

**ORDINANCE NO. 2010-06**

**AN ORDINANCE OF THE CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND ENTERPRISE, APPROVING AN INTERIM LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE A NEW WASTEWATER TREATMENT FACILITY AND WASTEWATER CAPITAL IMPROVEMENTS; AUTHORIZING THE EXECUTION OF AN INTERIM LOAN AGREEMENT AND A BOND TO DOCUMENT THE LOAN; AND PROVIDING FOR PAYMENT OF THE BOND.**

WHEREAS, the City of Fruita, Colorado, is a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, the City is the owner and operator of a public wastewater system, which system has historically been operated on a self-supporting basis by the City with all revenues of the system accounted for in a separate proprietary fund known as the "Sewer Fund" and such system is considered to be a government-owned business and an "enterprise" of the City; and

WHEREAS, the City is acting hereunder by and through its Sewer Fund Enterprise, which is a water activity enterprise under the provisions of Title 37, Article 45.1, C.R.S.; and

WHEREAS, pursuant to section 8.18 of the Charter, the City Council may, by ordinance, issue securities made payable from, among other things, the operation of the project or capital improvement acquired or bettered with the proceeds; and

WHEREAS, to finance additional interim estimated costs of the Project prior to an anticipated financing at a later date, the City Council has determined to enter into an Interim Loan Agreement with the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, pursuant to which the Authority is to loan the City a principal amount not to exceed \$5,000,000 under its Water Pollution Control Revolving Fund (which interim loan is in addition to the interim loan authorized pursuant to Ordinance No. 2009-06); and

WHEREAS, the City's repayment obligation under the Loan Agreement will be evidenced by governmental agency bond to be issued by the City to the Authority, which Bond shall constitute a special revenue obligation of the City which is anticipated to be paid from a long-term Project financing to occur within the next two years or, if not paid from such source, to be payable over a period of approximately twenty years from the income for the services furnished by or the use of the System less reasonable and necessary current expenses of the City of operating, maintaining and repairing the System and, after consideration, the City Council has determined that the execution of the Interim Loan Agreement and the issuance of the Bond to the Authority is to the best advantage of the City; and

WHEREAS, voter approval in advance is not required under Article X, Section 20 of the Colorado Constitution or pursuant to section 8.18 of the Charter for the execution of the Loan Agreement or the issuance of the Bond; and

WHEREAS, the City has outstanding loans which are secured by the Pledged Property (as defined in the Loan Agreement) and which generally consist of (i) a loan agreement with the Authority, dated April 27, 1995, in the original principal amount of \$224,000, (ii) an Energy/Mineral Impact Assistance Loan from the State of Colorado, made pursuant to a contract dated May 22, 2002, in the original principal amount of \$123,000, and (iii) a loan agreement with the Authority, dated October 6, 2009, in the original principal amount of \$4,570,000; and

WHEREAS, the form of the Loan Agreement and the Bond (which forms are substantially the same as the forms used in connection with loan authorized pursuant to Ordinance No. 2009-06), have been presented to the City and made available to the City Council; and

WHEREAS, as provided in the Acts, which include but are not limited to Title 11, Article 57, Part 2, C.R.S., by this Ordinance the City authorizes the execution of the Loan Agreement and the Bond, and delegates to the Mayor of the City (the “Mayor”), for a period not to exceed 365 days, the authority to approve, among other things, the principal amount of the Bond; therefore,

BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO::

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

“*Acts*” means the Charter, Title 37, Article 45.1, Part 1, C.R.S. and Title 11, Article 57, Part 2, C.R.S. and all other laws of the State establishing the power of the City to complete the financing contemplated by this Ordinance.

“*Authority*” means the Colorado Water Resources and Power Development Authority.

“*Bond*” means the governmental agency Bond to be issued by the City to the Authority pursuant to the Loan Agreement, the form of which is set forth in Exhibit C to the Loan Agreement.

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

“*City*” means the City of Fruita, Colorado, acting by and through its Sewer Fund Enterprise.

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

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

“*Financing Documents*” means the Loan Agreement and the Bond.

“*Loan Agreement*” means that certain Loan Agreement between the City and the Authority pursuant to which the Authority is to loan revenues from its Water Pollution Control Revolving Fund to the City.

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

“*Project*” means the construction of a new 2.5 MGD wastewater treatment facility, approximately two miles of interceptor sewer lines, a new lift station, and other system appurtenances as set forth in the Loan Agreement and as the Project may be later modified by determination of the City Council.

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

“*Sewer Fund Enterprise*” means the government owned business of the City for wastewater services which is authorized to issue its own revenue bonds and which receives under 10% of annual revenue in grants from all Colorado state and local governments combined.

“*State*” means the State of Colorado.

“*System*” means the sewer system of the City, as more particularly described in the Loan Agreement.

**Section 2. Approval of Loan Agreement and Authorization of Bond.** Pursuant to and in accordance with the State Constitution and the Acts, the Bond shall be issued by the City acting by and through its Sewer Fund Enterprise. The form of the Loan Agreement setting forth the terms, conditions and details of the Bond and the procedures relating thereto, is incorporated herein by reference and is hereby approved; all City officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the City under the Financing Documents. The City shall enter into the Loan Agreement and deliver the Bond in substantially the form presented to the City at or prior to this meeting of the City Council with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The accomplishment of the Project and the payment of Project Costs are hereby authorized, approved, and ordered.

**Section 3. Bond Details.** The Bond shall be in an aggregate principal amount not to exceed \$5,000,000, shall bear interest at a rate of 3.5% per annum (which shall be calculated based on the actual number of days elapsed and a 360 day year), and shall be payable and mature as more particularly set forth in the Loan Agreement. Should the Bond not be repaid in full on or before a date which is within two years from the date of the Loan Agreement, the Loan Term (as defined in the Loan Agreement) shall be extended twenty years, and the interest and principal shall be amortized over such twenty year time period on a 360 day year basis, at an interest rate of the Prime Rate plus two percent; provided that such rate shall not exceed the maximum rate

permitted by applicable Colorado law. The Bond may also provide for a penalty rate in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on late payments.

**Section 4. Pledge for Payment of the Bond.** The principal of and interest on the Bond shall be payable solely from the Pledged Property (which term is defined in the Loan Agreement). The City irrevocably pledges the Pledged Property for the payment of the Bond and the amounts due under the Loan Agreement. The Authority may not look to any general or other fund of the City for the payment of the principal of or interest on the Bond, except the funds and accounts pledged thereto pursuant to authority of this Ordinance, and the Bond shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be a general obligation of the City.

**Section 5. Maintenance of Enterprise Status.** The City Council hereby determines that the Sewer Fund Enterprise is currently an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and hereby reaffirms the establishment of the System as a “water activity enterprise” within the meaning of Title 37, Article 45.1, C.R.S. The City has and will continue to maintain the System as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution; provided, however, after the current calendar year the City may disqualify the System as an “enterprise” in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made in the Financing Documents. In the event that the System is disqualified as an enterprise and the enforceability of the covenants made by the City in the Financing Documents are materially, adversely affected, the City covenants to (i) immediately take all actions necessary to qualify the System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Financing Documents.

**Section 6. Approval of Miscellaneous Documents.** The Mayor (or in the Mayor’s absence the Mayor Pro Tem) is hereby authorized and directed to execute the Loan Agreement and all documents and certificates necessary or desirable to effectuate the issuance of the Bond and the financing contemplated by this Ordinance.

**Section 7. Amendment of Ordinance.** This Ordinance may be amended only with the prior written consent of the Authority.

**Section 8. Limitation of Actions.** The City Council elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Loan Agreement and to the issuance of the Bond. Pursuant to Section 8.18 of the Charter and in accordance with Section 11-57-212, Colorado Revised Statutes, no action or proceeding concerning the issuance of the Bonds shall be maintained against the City unless commenced within 30 days after the date of passage of this Ordinance.

**Section 9. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the issuance of the Bond for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 10. Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

**Section 11. Ordinance Irrepealable.** After any Bond has been issued, this Ordinance shall constitute a contract between the Authority and the City, and shall be and remain irrepealable until the Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 12. Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

**Section 13. Repealer.** All orders, bylaws, resolutions and ordinances of the City, or parts thereof, inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL**

**THIS \_\_\_ DAY OF \_\_\_\_\_, 2010.**

ATTEST:

CITY OF FRUITA, COLORADO

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

\_\_\_\_\_  
H. Kenneth Henry, Mayor

*Draft date: 2/10/10*

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**DRAFT INTERIM LOAN AGREEMENT**

**BETWEEN**

**COLORADO WATER RESOURCES AND POWER  
DEVELOPMENT AUTHORITY**

**AND**

**CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND  
ENTERPRISE**

**DATED \_\_\_\_\_ 2010**

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**THIS LOAN AGREEMENT** is made and entered into as of this \_\_\_\_\_ 2010, by and between the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), a body corporate and political subdivision of the State of Colorado, and the **CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND ENTERPRISE** (the "Governmental Agency").

**WITNESSETH THAT:**

**WHEREAS**, the United States of America, pursuant to the federal Water Quality Act of 1987, requires increased state and local participation in the financing of the costs of wastewater treatment projects and said Water Quality Act of 1987 requires each state, as a condition to the receipt of certain funds, to establish a water pollution control revolving fund to be administered by an instrumentality of the state before the state may receive capitalization grants for such projects;

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

**WHEREAS**, Section 37-95-107.6 of the Colorado Revised Statutes has created a water pollution control revolving fund to be administered by the Authority that will enable the State of Colorado to comply with the provisions of said federal Water Quality Act of 1987;

**WHEREAS**, the Authority is empowered to utilize its funds for the purpose of financing, including making loans to governmental agencies for, projects such as that of the Governmental Agency, and has determined to utilize such funds in special circumstances to make interim loans to governmental agencies for interim financing of all or a portion of the cost of certain wastewater projects;

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

**WHEREAS**, the Governmental Agency has made timely application to the Water Pollution Control Revolving Fund for a loan to finance a portion of the cost of a certain wastewater project, and long-term financing of the Governmental Agency's proposed project is expected to be available from the Water Pollution Control Revolving Fund through the Authority's leveraged loan program for that fund;

**WHEREAS**, in order to provide financing for the project until the long-term financing is available, the Authority will issue an interim loan to the Governmental Agency from available

funds of the Authority in an amount not to exceed the amount set forth in the loan commitment in Exhibit C hereto for interim financing of all or a portion of the cost of its proposed project;

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

**WHEREAS**, the Governmental Agency will issue its bond to the Authority pursuant to the Supplemental Public Securities Act, Title 11, Article 57, Part 2 of the Colorado Revised Statutes. This recital shall be conclusive evidence of the validity and the regularity of the issuance of the bond after its delivery date;

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

## **ARTICLE I.**

### **DEFINITIONS**

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

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

**"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.

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

**"Commencement Date"** means the date of commencement of the term of this Loan Agreement, as set forth in Paragraph (7) of Exhibit B attached hereto and made a part hereof.

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

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

**"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 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 C and made a part hereof.

**"Loan"** means the loan made by the Authority to the Governmental Agency to finance or refinance a portion of the cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the amount of the Loan at any time shall be the amount of the loan commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part of this Loan Agreement (which amount, as specified in the Governmental Agency Bond, equals the amount actually deposited in the Project Account), less any amount 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.

**"Loan Closing"** means the date upon which the Governmental Agency shall issue and deliver the Governmental Agency Bond.

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

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

**"Pledged Property"** means the source of repayment described in Paragraph 4 of Exhibit A to this Loan Agreement attached hereto and made a part hereof.

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

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

**"Project Account"** means the Project Account created for this Loan Agreement.

**"System"** means the wastewater 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, replaced, or expanded from time to time.

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

## **ARTICLE II.**

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

**SECTION 2.01. Representations of the Governmental Agency.** The Governmental Agency represents for the benefit of the Authority, 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 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 carry on its activities relating thereto; and to undertake and complete the Project. The Governmental Agency has full legal right and authority to execute and deliver this Loan Agreement; to execute, issue and deliver the Governmental Agency Bond; and to carry out and consummate all transactions contemplated by this Loan Agreement and the Governmental Agency Bond. The Project is on the water pollution control project eligibility list approved by the General Assembly of the State of Colorado pursuant to the Act and is a project that the Governmental Agency may undertake pursuant to Colorado law, and for which the Governmental Agency is authorized by law to borrow money.

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

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

(b) Full Disclosure

There is no fact that the Governmental Agency has not disclosed to the Authority in writing on the Governmental Agency's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all

Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the Governmental Agency Bond.

(c) Pending Litigation

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

(d) Compliance with Existing Laws and Agreements

The authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions provided for in this Loan Agreement and the Governmental Agency Bond; the compliance by the Governmental Agency with the provisions of this Loan Agreement and the Governmental Agency Bond; and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon, any property or assets of the Governmental Agency pursuant to any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement, or other instrument (other than the lien and charge of this Loan Agreement and the Governmental Agency Bond and any ordinance, resolution or indenture that authorized outstanding debt obligations of the Governmental Agency that are at parity with, or superior to, the Governmental Agency Bond as to lien on, and source and security for, payment thereon from Pledged Property) to which the Governmental Agency is a party, or by which the Governmental Agency, the System, or any of the property or assets of the Governmental Agency may be bound, nor will such action result in any violation of the provisions of the documents pursuant to which the Governmental Agency was established, or of any laws, ordinances, resolutions, governmental rules, regulations, or court orders to which the Governmental Agency, the System, or the properties or operations of the Governmental Agency are subject.

(e) No Defaults

No event has occurred and no condition exists that, upon authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Governmental Agency is not in violation of, nor has it received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party, or by which it, the System, or its property, may be bound, which violation would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(f) Governmental Consent

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

(g) Compliance with Law

The Governmental Agency:

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

(ii) has obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities that, if not obtained, would materially adversely affect the ability of the Governmental Agency to conduct its activities or undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System (other than licenses, permits, franchises or other governmental authorizations relating to the construction and acquisition of the Project which the Governmental Agency expects to receive in the ordinary course of business).

(h) Use of Proceeds

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

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

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

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

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

(d) Long-Term Financing

The Governmental Agency acknowledges and agrees that the Loan is intended to and shall provide short-term financing for the Project while long-term financing, through the Authority's leveraged loan program from the Water Pollution Control Revolving Fund, (i.e. issuance of Water Pollution Control Revolving Fund bonds by the Authority) or otherwise, is put in place. The Governmental Agency accordingly covenants and agrees to use its best efforts to enter into alternative long-term financing arrangements for the Project.

(e) Disposition of System

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

(f) Inspections; Information

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

(g) 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 that upon

direction of the Authority it shall supply the Authority with a certificate from its engineer stating that such Cost is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project and other money that would, absent the Loan, have been used to pay the Estimated Cost of the Project.

(h) Reimbursement for Ineligible Costs

The Governmental Agency shall promptly reimburse the Authority for any portion of the Loan that is determined not to be a Cost of the Project and would not be eligible for funding from draws under the Water Pollution Control Revolving Fund if this Loan were made from such Water Pollution Control Revolving Fund. Such reimbursement shall be promptly repaid to the Authority upon written request of the Authority with interest on the amount to be reimbursed at the rate set forth for the Loan. Eligible Costs are costs associated with the approved scope of work, the plans and specifications, and any change orders.

(i) Advertising

The Governmental Agency agrees that it shall not award contracts until plans and specifications for the Project have been approved by the State Department of Public Health and Environment.

(j) Commencement of Construction

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

(k) Interest in Project Site

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

(l) Federal Requirements

The Governmental Agency covenants to meet and comply with all Federal requirements applicable to borrowers from the Water Pollution Control Revolving Fund as a result of Federal "cross-cutting" authorities. The applicable Federal requirements are set forth in this Loan Agreement or on Exhibit E attached hereto and incorporated herein by this reference.

(m) No Lobbying

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

(n) Operation and Maintenance of System

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

(o) Records; Accounts

During the Loan Term, the Governmental Agency shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Records"). Such System Records 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 and shall comply with the provisions of the federal Single Audit Act, 31 U.S.C. 7501 et seq. 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 210 days of the close of the fiscal year being so audited. The Governmental Agency shall cause its independent auditor to file with the Authority a report that the Governmental Agency is not in default of its Rate Covenant (Paragraph 5 of Exhibit A) Operations and Maintenance Reserve Fund covenant (Paragraph 3 of Exhibit E), and the Lien Representation (Paragraph 3 of Exhibit A) under this Loan Agreement. This report may be noted in annual audit or provided in a separate letter.

(p) Insurance

During the Loan Term, the Governmental Agency shall maintain or cause to be maintained in force, insurance policies with responsible insurers or self insurance programs providing against

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

(q) Notice of Material Adverse Change

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

(r) Additional Covenants and Requirements

If necessary in connection with the making of the Loan, additional covenants and requirements will be included on Exhibit E hereto and made a part hereof. The Governmental Agency agrees that it will observe and comply with each such additional covenant and requirement, if any, included on Exhibit E on the date of the Loan Closing.

(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) Resident Hiring Requirements

The Governmental Agency agrees to comply with Colorado's resident hiring requirements found at Title 8, Article 17, Colorado Revised Statutes.

- (u) Federal Water Pollution Control Act

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

- (v) Archeological Artifacts

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

### **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 Exhibit B(4) attached hereto and made a part hereof, or, if the amount necessary to effect construction of the Project is less than the Loan Commitment set forth in Paragraph 4 of Exhibit B then in such lesser amount; provided, however, that the Authority shall be under no obligation to make the Loan if (i) the Governmental Agency does not deliver its Governmental Agency Bond to the Authority on the Loan Closing, or (ii) an Event of Default has occurred and is continuing under this Loan Agreement. The Governmental Agency shall use the proceeds of the Loan strictly in accordance with this Loan Agreement

**SECTION 3.02. Disbursement of Loan Proceeds.** The Authority has created a Project Account for this Project into which the Authority shall deposit funds to be used to pay Costs of the Project, which Project Account shall be used for no other purpose by the Authority. Amounts on deposit in the Project Account shall be disbursed to the Governmental Agency upon receipt of a requisition executed by an Authorized Officer, and approved by the Authority and, the State Department of Public Health and Environment, in the form set forth in Exhibit F.

**SECTION 3.03. Amounts Payable.**

(a) The Governmental Agency shall repay the principal of, and interest on the Loan on \_\_\_\_\_2012 or on any prior date that is mutually agreed to between the Authority and the Governmental Agency. Interest shall be calculated on the amount of principal drawn from the date of disbursement to the date of repayment of the principal and interest. The interest rate on the Loan is 3.5% per annum (which shall be calculated based on the actual number of days elapsed and a 360 day year).

Should the Loan not be repaid in full on or before \_\_\_\_\_2012, the Loan Term shall be extended twenty years to 2032, and the interest and principal shall be amortized over such twenty year time period on a 360 day year basis, at an interest rate of the Prime Rate plus two percent; provided that such rate shall not exceed the maximum rate permitted by applicable Colorado law. The Loan shall not be taken into account for purposes of Exhibit A(5) (Rate Covenant) and paragraph 1 of Exhibit E (Additional Bonds) to this Loan Agreement unless the Loan is so extended and amortized.

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

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

**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 to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement, or any rights of set-off, recoupment, abatement, or counterclaim that the Governmental Agency might otherwise have against the Authority or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

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

**SECTION 3.06. Option to Prepay Loan Repayments.** The Governmental Agency may prepay the Loan Repayments, in whole or in part upon prior written notice of not less than ten (10) days to the Authority unless otherwise waived by the Authority. Prepayments shall be applied first to accrued interest on the portion of the Loan to be prepaid and then to principal payments on the Loan.

**SECTION 3.07. Source of Payment of Governmental Agency's Obligations.** The Authority and the Governmental Agency agree that the amounts payable by the Governmental Agency under this Loan Agreement, including, without limitation, the amounts payable by the Governmental Agency pursuant to Section 3.03, Section 3.05, Section 3.06, and Section 5.04 of this Loan Agreement are payable solely from the Pledged Property and are not payable from any other source whatsoever. The Governmental Agency Bond, together with the interest accruing thereon, and any prior redemption premium, shall be payable and collectible solely out of the

Pledged Property, which is so pledged; the owner of the Governmental Agency Bond may not look to any general or other funds for the payment of principal of, premium, if any, or interest on the Governmental Agency Bond except the designated special funds pledged therefore; and the Governmental Agency Bond shall not constitute an indebtedness, debt, liability, or obligation of the Governmental Agency within the meaning of any constitutional, charter, or statutory provision or limitation of the Governmental Agency. Nothing herein shall be deemed to prevent the Governmental Agency from paying the amounts payable under this Loan Agreement from any other legally available source.

**SECTION 3.08. 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) an opinion of the Governmental Agency's counsel substantially in the form set forth in Exhibit D-1 hereto (such opinion or portions of 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 D-1 if such variances are not to the material detriment of the interests of the Authority.

(b) an opinion of the Governmental Agency's Bond Counsel substantially in the form set forth in Exhibit D-2 hereto. Such opinion must be rendered by Bond Counsel listed in the Directory of Bond Counsel published by the Bond Buyer (the "Red Book");

(c) executed counterparts of this Loan Agreement;

(d) 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

(e) 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 amount of the Loan shall be made available for the Project in accordance with the terms of this Loan Agreement.

## ARTICLE IV.

### ASSIGNMENT

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

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

**SECTION 4.02. Assignment by Governmental Agency.** Neither this Loan Agreement nor the Governmental Agency Bond may be assigned by the Governmental Agency for any reason, unless the following conditions shall be satisfied: (i) the Authority shall have approved said assignment in writing; (ii) the assignee shall 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; and (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.

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 occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

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

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

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

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

(e) 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 take possession of the Governmental Agency, or its property or assets, if such order remains in effect, or such possession continues, for more than thirty (30) days.

**SECTION 5.02. Notice of Default.** The Governmental Agency shall give the Authority prompt telephonic notice of the occurrence of any Event of Default referred to in Section 5.01 at

such time as any senior administrative or financial officer of the Governmental Agency becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 5.02 shall be confirmed in writing as soon as practicable by the Governmental Agency.

**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 any action permitted or required pursuant to the Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation, or agreement of the Governmental Agency hereunder, including, without limitation, appointment ex parte 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 the reasonable fees and expenses of attorneys, and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and/or legal staff) incurred by the Authority in the collection of Loan Repayments or any other sum due hereunder, or in the enforcement of the performance or observation of any other duties, covenants, obligations, or agreements of the Governmental Agency.

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

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

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

to enforce the obligations of the Governmental Agency to the Authority pursuant to Section 5.03, Section 5.04, and Section 5.06 hereof.

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

## ARTICLE VI

### MISCELLANEOUS

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

(a) Authority:

Colorado Water Resources and Power  
Development Authority  
1580 Logan Street, Suite 620  
Denver, Colorado 80203  
Attention: Executive Director

Such address may be changed by notice in writing to the Governmental Agency.

**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. The Governmental Agency Bond is issued pursuant to the laws of the State of Colorado, including, but not limited to Title 11, Article 57, Part 2, Colorado Revised Statutes, as amended. Venue for any action seeking to interpret or enforce the provisions of this Loan Agreement shall be in the Denver District Court.

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

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

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

**SECTION 6.10. Recital.** This Loan Agreement is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Loan Agreement is authorized by the Governmental Agency pursuant to Section 29-2-112, C.R.S. and Title 11, Article 57, Part 2, C.R.S and the Governmental Agency Bonds shall so recite. Such recitals shall conclusively impart full compliance with all provisions and limitations of such laws and shall be conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond, and this Loan Agreement and the Governmental Agency Bond delivered by the

Governmental Agency to the Authority containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

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

**COLORADO WATER RESOURCES AND POWER  
DEVELOPMENT AUTHORITY**

(SEAL)

By:

\_\_\_\_\_  
Executive Director

**ATTEST:**

\_\_\_\_\_  
Assistant Secretary

**CITY OF FRUITA, COLORADO, ACTING BY AND  
THROUGH ITS SEWER FUND ENTERPRISE**

(SEAL)

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

**ATTEST:**

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

## **EXHIBIT A**

### **(1) Description of the Project**

The Project consists of construction of a new 2.33 MGD wastewater treatment facility, approximately two miles of interceptor sewer lines and a new lift station.

### **(2) Description of System**

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

### **(3) Pledged Property**

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

“*Net Revenue*” means the Gross Revenue for any period, less the Operation and Maintenance Expenses for the same period.

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

donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom. Notwithstanding anything contained above, amounts deposited in a rate stabilization account shall not be deemed Gross Revenue in the calendar year deposited and amounts withdrawn from the rate stabilization account shall be deemed Gross Revenue in the year withdrawn.

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

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

#### **(4) 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. Except for the Governmental Agency Bond dated April 27, 1995, payable to the Authority, originally issued in the aggregate principal amount of \$224,000, a loan from the Colorado Department of Local Affairs dated May 22, 2002, originally issued in the aggregate principal amount of \$123,000, an interim loan dated October 6, 2009, payable to the Authority, originally issued in the aggregate principal amount of \$4,570,000, which loans are on a parity with the Loan Agreement and the Governmental Agency Bond, 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 that is prior to or on parity with the lien of the Loan Agreement and Government Agency Bond on the Pledged Property. Except as permitted by the Governmental Agency Resolution, the Governmental Agency shall not issue any bonds, notes, 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.

**(5) Rate Covenant** (applicable only if Loan Term is extended beyond \_\_\_\_\_ 2012, in accordance with paragraph 3.03 of the Loan Agreement)

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

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

Notwithstanding anything contained above, amounts deposited in a rate stabilization account shall not be deemed Gross Revenue (as defined in Paragraph (3) of this Exhibit A to this Loan Agreement) in the calendar year deposited and amounts withdrawn from the rate stabilization account shall be deemed Gross Revenue (as defined in Paragraph (3) of this Exhibit A to this Loan Agreement) in the year withdrawn.

**EXHIBIT B**

**DESCRIPTION OF THE LOAN**

- (1) Commencement Date: \_\_\_\_\_ 2010
- (2) Name and Address of Governmental Agency:  
  
City of Fruita, Colorado  
325 E. Aspen Ave.  
Fruita, CO. 81521
- (3) Cost of the Project: \$31,000,000
- (4) Principal Amount of Loan Commitment: \$5,000,000
- (5) Loan Term: Payable in full on or before \_\_\_\_\_ 2012
- (6) Interest Rate: 3.5%; (Prime plus 2% if not paid in full by \_\_\_\_\_ 2012)
- (7) Authorized Officers: Clinton M. Kinney, City Manager  
Margaret Steelman, Finance Director
- (8) Estimated Completion Date: September, 2012
- (9) Execution Date: \_\_\_\_\_ 2010

**EXHIBIT C**

**GOVERNMENTAL AGENCY BOND**

**CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND  
ENTERPRISE**

**DATED \_\_\_\_\_ 2010**

FOR VALUE RECEIVED, the undersigned **CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND ENTERPRISE** (the "Governmental Agency") hereby promises to pay to the order of the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority") the principal amount of Five Million and 00/100 Dollars (\$5,000,000.00), or such lesser amount as shall be loaned to the Governmental Agency pursuant to the Loan Agreement dated as of \_\_\_\_\_ 2010, by and between the Authority and the Governmental Agency (the "Loan Agreement"), at the times and in the amounts determined as provided in the Loan Agreement, 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 thereof. This Governmental Agency Bond is subject to assignment or endorsement in accordance with the terms of the Loan Agreement. All of the definitions, terms, conditions and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Governmental Agency Bond.

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

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

This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts, provided in Section 3.06 of the Loan Agreement.

The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is a special limited obligation and is secured by a lien on and is payable solely from the Pledged Property, except for reserves created in connection with the Loan. This Governmental Agency Bond does not constitute a debt or an indebtedness of the Governmental Agency within the meaning of any constitutional or statutory limitation or provision, and shall not be considered or held to be a general obligation of the Governmental Agency. The payment of this Governmental Agency Bond is not secured by an encumbrance, mortgage, or other pledge of property, except for such property and moneys pledged for the payment of the Governmental Agency Bond.

The Governmental Agency Bond, together with the interest accruing thereon, shall be payable and collectible solely out of the Pledged Property, which is so pledged; the owner of the Governmental Agency Bond may not look to any general or other funds for the payment of principal of, premium, if any, or interest on the Governmental Agency Bond except the designated special funds pledged therefore; and this Governmental Agency Bond shall not constitute an indebtedness, debt, liability, or obligation of the Governmental Agency within the meaning of any constitutional, charter, or statutory provision or limitation of the Governmental Agency.

This Governmental Agency Bond is issued under the authority of and in full conformity with the Constitution and laws of the State of Colorado, including without limitation, Article X, Section 20 of the Constitution, §29-2-112 C.R.S.; certain provisions of Title 11, Article 57, Part 2, C.R.S. (The “Supplemental Act”), and pursuant to the Loan Agreement. Pursuant to §11-57-210, of the Supplemental Act, such recital shall be conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond after its delivery for value. Pursuant to §29-2-112, C.R.S., such recital shall conclusively impart full compliance with all the provisions of said statutes, and this Governmental Agency Bond issued containing such recital is incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Governmental Agency has caused this Governmental Agency Bond to be duly executed, sealed and delivered, as of this \_\_\_\_\_ day of 2010.

**CITY OF FRUITA, COLORADO, ACTING BY  
AND THROUGH ITS SEWER FUND  
ENTERPRISE**

(SEAL)

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

ATTEST:

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

**EXHIBIT D-1**

**OPINION OF GOVERNMENTAL AGENCY COUNSEL**

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

**[DATED: \_\_\_\_\_ 2010]**

Colorado Water Resources and  
Power Development Authority

Gentlemen:

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

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

(a) the Loan Agreement, dated as of \_\_\_\_\_ 2010 (the "Loan Agreement") by and between the Authority and the Governmental Agency;

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

(c) the Governmental Agency Bond, dated as of \_\_\_\_\_ 2010 (the "Governmental Agency Bond") issued by agreements thereunder and to undertake and complete the Project; subject, however, to the effect of, restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment or other similar laws affecting creditors' rights generally (Creditor's Rights Limitations) heretofore or hereafter enacted.

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

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

the Governmental Agency.

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

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

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

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

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

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

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

(6) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on

the part of the Governmental Agency in connection with the authorization, execution, delivery and performance of the Loan Documents and the authorization, execution, delivery, and performance of the Loan Documents and the undertaking and completion of the Project, other than licenses and permits relating to the construction and acquisition of the Project which [insert "I" or "we"] expect the Governmental Agency to receive in the ordinary course of business, have been obtained or made.

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

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

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

Very truly yours,

**EXHIBIT D-2**

**OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL**

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

**[DATED: \_\_\_\_\_ 2010]**

Colorado Water Resources and  
Power Development Authority

Gentlemen:

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

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

- (a) the Loan Agreement, dated as of \_\_\_\_\_ 2010 (the "Loan Agreement"), by and between the Authority and the Governmental Agency;
- (b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement, and the execution, issuance, and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);
- (c) the Governmental Agency Bond, dated as of \_\_\_\_\_ 2010 (the "Governmental Agency Bond"), issued by the Governmental Agency to the Authority to evidence the Loan (as defined in the Loan Agreement);
- (d) the proceedings of the governing body of the Governmental Agency relating to the issuance, of the Governmental Agency Bond, and the execution, issuance, and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents"); and

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

**EXHIBIT E**  
**ADDITIONAL COVENANTS AND REQUIREMENTS**

(1) **Additional Bonds** (applicable only if Loan Term is extended beyond \_\_\_\_\_ 2012, in accordance with paragraph 3.03 of the Loan Agreement).

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

(B) **Parity Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued was at least equal to the sum of (a) 120% of the maximum annual debt service due in any one year on (i) this Loan Agreement and (ii) all other outstanding obligations of the Governmental Agency payable out of, or secured by a lien or charge on, the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, and (iii) such proposed obligations to be issued, and (b) the maximum annual debt service due in any one year on all obligations payable out of, or secured by a lien or charge on the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property. Provided however, it is not necessary to meet this test in connection with the refinancing of this loan by the Authority.

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

(D) **Net Revenue Adjustment.** In calculating revenue coverage for purposes of the issuance of additional parity or subordinate lien bonds, the Governmental Agency may adjust Net Revenues to reflect any rate increases adopted in connection with the issuance of additional obligations by adding to the actual Net Revenue for the period examined an estimated sum equal to 100% of the

estimated increase in Net Revenues that would have been realized during such period had the adopted rate increase been in effect during all of such period.

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

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

(3) **Operations and Maintenance Reserve.** 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, and shall be maintained as a continuing reserve for payment of any lawful purpose relating to the System. If the operations and maintenance reserves fall below this requirement, the shortfall shall be made up in 24 substantially equal monthly installments beginning the second month after such shortfall.

(4) **Rate Study.** In the event that Gross Revenues collected during a fiscal year is not sufficient to meet the requirements set forth in the Rate Covenant contained in paragraph 5 of Exhibit A of the Loan Agreement, the Governmental Agency shall, within 90 days of the end of such fiscal year, cause an independent firm of accountants or consulting engineers to prepare a rate study for the purpose of recommending a schedule of rates, fees, and charges for the use of the System that, in the opinion of the firm conducting the study, will be sufficient to provide Gross Revenues to be collected in the next succeeding fiscal year that 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. The Governmental Agency shall within six months of receipt of such study, adopt rates, fees, and charges for the use of the System, based upon the recommendations contained in such study, that provide compliance with said Rate Covenant.

**EXHIBIT F**  
**FORM OF REQUISITION**

**CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND  
ENTERPRISE**

Project Loan Account for the **CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND ENTERPRISE** (the "Governmental Agency")

To: Colorado Department of Public Health and Environment  
WQCD-OA-B1  
Attn: Louanna Cruz  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

This requisition is made in accordance with Section 3.02 of the Loan Agreement between the Colorado Water Resources and Power Development Authority and the CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND ENTERPRISE, on \_\_\_\_\_, 2010. Terms defined in the Loan Agreement and not otherwise defined herein shall have the same meanings when used herein.

The Governmental Agency hereby states as follows:

1. This is Requisition No \_\_\_\_\_.
2. The amount requisitioned hereunder is \_\_\_\_\_.
3. The person, firm or corporation to whom the amount requisitioned is due, or to whom a reimbursable and advance has been made, is \_\_\_\_\_.
4. The payee of the requisitioned amount is \_\_\_\_\_.
5. The manner of payment to the payee is to be wire transferred to:  
  
Bank:  
ABA No.:  
Account No.:  
Account Name:  
Contact:
6. Attached hereto is a statement, copy of a bill, or other proof that the amount requisitioned hereunder is currently due or has been advanced by the Governmental Agency.
7. The amount hereby requisitioned is a proper Cost of the Project to be paid only from amounts deposited in the Project Account established for the Governmental Agency.
8. The amount hereby requisitioned is a Cost of the Project that would be eligible for funding from the Water Pollution Control Revolving fund if the Project Account were funded from such Water Pollution Control Revolving Fund.

9. On the date hereof, there does not exist any Event of Default under the Loan Agreement, or any condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default thereunder.
10. Annexed hereto is a certificate of \_\_\_\_\_ Engineer for the Project, certifying that the amounts requisitioned hereunder constitute proper Costs of the Project. [Please change to Authorized Officer when Engineer is not appropriate.]
11. The undersigned is an Authorized Officer of the Governmental Agency duly authorized to submit this Requisition.
12. The Governmental Agency reaffirms that all representations made by it in the Loan Agreement are true and accurate as of the date of this requisition, and that it shall continue to observe and perform all of its duties, covenants, obligations and agreements thereunder, at all times during the entire term of said Loan Agreement.

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

**CITY OF FRUITA, COLORADO, ACTING BY  
AND THROUGH ITS SEWER FUND  
ENTERPRISE**

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

\_\_\_\_\_  
Print Name/Title of Authorized Officer

The undersigned approves the disbursement of the requisitioned amount from the Project Account established for the Governmental Agency.

**COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY**

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

Finance Director

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

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

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

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

Date of last inspection: \_\_\_\_\_

Estimate percentage of project completion as of last inspection \_\_\_\_\_