between January 27, 1992 and May 30, 1993 which satisfied the applicable provisions of Treasury Regulation Section 1.103-18 as in effect during such period.

(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 costs of the Project, including costs of issuance of the Authority Bonds allocated to the Loan.

(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 delivery of

the Authority Bonds by the Authority, expend at least five percent of the proceeds of the Authority Bonds loaned to the Governmental Agency.

(3) The Governmental Agency reasonably expects that all of the proceeds of the Loan will be expended within 3 years from the date of this Loan Agreement. 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 costs 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 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 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 3 years after the date hereof) 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 Loans; and (2) are being sold at substantially the same time as the Loans (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 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 will be invested in investments having a substantially guaranteed yield of four years or more.

(f) Operation and Maintenance of the System.

The Governmental Agency covenants and agrees that it shall, in accordance with prudent water utility practice, (i) at all times operate the properties of the System and any business in connection therewith in an efficient manner, (ii) maintain the 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 the 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 which are derived from sources other than the operation of the System or other receipts of the System which are not Pledged Property, 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 System (the "System Records"), separate and distinct from its other records and accounts (the "General Records"). Such System 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 System 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 180 days of the close of the fiscal year being so audited. Upon delivery of its annual audited financial statements, the Governmental Agency shall furnish to the Authority a certificate of an Authorized Officer stating that, to the best of such individual's knowledge following reasonable inquiry, no Event of Default has occurred, or if an Event of Default has occurred, specifying the nature thereof and, if the Governmental Agency has a right to cure pursuant to Section 5.01, stating in reasonable detail the steps, if any, being taken by the Governmental Agency to cure such Event of Default.

(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. The Governmental Agency shall advise the Authority in writing of the issuance of any debt payable from Pledged Property at least 30 days prior to the issue of such debt. 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 which are payable from the Pledged Property at least 30 days after the date of issuance of such debt.

(i) Insurance.

The Governmental Agency agrees to 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 System, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining water system facilities of the nature of the System, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the Governmental Agency from exerting 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 (3) 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, prospects or condition (financial or otherwise) of the Governmental Agency relating to the System, 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 Pledged Property. 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 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) Advertising.

To the extent required by the Colorado Department of Public Health and Environment, the Governmental Agency shall not make any award for construction bids until plans and specifications for the Project have been approved by the Colorado Department of Public Health and Environment.

(n) Commencement of Construction.

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

(o) Interest in Project Site.

As a condition of the Loan, the Governmental Agency will demonstrate to the satisfaction of the Authority before advertising bids for construction that it 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.

(p) Archeological Artifacts.

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

(q) 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.

(r) Federal Safe Drinking Water Act.

The Governmental Agency covenants to meet the requirements of or otherwise be treated under Section 130 of the federal Safe Drinking Water Act as amended. By the execution and delivery of this Loan Agreement, the Governmental Agency acknowledges receipt from the Colorado Water Quality Control Division a list of federal laws and executive orders (known as federal "Cost-Cutters") which the Governmental Agency may be subject. The Governmental Agency agrees to comply with such laws and executive orders which are applicable to the Governmental Agency.

(s) 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.

(t) 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:

(1) to each Repository and to the State Information Depository, no later than 180 days after the end of each Fiscal Year, commencing with the Fiscal Year during which the Governmental Agency is notified by the Authority pursuant to subsection (a) of this Section 2.03, the Annual Information relating to such Fiscal Year;

(2) if not submitted as part of or with the Annual Information, to each Repository and to the State Information Depository, if any, 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 (1) 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

(3) to each Repository or to the MSRB and to the State Information Depository, 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 each Repository, the State Information Depository and 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 which the Authority deems reasonably necessary to comply with the requirements of Rule 15c2-12.

(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 (i) the Repositories, the State Information Depository and, if the document is an official statement, the MSRB or (ii) 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 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 each Repository, the State Information Depository and 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.

### **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; 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(e) 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 direction of the Governmental Agency, pursue available 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 to purchase, redeem or pay Authority Bonds.

**SECTION 3.03. Amounts Payable.**

(a) The Governmental Agency shall repay 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.

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 subsections (a) and (b) of 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 therefore, 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.

In the event the Authority issues refunding bonds pursuant to the Bond Resolution in order to refinance the particular Project Account or Project Loan Subaccount from which amounts loaned to the Governmental Agency pursuant to this Loan Agreement are taken which refunding results in a decrease in total aggregate Loan Repayments, the Authority shall amend Exhibit C to reflect such decrease in total aggregate Loan Repayments.

(b) 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.

(c) 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.

(d) 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 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.

(e) The Governmental Agency acknowledges that payment of the Authority Bonds by the Authority, including payment from moneys drawn by the Trustee from the 2002 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 2002 Series A Matching Account shall be less than the requirement of such Account, as the result of any transfer of moneys from the 2002 Series A Matching Account to the Debt Service Fund as the result of a 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 2002 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.

**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 Pledged Property 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 System, 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 System or the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) 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 System 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. Option to Prepay Loan Repayments.** Subject in all instances to the prior written approval of the Authority which approval will not be unreasonably withheld and satisfaction of the requirements, if any, of the Bond Resolution relating to Loan prepayments, the Governmental Agency may prepay the 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 or special 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 Exhibit C Loan Repayments, 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 such date of redemption or (ii) if the Governmental Agency proposes to prepay a portion of the Exhibit C Loan Repayments, 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 such date of 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. In addition, any prepayments shall include an amount, which when added to the interest portions of the Loan Repayments, shall equal the interest payable on the Authority Bonds allocable to the Loan to the date of redemption or maturity, as the case may be, of the Authority Bonds. 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 3.07. Any amounts so deposited with the Authority shall be invested solely in direct obligations of the United States of America.

The restrictions contained in this Section 3.07 shall not be applicable to any mandatory or extraordinary redemption or acceleration required by the Bond Resolution.

**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 3.06, Section 3.07 and Section 5.04 of this Loan Agreement are payable solely from the Pledged Property. The obligations of the Governmental Agency under this Loan Agreement do not constitute a debt or indebtedness of the Governmental Agency within the meaning of any constitutional, charter or statutory provision or limitations, and shall not be considered or held to be a general obligation of the Governmental Agency.

**SECTION 3.09. 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 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 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; 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.

**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; provided, however, that in no event shall the Authority have the right to accelerate the Governmental Agency Bond solely for the enforcement of the payment of Administrative Fees or the enforcement of Section 3.06 or 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 drinking water revolving fund 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 Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182), 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, required to be paid hereunder when due, which failure shall continue for a period of five (5) 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 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) 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 or in connection with the Authority Bonds, is false or misleading in any material respect; and

(e) 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 or 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(e) 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 Bond Resolution or 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 System.

**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 hereunder 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(b), 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.** 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, the Trustee and the Loan Servicer at the following addresses:

- (a) Authority: Colorado Water Resources and  
Power Development Authority  
1580 Logan Street -- Suite 620  
Denver, Colorado 80203  
Attention: Executive Director
- (b) Trustee: Zions First National Bank  
717 17<sup>th</sup> Street, Suite 301  
Denver, Colorado 80202  
Attention: Corporate Trust
- (c) Loan Servicer: Zions First National Bank  
717 17<sup>th</sup> Street, Suite 301  
Denver, Colorado 80202  
Attention: Corporate Trust

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

**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 pursuant to Title 37, Article 45.1, C.R.S., Title 11, Article 57, Part 2, C.R.S. and the City Charter. Such recital shall conclusively impart full compliance with all provisions and limitations of such laws, and this Loan Agreement 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.

(SEAL)

COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY

ATTEST:

By: *Daniel J. Fawcett*  
Executive Director

*Nickal Brod*  
Assistant Secretary



ATTEST:

CITY OF GRAND JUNCTION, COLORADO

By: *City Council - Matty*  
President of the City  
Council

*Stephanie Linn*  
City Clerk

## SECURITY DESCRIPTION

(1) Description of Project

The Project consists of the replacement of approximately nine miles of water distribution pipelines.

(2) Description of System

"System" means all of the Governmental Agency's water facilities and properties, now owned or hereafter acquired, whether situated within or without the Governmental Agency's boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto, which facilities and properties are used exclusively for the Governmental Agency's water activity enterprise.

(3) Lien Representation

The Pledged Property will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to the obligation of the Governmental Agency to pay this Loan Agreement and the Governmental Agency Bond, 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 no outstanding bonds, notes or evidences of indebtedness or contractual obligations payable from the Pledged Property with a lien on the Pledged Property which is on a parity with the lien of the Loan Agreement and Governmental Agency Bond on the Pledged Property, except for the loan dated August 25, 1989, payable to the Colorado Water Conservation Board in the original principal amount of \$195,930.35. Except as permitted by Exhibit F hereto, the Governmental Agency shall not issue any bonds or other evidences of indebtedness of a similar nature payable out of or secured by a pledge, lien or assignment on the Pledged Property or create a lien or charge thereon.

(4) Pledged Property

"Pledged Property" means the Net Revenues (as defined in this paragraph (4) of Exhibit A of this Loan Agreement).

"Net Revenues" for any period shall mean the Revenues (as defined in this paragraph (4) of Exhibit A of this Loan Agreement) during such period minus Operating Expenses (as defined in this

"Revenues" 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 plant investment 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, including investment income accruing from moneys held to the credit of the Governmental Agency's Water Fund and from moneys required to be paid into any fund or account pledged to the payment of the Loan (or other obligations secured by a lien on the Pledged Property, except to the extent otherwise provided in the authorizing proceedings for such obligations); provided however, that there shall be excluded from Revenue any moneys borrowed and used for providing capital improvements; any money and securities, and investment income therefrom, in any escrow or similar account pledged to the payment of any refunded bonds or other legally defeased obligations; and any moneys received as grants or appropriations the use of which is limited or restricted by the grantor or donor to the capital improvements or other purposes inconsistent with the inclusion of such moneys as Revenues.

"Operating Expenses" shall mean, for any particular period, all reasonable and necessary current expenses of the Governmental Agency, paid or accrued, for operating, maintaining, and repairing the System, but only if such charges are made in conformity with Generally Accepted Accounting Principles (as defined in paragraph (4) of Exhibit A of this Loan Agreement).

Such Operating Expenses include, but are not limited to, expenses for ordinary repairs, renewals and replacements of the System, salaries and wages, employees' health, hospitalization, pension and retirement expenses, fees for services, materials and supplies, rents, administrative and general expenses, including legal and overhead expenses of the City directly related to the administration of the System, insurance expenses, legal, engineering, accounting, trustee, paying agent and financial advisory fees and expenses and costs of other consulting and technical services, taxes (except as set forth in the following paragraph), payments in lieu of taxes and other governmental charges, payments to the United States Treasury pursuant to Section 148(f) of the Code or similar requirement to pay rebate, fuel costs, and any other current expenses or obligations required to be paid by the Governmental Agency by law, all to the extent properly allocable to the System.

Such Operating Expenses do not include depreciation or obsolescence charges or reserves, amortization of intangibles or other bookkeeping entries of a similar nature, interest charges and charges for the payment of principal, or amortization, of bonded or other indebtedness of the Governmental Agency, costs, or charges made therefor, for capital additions, replacements, betterments, extensions or improvements to or retirements from the System which under Generally Accepted Accounting Principles are properly chargeable to the capital account or the reserve for depreciation, and do not include losses from the sale, abandonment, reclassification, reevaluation or other disposition of any properties of the System nor such property items, including taxes and fuel, which are capitalized pursuant to the then existing accounting practice of the Governmental Agency.

"Generally Accepted Accounting Principles" shall mean accounting principles, methods and terminology followed and construed for utilities and enterprises of governmental units, as established by the Governmental Accounting Standards Board, as amended from time to time.

(5) Rate Covenant

The Governmental Agency shall establish and collect rates and charges for the use or the sale of the products and services of the System, which together with other moneys available therefor (exclusive of any unappropriated fund balances), are expected to produce Revenues (as defined in paragraph (4) of this Exhibit A to this Loan Agreement) for each calendar year which will be at least sufficient for such calendar year to pay the sum of:

(a) all amounts estimated to be required to pay Operating Expenses (as defined in paragraph (4) of this 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 indebtedness payable on a parity with the lien or charge 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;

(d) a sum equal to the debt service on any subordinated debt 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 currently payable out of the Revenues during such calendar year.

Notwithstanding anything contained above, amounts deposited in a rate stabilization account, which such amounts maybe co-mingled, shall not be deemed Revenues (as defined in paragraph (4) of this Exhibit A to this Loan Agreement) in the calendar year deposited and amounts withdrawn from the rate stabilization account shall be deemed Revenues (as defined in paragraph (4) of this Exhibit A to this Loan Agreement) in the year withdrawn.

DESCRIPTION OF THE LOAN

- (1) **Commencement Date:** April 1, 2002
  
- (2) **Address of Governmental Agency:**  
City of Grand Junction, Colorado  
Attn: Greg Trainor, Utility Manager  
250 North 5<sup>th</sup> Street  
Grand Junction, Colorado 81501
  
- (3) **Cost of the Project:** \$3,500,000
  
- (4) **Principal Amount of Loan Commitment:** \$3,566,521.69
  
- (5) **Loan Term:** The final Loan Repayment Date set forth in Exhibit C.
  
- (6) **Description of the Project:** See Exhibit A(1)
  
- (7) **Authorized Officer(s):**  
  
Ron Lappi, Director of Finance and Administrative Services
  
- (8) **Completion Date:**  
  
November 2004
  
- (9) **Execution Date:**  
  
April 16, 2002

**EXHIBIT C**  
**CITY OF GRAND JUNCTION, COLORADO**

**LOAN REPAYMENT SCHEDULE**  
**Loan Rate: 4.02%**

Loan Repayment Date	Principal Portion of Loan Repayment (1)	Principal Portion of Loan Repayment (2)	Total Principal	Administrative Fee	Interest Portion of Loan Repayment (3)	Total Loan Repayment
8/1/2002	-	-	-	8,916.30	9,566.41	18,482.71
2/1/2003	5,000.00	387.49	5,387.49	8,916.30	-	14,303.79
8/1/2003	5,000.00	387.49	5,387.49	14,266.09	11,850.14	31,503.72
2/1/2004	67,500.00	5,231.19	72,731.19	14,266.09	28,278.78	115,276.06
8/1/2004	67,500.00	5,231.18	72,731.18	14,266.09	44,051.73	131,049.00
2/1/2005	70,000.00	5,424.93	75,424.93	14,266.09	49,134.33	138,825.35
8/1/2005	70,000.00	5,424.93	75,424.93	14,266.09	49,134.33	138,825.35
2/1/2006	70,000.00	5,424.93	75,424.93	14,266.09	47,610.34	137,301.36
8/1/2006	70,000.00	5,424.93	75,424.93	14,266.09	47,610.34	137,301.36
2/1/2007	72,500.00	5,618.68	78,118.68	14,266.09	45,911.35	138,296.12
8/1/2007	72,500.00	5,618.68	78,118.68	14,266.09	45,911.35	138,296.12
2/1/2008	72,500.00	5,618.68	78,118.68	14,266.09	44,151.68	136,536.45
8/1/2008	72,500.00	5,618.68	78,118.68	14,266.09	44,151.68	136,536.45
2/1/2009	75,000.00	5,812.43	80,812.43	14,266.09	42,210.76	137,289.28
8/1/2009	75,000.00	5,812.42	80,812.42	14,266.09	42,210.76	137,289.27
2/1/2010	77,500.00	6,006.18	83,506.18	14,266.09	40,109.16	137,881.43
8/1/2010	77,500.00	6,006.17	83,506.17	14,266.09	40,109.16	137,881.42
2/1/2011	80,000.00	6,199.92	86,199.92	14,266.09	37,840.64	138,306.65
8/1/2011	80,000.00	6,199.92	86,199.92	14,266.09	37,840.64	138,306.65
2/1/2012	82,500.00	6,393.67	88,893.67	14,266.09	35,498.93	138,658.69
8/1/2012	82,500.00	6,393.67	88,893.67	14,266.09	35,498.93	138,658.69
2/1/2013	85,000.00	6,587.41	91,587.41	14,266.09	33,084.05	138,937.55
8/1/2013	85,000.00	6,587.41	91,587.41	14,266.09	33,084.05	138,937.55
2/1/2014	87,500.00	6,781.17	94,281.17	14,266.09	30,510.99	139,058.25
8/1/2014	87,500.00	6,781.16	94,281.16	14,266.09	30,510.99	139,058.24
2/1/2015	90,000.00	6,974.91	96,974.91	14,266.09	27,774.75	139,015.75
8/1/2015	90,000.00	6,974.91	96,974.91	14,266.09	27,774.75	139,015.75
2/1/2016	92,500.00	7,168.66	99,668.66	14,266.09	24,870.34	138,805.09
8/1/2016	92,500.00	7,168.66	99,668.66	14,266.09	24,870.34	138,805.09
2/1/2017	95,000.00	7,362.41	102,362.41	14,266.09	21,792.74	138,421.24
8/1/2017	95,000.00	7,362.40	102,362.40	14,266.09	21,792.74	138,421.23
2/1/2018	97,500.00	7,556.15	105,056.15	14,266.09	18,536.97	137,859.21
8/1/2018	97,500.00	7,556.15	105,056.15	14,266.09	18,536.97	137,859.21
2/1/2019	100,000.00	7,749.90	107,749.90	14,266.09	15,195.52	137,211.51
8/1/2019	100,000.00	7,749.90	107,749.90	14,266.09	15,195.52	137,211.51
2/1/2020	105,000.00	8,137.39	113,137.39	14,266.09	11,768.39	139,171.87
8/1/2020	105,000.00	8,137.39	113,137.39	14,266.09	11,768.39	139,171.87
2/1/2021	110,000.00	8,524.89	118,524.89	10,699.57	8,169.90	137,394.36
8/1/2021	110,000.00	8,524.89	118,524.89	10,699.57	8,169.90	137,394.36
2/1/2022	120,000.00	9,299.88	129,299.88	5,349.78	4,262.56	138,912.22
8/1/2022	120,000.00	9,299.88	129,299.88	5,349.67	4,262.57	138,912.12
<b>TOTALS</b>	<b>\$3,310,000.00</b>	<b>\$256,521.69</b>	<b>\$3,566,521.69</b>	<b>\$549,244.34</b>	<b>\$1,170,613.87</b>	<b>\$ 5,286,379.90</b>

(1) Allocated to Principal of Authority Bonds.  
 Allocated to Authority Funds deposited to Project Loan Subaccount.  
 Allocated to Interest on Authority Bonds less Interest Credit.

## GOVERNMENTAL AGENCY BOND

FOR VALUE RECEIVED, the undersigned, CITY OF GRAND JUNCTION, COLORADO (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 Three Million Five Hundred Sixty-Six Thousand Five Hundred Twenty-One and 69/100 Dollars (\$3,566,521.69), at the times and in the amounts determined as provided in the Loan Agreement dated as of April 1, 2002, 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 set forth in Section 3.03(a) and (b) thereof. This Governmental Agency Bond has been assigned to Zions First National Bank 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.

Pursuant to the Loan Agreement, disbursements shall be made in accordance with written instructions of the Authority by the Trustee to the Governmental Agency, upon the receipt by the Authority and Trustee 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 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 3.07 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 repayment source described in the Loan Agreement. This Governmental Agency Bond is a special and limited obligation of the Governmental Agency payable solely out of and secured by an irrevocable pledge of and lien (but not necessarily exclusive lien) upon the Pledged Property (as defined in paragraph (4) 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 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 Governmental Agency Bond is issued pursuant to Title 37, Article 45.1, C.R.S., Title 11, Article 57, Part 2, C.R.S., and the City Charter. Such recital shall conclusively impart full compliance with all provisions and limitations of such laws, and this Governmental Agency Bond issued containing such recital 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 this 1st day of April 2002.

(SEAL)

CITY OF GRAND JUNCTION, COLORADO

ATTEST:

By: \_\_\_\_\_  
President of the  
City Council

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

OPINION OF GOVERNMENTAL AGENCY COUNSEL

[LETTERHEAD OF COUNSEL TO GOVERNMENTAL AGENCY]

DATED April 16, 2002

Colorado Water Resources and Power  
Development Authority

Zions First National Bank  
as Trustee

Ladies and Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and ["I" or "We"] have acted as counsel to the **CITY OF GRAND JUNCTION, COLORADO** (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 [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and rules 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:

The Authority's Drinking Water Revolving Fund 2002 Series A Revenue Bond Resolution, adopted by the Authority on March 1, 2002 ("Bond Resolution");

1. the Loan Agreement, dated as of April 1, 2002 (the "Loan Agreement") by and between the Authority and the Governmental Agency;
2. 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);

3. the Governmental Agency Bond, dated April 1, 2002 (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan;

4. 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");

[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 with the legal right to carry on the business of the System (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; 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 Ordinances"), which Authorizing Ordinances were duly approved 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 acting throughout.

4. 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 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 System (as defined in the Loan Agreement) or its property or assets is bound.

5. 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 (other than authorizations, licenses and permits relating to the siting, construction and acquisition of the Project which the Governmental Agency expects to receive in the ordinary course of business) and, the undertaking and completion of the Project have been obtained or made.

6. 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 or 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 its System.

7. There does not exist any bill, act, law, rule or regulation pending or, to the best of [insert "my" or "our"] knowledge, threatened which, if enacted, could (i) materially adversely affect (a) the ability of the Governmental Agency to perform its obligations under the Loan Documents, (b) the security for the Loan Documents or (c) 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 O'Melveny & Myers LLP, Bond Counsel, and 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,

OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL

[LETTERHEAD OF BOND COUNSEL TO GOVERNMENTAL AGENCY]

DATED April 16, 2002

Colorado Water Resources and Power  
Development Authority

Zions First National Bank  
as Trustee

Gentlemen:

We have acted as bond counsel to the **CITY OF GRAND JUNCTION, COLORADO** (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 rules 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 Drinking Water Revolving Fund 2002 Series A Revenue Bond Resolution, adopted by the Authority on March 1, 2002 (the "Bond Resolution");
2. The Loan Agreement, dated as of April 1, 2002 (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;
4. The Governmental Agency Bond, dated April 1, 2002 (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan; and

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").

6. All outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Governmental Agency, if any; and

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.

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; 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 Governmental Agency has pledged the [insert specific source of payment] for the punctual payment of the principal of and interest on the Loan (as defined in the Loan Agreement), and all other amounts due under the Loan Documents according to their respective terms and the Authority has a first lien on such source of repayment. No filings or recordings are required under the Colorado Uniform Commercial code in order to provide a first lien on such source of repayment 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.

5. Assuming compliance with the covenants contained in the Loan Agreement, the Governmental Agency is not (directly or indirectly) (A) using in excess of 10 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 term is used in Section 141(c) of the Code).

6. The execution and delivery of the Loan Documents are not subject to the limitations of Article X, Section 20 of the Colorado Constitution ("TABOR") since the System of the Governmental Agency as of the date hereof constitutes an enterprise under TABOR. 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 System continues to qualify as an enterprise under TABOR. If the System is no longer 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, however, to (a) Creditor's Rights Limitations or other laws, judicial decisions and principles of entity relating to the enforcement of contractual rights generally and (b) subject to the next sentence, the revenue and spending limitations of TABOR. If the System at any time fails to be an enterprise under TABOR, (i) the Governmental Agency may continue to impose any

increase in fees, rates and charges of the System without voter approval; (ii) all revenues of the Governmental Agency used to pay Loan Repayments shall be included in the Governmental Agency's fiscal year spending limit under Section 7(d) of TABOR, except that debt service changes and reductions are exceptions to, and not part of, the Governmental Agency's revenue and spending basis 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 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.

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. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

We hereby authorize O'Melveny & Myers LLP, Bond Counsel, and Carlson, Hammond & Paddock, LLC, General Counsel to the Authority, to rely on this opinion as if we had addressed this opinion to them in addition to you.

## 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.** The Governmental Agency covenants that it will not issue any obligations payable from the Pledged Property which are superior to the lien of this Loan Agreement on the Pledged Property. In addition, the Governmental Agency covenants that it will not issue any obligations with a lien on the Pledged Property which is on a parity with the lien of the Governmental Agency Bond payable from the Pledged Property unless the Governmental Agency certifies to the Authority that Net Revenues (as defined in paragraph (4) 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 is at least equal to the sum (a) of 110% of the maximum annual debt service of (i) the Governmental Agency Bond and all obligations of the Governmental Agency outstanding during such 12 month period payable on a parity with the Governmental Agency Bond from the Pledged Property, and (ii) such proposed obligations to be issued and (b) 100% of maximum annual debt service of all subordinate obligations secured by and payable from the Pledged Property. Net Revenues for the purposes of the preceding sentence may be adjusted to reflect any rate increases adopted prior to the issuance of such additional obligations. Notwithstanding the foregoing, the Governmental Agency may issue refunding obligations, payable from 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 on any interest payment date. In addition, the Governmental Agency covenants that it will not issue any obligations payable from the Pledged Property which is subordinate to the lien 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 Revenues were at least 100% of the maximum annual debt service on all indebtedness outstanding during such period; provided however, upon written request of the Governmental Agency the Authority may, in its sole and absolute discretion and without approval of the holders of the Authority Bonds, waive any requirements regarding

the issuance by the Governmental Agency of obligations payable from the Pledged Property which are subordinate to the lien of this Loan Agreement.

**Rate Study.** In the event that Revenues 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 System which in the opinion of the firm conducting the study will be sufficient to provide Revenues 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 System, based upon the recommendations contained in such study, which provide compliance with said rate covenant.

**Operations and Maintenance Reserve Fund.** The Governmental Agency shall maintain an operations 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 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. If the operations 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.

Upon prior written consent of the Authority and the Governmental Agency, and without requirement of notice to or the consent of the Authority Bonds, any requirement concerning the establishment of the Reserve Account or the amount of the Required Reserve may be modified or amended in accordance with the Loan Agreement.

**Special Fund.** The Governmental Agency covenants to create or maintain a special fund into which shall be deposited the Revenues (as defined in paragraph (4) of Exhibit A to this Loan Agreement). The Revenues shall be applied, on or before the last business day of each month, first to the payment of the Operating Expenses (as defined in paragraph (4) of Exhibit A to this Loan Agreement) and then applied in substantially equal monthly deposits 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 or resolution of the Governmental Agency.

## GOVERNMENTAL AGENCY BOND

FOR VALUE RECEIVED, the undersigned, CITY OF GRAND JUNCTION, COLORADO (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 Three Million Five Hundred Sixty-Six Thousand Five Hundred Twenty-One and 69/100 Dollars (\$3,566,521.69), at the times and in the amounts determined as provided in the Loan Agreement dated as of April 1, 2002, 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 set forth in Section 3.03(a) and (b) thereof. This Governmental Agency Bond has been assigned to Zions First National Bank 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.

Pursuant to the Loan Agreement, disbursements shall be made in accordance with written instructions of the Authority by the Trustee to the Governmental Agency, upon the receipt by the Authority and Trustee 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 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.

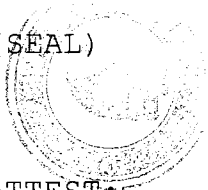
This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts, provided in Section 3.07 of the Loan Agreement.

The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is payable solely from the repayment source described in the Loan Agreement. This Governmental Agency Bond is a special and limited obligation of the Governmental Agency payable solely out of and secured by an irrevocable pledge of and lien (but not necessarily exclusive lien) upon the Pledged Property (as defined in paragraph (4) 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 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 Governmental Agency Bond is issued pursuant to Title 37, Article 45.1, C.R.S., Title 11, Article 57, Part 2, C.R.S., and the City Charter. Such recital shall conclusively impart full compliance with all provisions and limitations of such laws, and this Governmental Agency Bond issued containing such recital 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 this 1st day of April 2002.

(SEAL)



ATTEST:

CITY OF GRAND JUNCTION,  
COLORADO

By: Andy Evers - Matty  
President of the  
City Council

Stephanie Turner  
City Clerk



**GOVERNMENTAL AGENCY CERTIFICATE**

I, the undersigned, an authorized officer of the Governmental Agency described below, (the "Governmental Agency"), DO HEREBY CERTIFY that:

(A) the undersigned has the authority to certify as to the matters in this certificate on behalf of the Governmental Agency;

(B) to the best of my knowledge, all of the representations of the Governmental Agency contained in Sections 2.01 and 2.02 of the Loan Agreement, (the "Loan Agreement") dated as of April 1, 2002, between the Authority and the Governmental Agency, are true on and as of the date hereof with the same effect as if made on and as of such date;


(C) the Governmental Agency has duly authorized, executed and delivered the Loan Agreement and Governmental Agency Bond; and

(D) the Governmental Agency is in compliance with the provisions of the Loan Agreement and Governmental Agency Bond.

All capitalized terms not defined herein shall have the same meanings given to such terms in the Loan Agreement.

**CITY OF GRAND JUNCTION,  
COLORADO**

Dated: April 16, 2002

  
Title: Director of Finance and  
Administrative Services

STATE OF COLORADO )  
COUNTY OF MESA ) SS. OMNIBUS CERTIFICATE  
CITY OF GRAND JUNCTION )

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting President of the City Council, City Clerk, Finance Director and City Attorney of the City of Grand Junction, Mesa County, Colorado (the "City"), that:

1. This certificate is delivered in connection with the execution and delivery of a Loan Agreement dated as of April 1, 2002 (the "Loan Agreement") between the Colorado Water Resources and Power Development Authority ("CWRPDA") and the City.

2. The City is a legally and regularly created, established, organized, and existing home rule municipality of the State of Colorado.

3. The City, as originally incorporated, has never been consolidated with or annexed to any other municipality. No territory has been disconnected from the City as originally incorporated.

4. From January 1, 2002, up to and including the date hereof, the following were the duly chosen, qualified and acting officers of the City:

President of Council:	Cindy Enos-Martinez
Other Council members:	Janey Terry
	Dennis Kirtland
	Jim Spehar
	Reford Theobald
	William McCurry
	Harry Butler
City Manager:	Kelly Arnold
Finance Director:	Ron Lappi
City Clerk:	Stephanie Tuin
City Attorney:	Dan Wilson

5. No litigation of any nature is now pending or, to the best of our knowledge, threatened (either in municipal, state or federal courts):

(a) Restraining or enjoining the execution or delivery of the Loan Agreement, or the issuance, execution or delivery of the Governmental Agency Bond (the "Bond") executed in connection with the Loan Agreement (collectively, the Loan Agreement and the Bond will be referred to herein as the "Loan Documents") or the levy and collection of rates, fees and charges to make the payments due under the Loan Documents; or the use of the proceeds of the loan (the "Loan") made pursuant to the Loan Documents for the purposes provided by the ordinance finally passed and adopted by the City Council of the City (the "City Council") on March 5, 2002, as subsequently amended on April 3, 2002 (the "Ordinance"); or affecting in any way the right or authority of the City to make the payments required under the Loan Documents, or otherwise to carry out the terms and provisions of the Ordinance and the Loan Documents and the covenants and agreements therein and of other proceedings authorizing the execution of or otherwise concerning the Loan Documents.

(b) In any manner questioning, contesting or otherwise affecting the authority or proceedings for the execution or delivery of the Loan Documents; or questioning, contesting or otherwise affecting, directly or indirectly, the validity thereof, or of any provisions made or authorized for their payment.

6. The City has previously designated the System (as defined in the Loan Agreement) as a water activity enterprise under Article X, Section 20 of the Colorado Constitution and Section 37-45.1-103, C.R.S. The total revenue for the System in 2001 was \$4,936,665 and less than 10% of this amount (\$493,666) was received in grants from state and local governments.

7. Except for loan agreement between the City and the Colorado Water Conservation Board dated as of August 25, 1989, the City has not previously pledged the Pledged Property (as defined in the Loan Agreement) for payment of any outstanding indebtedness or other obligation of the City.

8. Neither the corporate existence nor the boundaries of the City, nor the titles of its present officers or any of them to their respective offices is being contested, including, without limitation, the members and officers of the City Council; and the Ordinance remains in full force and

effect, and no proceedings or authority for the execution or delivery of the Loan Documents have or has been repealed, rescinded, revoked, modified, changed, or altered in any manner.

9. Regular meetings of the City Council are scheduled to be held at the City Hall, within the City, at the hour of 7:30 p.m. on the first and third Wednesdays of each month.

10. The Ordinance was duly adopted at a regular, public meeting of the City Council and is valid and enforceable.

11. No referendum petition satisfying the requirements of the City Charter concerning either the Ordinance or any other ordinances, resolutions or other proceedings of the City Council concerning the Loan Documents or the uses of the proceeds of the Loan has been filed, and to the best of our knowledge none is being circulated or is planned for circulation.

12. To the best of our knowledge, none of the President, any member of the City Council, any other officer or employee of the City, or any member of the family of any such officer or employee, has any pecuniary or other prohibited interest, direct or indirect, in the profits of any contract or job for work or services to be performed, nor have such persons solicited or received any pay, commission, money or anything of value or derived any benefit, profit or advantage, directly or indirectly, in connection with the Loan Documents or the uses of the proceeds of the Loan as provided in the Ordinance.

13. The City has authorized by all necessary action, the execution, delivery, receipt and due performance of the Loan Documents, the Ordinance and any and all other agreements and documents as may be required to be executed, delivered and received by the City to carry out, give effect to and consummate the transactions contemplated by the Ordinance and the Loan Documents.

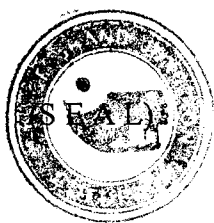
14. The execution, delivery, receipt and due performance of the Loan Documents, the Ordinance, and any other agreements contemplated by the Ordinance and the Loan Documents, under the circumstances contemplated by the Ordinance and the compliance by the City with the provisions thereof, will not conflict with or constitute on the part of the City a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, lease or other instrument to which the City is subject or by which the City is or may be bound.

15. On or before the date hereof, the undersigned President and City Clerk executed each of the Loan Documents and affixed the seal of the City thereto.

16. There is no reason within our knowledge why the City may not deliver the Loan Documents.

17. This certificate is for the benefit of the owners from time to time of the Loan Documents.

WITNESS our hands and the corporate seal of the City this April 9<sup>th</sup>, 2002.



*Craig Ems - Matting*  
President

*Stephanie Turn*  
City Clerk

*Ronald M. Lippi*  
Finance Director

*Don G. J.*  
City Attorney



## OPINION OF GOVERNMENTAL AGENCY COUNSEL

City of Grand Junction  
Administrative Services  
250 North 5<sup>th</sup> Street  
Grand Junction CO 81501-2668  
Fax: 970 256-4078

April 16, 2002

Colorado Water Resources and Power Development Authority  
Zions First National Bank as Trustee

Ladies and Gentlemen:

I am an attorney admitted to practice in the State of Colorado and I have acted as counsel to the City of Grand Junction, Colorado (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 I have examined the Constitution and laws of the State of Colorado and rules of the Governmental Agency. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

The Authority's Drinking Water Revolving Fund 2002 Series A Revenue Bond Resolution, adopted by the Authority on March 1, 2002 ("Bond Resolution");

1. the Loan Agreement, dated as of April 1, 2002 (the "Loan Agreement") by and between the Authority and the Governmental Agency;
2. 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);
3. the Governmental Agency Bond, dated April 1, 2002 (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan;
4. 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-1-1

*Customer Service. Community Pride*

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

Based upon the foregoing, I am 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 System (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; 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 Ordinances"), which Authorizing Ordinances were duly approved 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 acting throughout.
4. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Loan Documents of 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 herein and the undertaking and completion of Project do not and will not contravene any existing law or any existing order, injunction, judgement, 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 System (as defined in the Loan Agreement) or its property or assets is bound.

5. To the best of my knowledge, after such investigation as I 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 (other than authorizations, licenses and permits relating to the siting, construction and acquisition of the Project which the Governmental Agency expects to receive in the ordinary course of business) and, the undertaking and completion of the Project have been obtained or made.

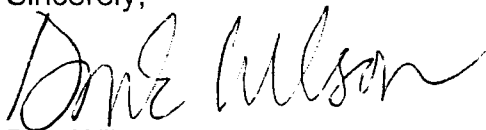
6. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Governmental Agency or of the validity, legality or enforceability of the Loan Documents or the undertaking or completion of the Project or 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 its System.

7. There does not exist any bill, act, law, rule or regulation pending or, to the best of my knowledge, threatened which, if enacted, could (i) materially adversely affect (a) the ability of the Governmental Agency to perform its obligations under the Loan Documents, (b) the security for the Loan Documents or (c) 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. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

I hereby authorize O'Melveny & Myers LLP, Bond Counsel, and Carlson, Hammond & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if I had addressed this opinion to them in addition to you.

Sincerely,



Dan Wilson  
City Attorney, City of Grand Junction



April 16, 2002

Colorado Water Resources and Power  
Development Authority

Zions First National Bank  
as Trustee

Ladies and Gentlemen:

We have acted as bond counsel to the City of Grand Junction, Colorado (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).

As to questions of fact material to our opinions, we have relied upon the certified proceedings and other representations and certifications of public officials and others furnished to us without undertaking to verify the same by independent investigation.

In our role as bond counsel, we have examined the Constitution and laws of the State of Colorado. We have also examined originals, or copies certified or otherwise identified to our satisfaction, of the following:

(a) The Authority's Drinking Water Revolving Fund 2002 Series A Revenue Bond Resolution, adopted by the Authority on March 1, 2002 (the "Bond Resolution");

(b) The Loan Agreement, dated as of April 1, 2002 (the "Loan Agreement") by and between the Authority and the Governmental Agency;

(c) The Governmental Agency Bond, dated as of April 1, 2002 (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan (as defined in the Loan Agreement);

(d) Proceedings of the governing body of the Governmental Agency relating to the delivery of the Loan Agreement and 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 bonds, notes or other indebtedness of or relating to the Governmental Agency which are payable from the Pledged Property (as defined in the Loan Agreement), including the loan agreement between the Governmental Agency and the Colorado Department of Natural Resources, Colorado Water Conservation Board dated as of August 25, 1989 (the "Prior Loan").

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.

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; 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") or other laws, judicial decisions and principles of equity relating to the enforcement of contractual obligations generally heretofore or hereafter enacted; provided that no opinion is expressed herein regarding the validity or enforceability of Section 3.06(iii) of the Loan Agreement or any other provision thereof which purports to require the Governmental Agency to indemnify or hold any person harmless.

3. The Governmental Agency has pledged the Pledged Property for the punctual payment of the principal of and interest on the Governmental Agency Bond, and all other amounts due under the Loan Documents according to their respective terms. Subject to the lien of the Prior Loan, the Authority has a lien on the Pledged Property. No filings or recordings are required under the Colorado Uniform Commercial Code in order to provide said lien on the 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 heretofore or hereafter enacted; provided that no opinion is expressed herein regarding the validity or enforceability of Section 3.06(iii) of the Loan Agreement or any other provision thereof which purports to require the Governmental Agency to indemnify or hold any person harmless.

5. Assuming compliance with the covenants contained in the Loan Agreement, the Governmental Agency is not (directly or indirectly) (A) using in excess of 10 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 term is used in Section 141(c) of the Code).

6. The execution and delivery of the Loan Documents are not subject to the limitations of Article X, Section 20 of the Colorado Constitution ("TABOR") since the System (as defined in the Loan Agreement) as of the date hereof constitutes an enterprise under TABOR. 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 System continues to qualify as an enterprise under TABOR. If the System is no longer 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, however, to (a) Creditor's Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual obligations generally heretofore or hereafter enacted, and (b) subject to the next sentence, the revenue and spending limitations of TABOR. If the System at any time fails to be an enterprise under TABOR, (i) the Governmental Agency may impose increased fees, rates and charges of the

System without voter approval; (ii) all revenues of the Governmental Agency used to pay Loan Repayments (as defined in the Loan Agreement) shall 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 annual 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 (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 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.

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 and we assume no obligation to update or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur. We express no opinion as to any matter not set forth in the numbered paragraphs herein.

We hereby authorize O'Melveny & Myers LLP, Bond Counsel, and Carlson, Hammond & Paddock L.L.C., General Counsel to the Authority, to rely on this opinion as if we had addressed this opinion to them in addition to you. No attorney-client relationship has existed or exists between us and anyone other than the Governmental Agency in connection with the Loan Documents by virtue of this letter. This letter is delivered to you and is solely for your information and benefit in connection with the execution, issuance and delivery the Loan Documents and may not be relied upon, used, quoted or distributed in any manner or for any purpose whatsoever by or to any other person, other than your counsel, without the prior written consent of this firm.

Respectfully submitted,

*Sherman & Howard L.L.C.*