



## Council Request Update

October 26, 2017

**Council Request: 17-152**

**Requested by:** Mayor Jefferson

**Request:** What can the City do about a dead tree at 4335 S. Clarkson Street?

**Assigned to: Police Department**

**Response:** Please see the response provided by Deputy Chief Sam Watson.

**Council Request: 17-158**

**Requested by:** Mayor Jefferson

**Request:** Confirmation of street sweeping schedule

**Assigned to: Public Works**

**Response:** Please see the response provided by Right-of-Way Services Manager Larry Nimmo.

**Council Request: 17-159**

**Requested by:** Councilmember Russell

**Request:** Police and Code Calls at 4900 S. Federal Blvd. "AMF"

**Assigned to: Police Department**

**Response:** Please see the response provided by Code Enforcement Supervisor David Lewis

**Council Request: 17-174**

**Requested by:** Mayor Jefferson

**Request:** Process to add a street light

**Assigned to: Public Works**

**Response:** Please see the response provided by Right-of-Way Services Manager Larry Nimmo.

**Council Request: 17-179**

**Requested by:** Councilmember Barrentine

**Request:** Request to see the City's CORA Policy

**Assigned to: City Clerk**

**Response:** Please see the response provided by City Clerk Stephanie Carlile.

**Council Request: 17-180**

**Requested by:** Councilmember Barrentine

**Request:** Analysis of the 2004 Sewer Enterprise loan agreement and reserve requirements

**Assigned to: Finance**

**Response:** Please see the response provided by Director of Finance and Administrative Services Kathy Rinkel.



**TO:** Deputy Chief Sam Watson  
**FROM:** Code Enforcement Supervisor David Lewis  
**DATE:** September 20<sup>th</sup>, 2017  
**SUBJECT:** Council Request Mayor Jefferson

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CR17-152

Requested by: Mayor Jefferson: There is a dead tree at 4335 S. Clarkson Street on private property that is causing issues with a neighboring property. What can the City do about this situation?

Assigned to: Police Department/Code Enforcement

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The City may take action in regards to dead or unhealthy trees by way of Notice of Violation as outlined within the Englewood Municipal Code. Below, is an example of a Tree Notice of Violation. The Property Owner will have 45 days for voluntary compliance as set forth in the EMC. If the Property Owner is not in compliance after the 45 day posting a summons will be issued into Municipal Court. Historically, the City will not abate a tree unless it poses a "Health or Safety" risk.

### **Notice and Order**

**To Property Owner:** **Name**

**Owner/Occupant:** **Address of Violation**

Recently, I noticed tree(s) or plants on your property which appear to be either dead or dying and which constitute a danger to the public safety, health and welfare. **This is in violation of E.M.C. 11-5-8 (A) Prohibited Acts, Conditions.** In addition, these trees or plants may be harboring disease or insects, which could be spread throughout the neighborhood.

The City does not make final determinations on the condition of trees or shrubs. It is your responsibility to have this determination made by an Englewood licensed arborist and to take one of the following steps:

- If the tree(s) or plants are determined to be dead or otherwise unsalvageable, the tree(s) or plants must be removed by **Date**

(OR)

- If the tree(s) or plants are determined to be healthy, but in need of professional care, you will need to arrange for the necessary care and call me at, **Phone Number**, by **Date**, with the name of the arborist who made the determination. Once you have obtained the necessary care, and the tree(s) or plants have responded favorably, the case will be closed.

If you fail to take one of the above two steps by **Date**, the City shall remedy the condition or contract with others for such purpose and charge the cost, plus 15% for administrative fees, to the person to whom the order is directed. The person remedying a condition under a contract made hereunder shall be authorized to enter the premises for that purpose. Failure to comply constitutes a Municipal Court violation for which the violator may be cited and summoned into Municipal Court under 11-5-6 (D) of the Englewood Municipal Code.

Any person to whom this order is directed may appeal, in writing, to the City within seventy-two (72) hours of the service of such an order pursuant to 11-5-6(C).

If you have any questions about this Notice and Order, or if you are unable to take the specified action(s) within the specified period of time, please contact me at, **303.762.0000**, to request an extension.

Ordered by: **Officer Name**      Date: **Issue Date**



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**TO:** Mayor Jefferson and City Council

**THROUGH:** Eric A. Keck, City Manager

**THROUGH:** Dave Henderson, Director of Public Works

**FROM:** Larry Nimmo, Right-of-Way Services Manager

**DATE:** October 19, 2017

**SUBJECT: CONFIRMATION OF STREET SWEEPING SCHEDULE  
CR 17-158**

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Mayor Jefferson requested confirmation that street sweeping is done on the same day as garbage pickup on South Ogden Street.

During the 2018 Budget discussions, staff presented City Council with the necessary requirements for the development of a street sweeping schedule. City Council's response to staff clearly stated that though a street sweeping schedule would be nice, it is not a necessity at this time. Without the fulfilment of the outlined requirements, it is impossible to schedule street sweeping on Ogden the same day as trash pickup.



**TO:** Deputy Chief Sam Watson  
**FROM:** Code Enforcement Supervisor David Lewis  
**DATE:** October 2<sup>nd</sup>, 2017  
**SUBJECT:** Council Request 17-159

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CR17-159

Requested by: Council Member Rita Russell  
Request for Police and Code Calls at 4900 S Federal Blvd "AMF"  
Assigned to: Police Department / Code Enforcement

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Code Enforcement has been working with the AMF bowling Center on a variety of complaints. The biggest contributing factor is that the business is being victimized by transients setting up small camps out of the view from the public right of way. AMF management has been very receptive to Code and the Police partnership and will frequently clean up illegal dumping when asked however, this is an ongoing concern of the business.

Code Officers will inspect the property this week for any violations.

Below, is a list of calls from Code and Police for the last 3 years, as you will see, many of the activities are proactive business checks and extra patrols made by Patrol Officers:

<b>DATE</b>	<b>TYPE OF CALL</b>
2/18/2017 12:39	ACCIDENT-HIT AND RUN
9/21/2017 18:05	ACCIDENT-PROPERTY
7/21/2015 4:08	ALARM NOTIFICATION
4/11/2015 4:49	ALARM-AUDIBLE
5/9/2015 4:28	ALARM-AUDIBLE
8/4/2015 3:31	ALARM-AUDIBLE
5/15/2016 6:50	ALARM-AUDIBLE
12/27/2016 2:55	ALARM-AUDIBLE
10/14/2015 20:11	ALARM-CANCEL
8/9/2016 18:32	ALARM-CANCEL
1/15/2015 15:07	ANIMAL CALL
1/5/2016 8:09	ANIMAL CALL
6/8/2015 21:53	ASSAULT

4/15/2017 11:39	ASSIST OTHER AGENCY
9/14/2017 12:29	ASSIST OTHER AGENCY
10/22/2015 5:40	BURGLARY
1/10/2015 19:59	BUSINESS CHECK
2/18/2015 19:33	BUSINESS CHECK
6/17/2015 20:13	BUSINESS CHECK
12/8/2015 22:27	BUSINESS CHECK
1/17/2016 17:10	BUSINESS CHECK
6/3/2017 21:01	BUSINESS CHECK
6/4/2015 11:03	CHILD ABUSE/NEGLECT
2/6/2017 8:22	CODE VIOLATION
9/12/2017 14:50	CODE VIOLATION
9/14/2017 12:18	CODE VIOLATION
9/14/2017 13:31	CODE VIOLATION
10/4/2015 17:14	CRIMINAL MISCHIEF
11/18/2016 22:03	DISTURBANCE/FIGHT
4/17/2017 22:57	DISTURBANCE/FIGHT
7/27/2015 21:44	DOMESTIC
2/2/2015 19:01	DRIVING UNDER INFLUENCE
3/5/2015 22:52	EXTRA PATROL
10/23/2015 20:01	EXTRA PATROL
10/26/2015 16:51	EXTRA PATROL
10/31/2015 21:00	EXTRA PATROL
12/11/2015 18:50	EXTRA PATROL
12/26/2015 19:25	EXTRA PATROL
1/6/2016 20:38	EXTRA PATROL
3/6/2016 22:24	EXTRA PATROL
7/15/2016 21:46	EXTRA PATROL
8/27/2016 13:38	EXTRA PATROL
8/27/2016 14:03	EXTRA PATROL
9/21/2016 15:05	EXTRA PATROL
11/19/2016 10:17	EXTRA PATROL
1/8/2017 18:33	EXTRA PATROL
1/18/2017 0:35	EXTRA PATROL
1/21/2017 18:42	EXTRA PATROL
3/27/2017 19:54	EXTRA PATROL
5/20/2017 18:30	EXTRA PATROL
8/21/2017 20:09	EXTRA PATROL
9/10/2017 16:11	EXTRA PATROL
3/1/2015 20:06	INTOXICATION
4/28/2016 21:17	INTOXICATION
12/11/2016 19:22	INTOXICATION
8/3/2015 21:16	INVESTIGATION FOLLOWUP
10/11/2015 17:05	INVESTIGATION FOLLOWUP

10/13/2015 16:54	INVESTIGATION FOLLOWUP
10/15/2015 8:11	INVESTIGATION FOLLOWUP
10/17/2015 15:38	INVESTIGATION FOLLOWUP
10/26/2015 13:51	INVESTIGATION FOLLOWUP
1/11/2017 16:44	INVESTIGATION FOLLOWUP
8/28/2017 9:06	INVESTIGATION FOLLOWUP
12/2/2015 12:49	MEDICAL ASSIST
6/28/2016 17:27	MEDICAL ASSIST
4/15/2017 11:36	MEDICAL ASSIST
7/22/2017 21:57	MEDICAL ASSIST
1/8/2015 23:24	MOTOR VEHICLE THEFT
1/9/2015 11:09	MOTOR VEHICLE THEFT
1/16/2016 0:32	MOTOR VEHICLE THEFT
1/3/2017 16:09	MOTOR VEHICLE THEFT
1/30/2016 10:10	PARKING VIOLATION
7/21/2015 20:20	PEDESTRIAN STOP
3/6/2016 22:16	PEDESTRIAN STOP
3/16/2016 1:49	PEDESTRIAN STOP
5/31/2016 0:24	PEDESTRIAN STOP
	RECOVERED STOLEN
2/23/2016 1:23	VEHICLE RECOVERED
5/9/2016 18:03	VEHICLE RECOVERED
7/17/2015 15:35	SEXUAL ASSAULT (ADULT)
3/16/2015 1:46	SUSPICIOUS
4/4/2015 17:16	SUSPICIOUS
6/7/2015 20:33	SUSPICIOUS
2/14/2016 4:41	SUSPICIOUS
3/2/2016 11:14	SUSPICIOUS
3/2/2016 11:42	SUSPICIOUS
8/8/2016 18:20	SUSPICIOUS
12/19/2016 8:09	SUSPICIOUS
2/17/2017 11:14	SUSPICIOUS
2/17/2017 11:59	SUSPICIOUS
6/1/2017 8:08	SUSPICIOUS
6/15/2017 20:26	SUSPICIOUS
7/8/2017 8:59	SUSPICIOUS
9/10/2017 1:47	SUSPICIOUS
10/1/2017 13:32	SUSPICIOUS
1/8/2015 21:08	THEFT
7/31/2015 21:32	THEFT
10/21/2015 12:46	THEFT
11/7/2015 13:02	THEFT
8/21/2017 13:30	THEFT
	THEFT FROM MOTOR
10/11/2015 15:58	VEHICLE

1/3/2017 16:00	THEFT FROM MOTOR VEHICLE
6/12/2017 11:02	TOWED VEHICLE
8/22/2017 13:24	TOWED VEHICLE
1/22/2015 21:22	TRAFFIC
1/30/2015 14:40	TRAFFIC
5/11/2015 23:58	TRAFFIC
7/17/2015 1:21	TRAFFIC
3/5/2016 23:31	TRAFFIC
3/6/2016 22:20	TRAFFIC
4/10/2016 0:41	TRAFFIC
12/27/2016 17:08	TRAFFIC
2/22/2017 17:44	TRESPASSING
1/24/2015 19:43	UNWANTED SUBJECT
6/1/2015 22:17	UNWANTED SUBJECT
10/31/2015 15:26	UNWANTED SUBJECT
11/18/2016 19:05	UNWANTED SUBJECT
11/22/2016 12:12	UNWANTED SUBJECT
2/19/2017 1:29	UNWANTED SUBJECT
4/12/2016 4:54	WELFARE CHECK
5/19/2016 23:01	WELFARE CHECK
6/2/2016 23:01	WELFARE CHECK
8/7/2016 19:12	WELFARE CHECK
4/15/2017 7:50	WELFARE CHECK





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**TO:** Mayor Jefferson and City Council

**THROUGH:** Eric A. Keck, City Manager

**THROUGH:** Dave Henderson, Director of Public Works

**FROM:** Larry Nimmo, Right-of-Way Services Manager

**DATE:** October 19, 2017

**SUBJECT: PROCESS TO ADD A STREET LIGHT  
COUNCIL REQUEST 17-174**

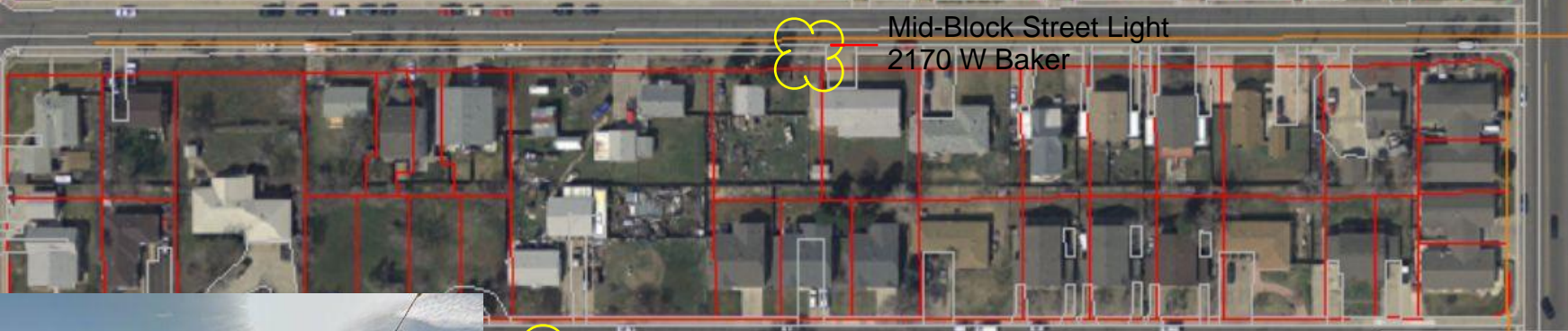
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Mayor Jefferson requested information on adding a street light in the City, specifically the Mayor received a request for a light at the 2100 block of West Harvard.

Staff has reviewed the request for the addition of a streetlight in the 2100 Block of West Harvard, and found the current lighting in consistent with the standard established in this area of the City. Per the attached map, the typical configuration for streetlights in this area, (Vassar, Hillside, Harvard, and Baker) include both intersections, (Tejon and Zuni), and one somewhere in the middle of the block. The map provides information on the approximate location of each of these mid-block lights. The current location at 2268 W Harvard meets this standard.



Mid-Block Street Light  
2170 W Baker



Mid Block Street Light  
2268 W Harvard



Mid-Block Street Light  
2243 W Hillside



Mid-Block Street Light  
2123 W Vassar



TEJON

## City of Englewood

# Open Records Request Policy

The City Clerk is the "official custodian" of all City Records, with the exception of Criminal Justice Records.

The City Clerk or Deputy City Clerk will certify records.

Each department is the "designated custodian" of records in their "personal custody and control".

If a department or Council member receives an Open Records Request, it is the responsibility of the individual department or Council member to comply. These may be forwarded to the City Clerk for certification, if necessary.

If you have a question as to whether a record falls under the Open Records Act, contact the City Attorney's Office.

If it appears that the request is for purposes of solicitation, contact the City Attorney's Office for assistance in responding, as this is an exception to the Open Records Act for criminal justice records. (CRS § 24-72-305.5)

The City of Englewood must respond to Open Records Requests within three working days or, in the case of extenuating circumstances, the response period may be extended by seven working days.

The day the request is received does not count as a day, neither do weekends nor City of Englewood recognized holidays.

CRS § 24-72-203 (3) (b) - "The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in the subsection (3), a "reasonable time" shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven working days."

A finding of extenuating circumstances shall be made in writing by the "designated custodian" and shall be provided to the person making the request within the three-day period. Refer to the Statutes to determine if extenuating circumstances apply.

Open Records research fee: \$25.00 per hour, after the first hour. Black & white copy fee: 10 cents per page. Color copy fee: 35 cents per page. Total copy charges of \$5.00 and under will be waived. A page is considered one side. These fees are for "standard pages". CRS § 24-72-205 (5) (a) states that if the record is in a format other than a standard page, the fee cannot exceed the actual cost of providing the record. CD/DVD: \$5.00 EACH. Staff will provide an estimate of the cost of research time and the cost of copies involved and a 50% deposit will be required prior to processing the request.

A modification of the request is considered a new request.

When responding to Open Records Requests, redact (remove/black out) all confidential information, e.g. signatures, date of birth, e-mail addresses provided to the City of Englewood, on the copies that you release. Make sure your original copies retain the confidential information. You may attach a note to the records request stating that the confidential information has been redacted in an effort to comply with laws established to protect personal identifying information.

The City of Englewood will not proceed with a new Open Records Request unless full payment has been received for all previous Open Records Requests.

The attached request form is an example of a method you may use to document the request. If you choose to use the form, you may amend it.

/s/ Loucrishia A. Ellis  
Loucrishia A. Ellis, City Clerk

July 8, 2009  
Date



## **Response to Council Request 17-180**

To: City Council

From: Kathleen Rinkel, Director of Finance and Administrative Services

Date: August 23, 2017

Subject: Analysis of the 2004 Sewer Enterprise loan agreement (to fund LEWWTP capital improvements) and reserve requirements

In the October 16, 2017, regular City Council meeting during the 2<sup>nd</sup> reading of the 2018 Budget Ordinance, the 2004 loan agreement between the 'Colorado Water Resources and the Power Development Authority and the City of Englewood, CO, acting by and through its Sewer Utility Enterprise' was referenced (see attached). The issue raised was that in leveraging the Sewer Utility Enterprise's Fund balance to cover the City's anticipated portion of the LEWWTP BioGas project, the Enterprise was in violation of the Fund Balance reserve requirement of the loan agreement.

In the document, four reserve-type funds are identified and have been summarized below:

Debt Reserve Fund – initially mentioned on page 11 of the loan agreement and then referenced throughout the document. This is a separate account the City creates for each bond/loan issuance into which revenue received from taxes or rates is deposited and from which the bond/loan payment is made. (internal accounting)

Debt Service Reserve Fund – initially mentioned on page 19 of the loan agreement. This is a reserve set up at the time bond/loan proceeds are received, which is held by a trustee (typically a 3<sup>rd</sup> party financial institution). It is used to pay loan/bond payments in case the entity fails to make payment. If used, it must be repaid in equal monthly payments over the lesser of 6 months or the term of the loan.

Rate Stabilization Fund – initially mentioned on page A-2 of the loan agreement. This is a \$5M reserve set up at the time bond/loan proceeds are received, which is held by a trustee. It is used to supplement revenue if rates are not sufficient to cover needed expenses. Must be replenished annually if used.

Operations & Maintenance Reserve requirement – initially mentioned on page F-1 of the loan agreement. It is defined as 3 months of Operations and Maintenance expense or \$1,250,000, whichever is less. Based on the description of this fund, it could be considered our regular reserve or an additional separate reserve the City would set up. Any draw below minimum would need to be repaid over 24 months.



The reserve to which staff believes the Council Member who raised the question was referring was the Operations and Maintenance Reserve requirement. Based on the 2018 Budget, the ending balance of the reserve in the Sewer Utility Enterprise is expected to be \$1,588,830. This is above the minimum requirement of the loan (\$1,250,000). In reviewing our accounting system, we found that at the inception of the loan the City specifically 'assigned,' and is still holding, the \$1,250,000 within the Sewer Utility Reserve specifically for this purpose.

Please let me know if you have any questions.

Sincerely,

Kathleen Rinkel, CPA, CMA  
Director of Finance and Administrative Services  
[krinkel@englewoodco.gov](mailto:krinkel@englewoodco.gov)  
(303) 762-2401

**WATER REVENUE BOND PROGRAM**

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**LOAN AGREEMENT**

**BETWEEN**

**COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY**

**AND**

**CITY OF ENGLEWOOD, COLORADO, ACTING BY  
AND THROUGH ITS SEWER UTILITY ENTERPRISE**

**DATED AS OF MAY 1, 2004**

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**THIS LOAN AGREEMENT**, made and entered into as of this 1st day of May, 2004, by and between **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), a body corporate and political subdivision of the State of Colorado, and the **CITY OF ENGLEWOOD, COLORADO, ACTING BY AND THROUGH ITS SEWER UTILITY ENTERPRISE** (the "Governmental Agency"), a home rule municipal corporation and political subdivision of the State of Colorado;

**WITNESSETH THAT:**

**WHEREAS**, the Authority is authorized by Title 37, Article 95, Part 1, Colorado Revised Statutes, as amended (the "Act"), to issue its negotiable bonds or notes in furtherance of its purposes to preserve, protect, upgrade, conserve, develop, utilize, and manage the water resources of the State, and to make loans to any governmental agency for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of projects related to its purposes, which loans may be secured by loan and security agreements; and

**WHEREAS**, the Governmental Agency has the power under and pursuant to Title 37, Article 45, Part 1, Colorado Revised Statutes, as amended to borrow money and to acquire, construct, operate, control and use any and all works, facilities and means for the purpose of providing for the treatment of wastewater within the geographical area of the Governmental Agency; and

**WHEREAS**, in furtherance of its purposes, the Governmental Agency has determined to finance the cost of acquisition and construction of various improvements to its wastewater system;

**WHEREAS**, the Authority has authorized the issuance of its revenue bonds, pursuant to the Act in order to loan the proceeds to the Governmental Agency to finance such improvements on the terms and conditions herein set forth;

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

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

**ARTICLE I.**

**DEFINITIONS**

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

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

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

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

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

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

**“Bond Resolution”** means the Water Resources Revenue Bond Resolution (City of Englewood, Colorado Project), as adopted by the Authority on April 23, 2004, authorizing the issuance of the Authority Bonds, and all further amendments and supplements thereto adopted in accordance with the provisions thereof.

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

**“Cost”** means those costs that are reasonable, necessary and allocable to the Project and are permitted by generally accepted accounting principles to be costs of the Project. Cost shall also include Costs of Issuance (as defined in the Bond Resolution).

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

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

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

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



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

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

**“Loan”** means the loan made by the Authority to the Governmental Agency to finance or refinance a portion of the Cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the principal amount of the Loan at any time shall be equal to the principal amount of the Authority Bonds, less any portion of such principal amount as has been repaid by the Governmental Agency under this Loan Agreement.

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

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

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

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

**“MSRB”** means the Municipal Securities Rulemaking Board established in accordance with the provisions of Section 15B(b)(1) of the Securities Exchange Act of 1934.

**“Pledged Property”** means the defined term of this Loan Agreement set forth in paragraph (4) of Exhibit A attached hereto and made a part hereof.

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

**“Project”** means the wastewater 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 Fund”** means the Project Fund created under the Bond Resolution.

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

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

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

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

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

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

Terms not otherwise defined herein shall have the meanings ascribed to them in the Bond Resolution.

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

## ARTICLE II.

### REPRESENTATIONS AND COVENANTS OF GOVERNMENTAL AGENCY

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

- (a) **Organization and Authority.**
  - (i) The Governmental Agency is a governmental agency as defined in the Act and as described in the first paragraph of this Loan Agreement.
  - (ii) The 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, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to execute, issue and deliver the Governmental Agency Bond, to undertake and complete the Project (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), and to carry out and consummate all transactions contemplated by this Loan Agreement. The Project is a project which the Governmental Agency may undertake pursuant to Colorado law and for which the Governmental Agency is authorized by law to borrow money.

- (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 have been or will be duly and lawfully adopted in accordance with the laws of Colorado and such proceedings were or will be duly approved and published, if necessary, in accordance with applicable Colorado law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout.
- (iv) This Loan Agreement and the Governmental Agency Bond, when delivered at the Loan Closing, will have been, duly authorized, executed and delivered by an Authorized Officer of the Governmental Agency; and, assuming that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement, this Loan Agreement, and the Governmental Agency Bond when delivered to the Authority, will constitute, the legal, valid and binding obligations of the Governmental Agency in accordance with their respective terms, and the information contained under "Description of the Loan" on Exhibit B attached hereto and made a part hereof is true and accurate in all respects.

(b) Full Disclosure.

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

(c) Pending Litigation.

There are no proceedings pending, or, to the knowledge of the Governmental Agency threatened, against or affecting the Governmental Agency, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments and otherwise observe and perform its duties, covenants,

obligations and agreements under this Loan Agreement and the Governmental Agency Bond, that have not been disclosed in writing to the Authority in the Governmental Agency's application for the Loan or otherwise to the Authority.

(d) Compliance with Existing Laws and Agreements.

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

(e) No Defaults.

No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement and the Governmental Agency Bond or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Governmental Agency is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, the System or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Governmental Agency or the System or the ability of the Governmental Agency to make all Loan Repayments or otherwise 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 (and reasonably expects to receive all permits required in the future by any governmental agency) for the making, observance and performance by the Governmental Agency of its duties, covenants, obligations and agreements under this Loan Agreement and the Governmental Agency Bond 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. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained (or that is not reasonably expected to be obtained) is required on the part of the Governmental Agency as a condition to the authorization, execution and delivery of this Loan Agreement and the Governmental Agency Bond, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

**(g) Compliance with Law.**

The Governmental Agency (i) is in compliance with all laws, ordinances, 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 which, 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 (i) to finance or refinance a portion of the Cost of the Project; and (ii) where applicable, to reimburse the Governmental Agency for a portion of the Cost of the Project, which portion was paid or incurred in anticipation of reimbursement by the Authority.

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

**(a) Source of Repayment Pledge.**

The Governmental Agency irrevocably pledges the Pledged Property for the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement and the Governmental Agency Bond according to their respective terms.

**(b) Performance Under Loan Agreement.**

The Governmental Agency covenants and agrees (i) to maintain the System in good repair and operating condition; (ii) to cooperate with the Authority in the observance and performance of the respective duties, covenants, obligations and agreements of such

Governmental Agency and the Authority under this Loan Agreement; and (iii) to comply with the covenants described in the Exhibits to this Loan Agreement.

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

The Governmental Agency covenants and agrees (i) to exercise its best efforts in accordance with prudent wastewater treatment utility practice to complete the Project; and (ii) subject to appropriation, to provide from its own fiscal resources all moneys, in excess of the total amount of loan proceeds it receives under the Loan, required to complete the Project.

(d) **Disposition of the System.**

Except for the disposal of any portion of the System which the Governmental Agency determines are no longer necessary for the operation of the System, the Governmental Agency shall not sell, lease, abandon or otherwise dispose of all or substantially all of the System, or any other component of the System which provides revenues to provide for the payment of this Loan Agreement or the Governmental Agency Bond except on ninety (90) days' prior written notice to the Authority and, in any event, shall not so sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Governmental Agency shall assign this Loan Agreement in accordance with Section 4.02 hereof and its rights and interests hereunder to the purchaser or lessee of the System and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Governmental Agency under this Loan Agreement; and (ii) the Authority shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations and agreements under the Bond Resolution, and will not adversely affect the value of this Loan Agreement as security for the payment of Authority Bonds and interest thereon, adversely affect the eligibility of interest on Authority Bonds then outstanding for exclusion from gross income for purposes of Federal income taxation.

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

- (i) The Governmental Agency covenants and agrees that it shall not take or permit any action or fail to take any action which action or omission would result in the loss of the exclusion of the interest on any Authority Bonds (assuming solely for this purpose that the proceeds of the Authority Bonds loaned to the Governmental Agency represent all of the proceeds of the Authority Bonds) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.
- (ii) The Governmental Agency covenants and agrees that it shall not take or permit any action or fail to take any action, which action or omission would cause the Authority Bonds (assuming solely for this purpose that the proceeds of the Authority Bonds loaned to the Governmental Agency represent all of the proceeds of the Authority Bonds) to be "private activity bonds" within the meaning of section 141(a) of the Code. Accordingly, unless the Governmental Agency receives the prior written

approval of the Authority, and subject to the conditions of Section 2.02(d)(ii), the Governmental Agency shall neither (A) permit in excess of 10 percent of either (1) the proceeds (as such term is used in Section 141 of the Code) of the Authority Bonds loaned to the Governmental Agency or (2) the Project financed (or refinanced) with the proceeds of the Authority Bonds loaned to the Governmental Agency, to be used directly or indirectly in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, nor (B) use directly or indirectly any of the proceeds of the Authority Bonds loaned to the Governmental Agency to make or finance loans to persons other than governmental units (as such term is used in section 141(c) of the Code); provided further, that more than one half of the private business use permitted by clause (A) shall be neither (1) disproportionate related business use, nor (2) private business use not related to the government use of such proceeds of the Authority Bonds, as those terms are used in Section 141(b)(3) of the Code.

- (iii) The Governmental Agency covenants and agrees that it shall not directly or indirectly use or permit the use of any proceeds of the Authority Bonds (or amounts treated as replaced with such proceeds) or any other funds, or take or permit any action or fail to take any action, which use, action or omission would cause the Authority Bonds (assuming solely for this purpose that the proceeds of the Authority Bonds in the hands of the Governmental Agency represent all of the proceeds of the Authority Bonds) to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.
- (iv) The Governmental Agency covenants and agrees that it shall not use or permit the use of any portion of the proceeds of the Authority Bonds to retire any other obligations of the Governmental Agency or any other entity, unless the Governmental Agency obtains the written consent of the Authority, which consent may be given or withheld in the Authority's sole discretion.
- (v) The Governmental Agency covenants and agrees to maintain records of its investments, if any, of proceeds of the Authority Bonds loaned to the Governmental Agency and earnings thereon, and will maintain records of expenditures of such amounts. The Governmental Agency will pay to the Authority any earnings on proceeds of the Authority Bonds loaned to the Governmental Agency (including earnings on such earnings) which, in the opinion of the Authority, are required to be rebated to the United States Treasury Department. The Governmental Agency will provide copies of all records of its investment of such moneys and of its expenditures to the Authority on a periodic basis upon request by the Authority and will furnish to the Authority, in writing, information regarding any facilities financed or refinanced therewith.

- (vi) Notwithstanding anything to the contrary, as long as is necessary to maintain the exclusion of interest on the Authority Bonds from gross income for Federal income tax purposes, the covenants contained in this subsection (e) shall survive the payment of the Authority Bonds and the interest thereon, including any payment pursuant to section 12.01 of the Bond Resolution or prepayment pursuant to Section 3.07 of this Loan Agreement, respectively.
- (vii) Neither the Governmental Agency nor any of its agencies shall, pursuant to any arrangement formal or informal, purchase Authority Bonds in an amount related to the amount of the Loan.
- (viii) The Governmental Agency hereby certifies and represents that it has complied with the requirements of Treasury Regulation Section 1.150-2 in its authorizing resolution or other official action with regard to proceeds of the Authority Bonds, if any, to be used to reimburse the Governmental Agency for expenses incurred by the Governmental Agency prior to the issuance of the Authority Bonds. In the event that any of the proceeds of the Authority Bonds are to be used to pay debt service on any prior issue of the Governmental Agency, and any of the proceeds of such prior issue (or any obligations refinanced by such prior issue) were used to reimburse the Governmental Agency for expenditures incurred prior to the issuance of the prior issue (or refinanced obligations, as the case may be), the Governmental Agency hereby certifies and represents that the allocation of such proceeds to the reimbursed expenditure was a valid expenditure under the applicable law on reimbursement expenditures on the date of issue of the prior issue (or the refinanced obligations), as required by Federal Income Tax Regulation Section 1,150-2(g)(2). In the case of refunding of a prior issue issued before July 1, 1993, the proceeds of which were used to reimburse original expenditures, the Governmental Agency (A) made an official intent prior to July 1, 1993, which satisfied the applicable provisions of Treasury Regulation Section 1.103-8(a)(5) as in effect prior to July 1, 1993, or (B) made an official intent between January 27, 1992, and June 30, 1993, which satisfied the applicable provisions of Treasury Regulation Section 1.103-18 as in effect during such period.
- (ix) By executing this Loan Agreement, the Governmental Agency hereby certifies, represents and agrees that:
  - (1) The proceeds of the Authority Bonds to be loaned to the Governmental Agency pursuant to this Loan Agreement do not, taking into account available earnings thereon, exceed the amount necessary to pay for the costs of the Project, including costs of issuance of the Authority Bonds allocated to the Loan.



(2) The Governmental Agency has entered into (or will enter into within six months from the date hereof) a binding commitment for the acquisition, construction or accomplishment of the Project, and will, within six months from the date of delivery of the Authority Bonds by the Authority, expend at least five percent of the proceeds of the Authority Bonds loaned to the Governmental Agency.

(3) The Governmental Agency reasonably expects that 85% of the proceeds of the Loan will be expended within three years from the date of delivery of the initial series of Authority Bonds. Work on the acquisition, construction or accomplishment of the Project will proceed with due diligence to completion.

(4) The total proceeds of the sale of all obligations issued to date for the Project do not exceed the total costs of the Project, taking into account available earnings thereon.

(5) The Governmental Agency does not expect that the Project will be sold, leased or otherwise disposed of in whole or in part during the term of the Loan or of the Authority Bonds or for any portion of the term of the Loan or of the Authority Bonds. The Governmental Agency shall not sell, lease or otherwise dispose of the Project in whole or in part during the term of the Loan or of the Authority Bonds or for any portion of the term of the Loan or of the Authority Bonds unless the conditions of Section 2.02(d)(ii) have been satisfied.

(6) Any fund established, utilized or held by or on behalf of the Governmental Agency to pay debt service on the Loan will be used to achieve a proper matching of revenues and debt service and will be depleted at least annually except for a reasonable carryover amount not to exceed earnings on the fund for the immediately preceding year or 1/12 of the annual debt service on the Loan for the immediately preceding year.

(7) No portion of the amounts received from the Loan will be used as a substitute for other funds which were otherwise to be used as a source of financing for the Project and which have been or will be used to acquire, directly or indirectly, obligations producing a yield in excess of the yield on the Authority Bonds. The Governmental Agency does not expect to receive any amounts in the future that are intended to finance the portion of the Project being financed with proceeds of the Loan. No portion of the amounts received from the Loan will be used to finance working capital expenditures. The Loan has a weighted average maturity that does not exceed 120 percent of the average reasonably expected economic life of the capital projects financed or refinanced by the Loan.

(8) No portion of the proceeds of the Loan will be invested, directly or indirectly, in federally-insured deposits or accounts, or federally-

guaranteed investments, other than amounts of unexpended Loan proceeds invested in the debt service fund, in any reasonably required reserve or replacement fund, or investments of unexpended Loan proceeds for any remaining initial temporary period (e.g., no later than three years after the date hereof) until the proceeds are needed for the Project.

(9) No other obligations of the Governmental Agency (1) are reasonably expected to be paid out of substantially the same source of funds (or will have substantially the same claim to be paid out of substantially the same source of funds) as will be used to pay the Loan; and (2) are being sold at substantially the same time as the Loan (i.e., less than 15 days apart); and (3) were sold pursuant to the same plan of financing with the Loan.

(10) The Governmental Agency has neither received notice that its certifications as to expectations may not be relied upon with respect to its obligations nor has it been advised that any adverse action by the Commissioner of the Internal Revenue is contemplated.

(11) To the best of the knowledge and belief of the undersigned officer of the Governmental Agency, the facts and estimates set forth in this subsection of the Loan Agreement on which the Governmental Agency's expectations as to the application of the proceeds of the Authority Bonds loaned to the Governmental Agency are based, are reasonable.

(12) None of the proceeds of the Authority Bonds loaned to the Governmental Agency will be invested in investments having a substantially guaranteed yield of four years or more.

(f) Operation and Maintenance of the System.

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

(g) Records; Accounts.

The Governmental Agency shall keep accurate records and accounts for the System (the "System Records"), separate and distinct from its other records and accounts (the "General Records"). Such System Records shall be maintained in accordance with GAAP and

shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Governmental Agency. Such System Records and General Records shall be made available for inspection by the Authority at any reasonable time, and a copy of such annual audit(s) therefor, including all written comments and recommendations of such accountant, shall be furnished to the Authority within 180 days of the close of the fiscal year being so audited. Upon delivery of its annual audited financial statements, the Governmental Agency shall furnish to the Authority a certificate of an Authorized Officer stating that, to the best of such individual's knowledge following reasonable inquiry, no Event of Default has occurred, or if an Event of Default has occurred, specifying the nature thereof and, if the Governmental Agency has a right to cure pursuant to Section 5.01, stating in reasonable detail the steps, if any, being taken by the Governmental Agency to cure such Event of Default.

(h) Inspections; Information.

The Governmental Agency shall permit the Authority, and any party designated by the Authority, to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith. The Governmental Agency shall advise the Authority in writing of the issuance of any debt payable from Pledged Property at least 30 days prior to the issue of such debt. In addition, the Governmental Agency shall provide the Authority with copies of any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of the Governmental Agency which are payable from the Pledged Property at least 30 days after the date of issuance of such debt.

(i) Insurance.

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

(j) Cost of Project.

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

(k) **Notice of Material Adverse Change.**

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

(l) **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.

(m) **Additional Covenants and Requirements.**

The Governmental Agency agrees to observe and comply with each such additional covenant and requirement, if any, included on Exhibit F on the date of the Loan Closing.

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

(a) **The Governmental Agency shall undertake, for the benefit of Holders of the Authority Bonds, to provide or cause to be provided through the Authority:**

(i) to each Repository and to the State Information Depository, no later than 180 days after the end of each Fiscal Year, commencing with the end of the first Fiscal Year following the date of this Loan Agreement, the Annual Information relating to such Fiscal Year;

(ii) if not submitted as part of or with the Annual Information, to each Repository and to the State Information Depository, if any, audited financial statements of the Governmental Agency for such Fiscal Year when and if they become available; provided that if the Governmental Agency's audited financial statements are not available by the date set forth in (i) above, the Annual Information shall contain unaudited financial statements in a format similar to the Governmental Agency's audited financial statements prepared for its most recent Fiscal Year, and the audited financial statements shall be filed in the same manner as the Annual Information when and if they become available; and

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

- (b) The obligations of the Governmental Agency pursuant to subsection (a) of this Section 2.03 may be terminated as to such Governmental Agency pursuant to subsection (k) of this Section 2.03. Upon any such termination, the Governmental Agency shall provide notice of such termination to each Repository, the State Information Depository and the MSRB.
- (c) Nothing herein shall be deemed to prevent the Governmental Agency from disseminating or requiring the Governmental Agency to disseminate any other information in addition to that required hereby in the manner set forth herein or in any other manner. If the Governmental Agency disseminates any such additional information, the Governmental Agency shall have no obligation to update such information or include it in any future materials disseminated hereunder.
- (d) The required Annual Information shall consist of the Governmental Agency's audited financial statements for the most recent Fiscal Year as provided in subsection (a)(i) of this Section 2.03, and the information contained in Tables 2,3,4, 7,8,10 and11 in Appendix B to the Official Statement of the Authority relating to the Authority Bonds dated April 27, 2004.
- (e) All or any portion of the Annual Information may be incorporated in the Annual Information by cross reference to any other documents which have been filed with (i) the Repositories, the State Information Depository and, if the document is an official statement, the MSRB or (ii) the SEC.
- (f) Annual Information for any Fiscal Year containing any modified operating data or financial information (as contemplated by subsection (j)(v) of this Section 2.03) for such Fiscal Year shall explain, in narrative form, the reasons for such modification and the effect of such modification on the Annual Information being provided for such Fiscal Year. If a change in accounting principles is included in any such modification, such Annual Information shall present a comparison between the financial statements or information prepared on the basis of the modified accounting principles and those prepared on the basis of the former accounting principles.
- (g) The Governmental Agency's annual financial statements for each Fiscal Year shall be prepared in accordance with GAAP as in effect from time to time. Such financial statements shall be audited by an independent accounting firm.
- (h) If the Governmental Agency shall fail to comply with any provision of this Section 2.03, then the Authority or any Holder of the Authority's Bonds may enforce, for the equal benefit and protection of all Holders similarly situated, by mandamus or other suit or proceeding at law or in equity, this Section 2.03 against the Governmental Agency and any of the officers, agents and employees of the Governmental Agency, and may compel the Governmental Agency or any such officers, agents or employees to perform and carry out their duties under this Section 2.03; provided that the sole and exclusive remedy for breach of this Section 2.03 shall be an action to compel specific performance of the obligations

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

- (i) The provisions of this Section 2.03 are executed and delivered solely for the benefit of the Holders. No other person (other than the Authority) shall have any right to enforce the provisions of this Section 2.03 or any other rights under this Section 2.03.
- (j) Without the consent of any Holders of Authority Bonds, the Authority and the Governmental Agency at any time and from time to time may enter into any amendments or changes to this Section 2.03 for any of the following purposes:
  - (i) to comply with or conform to Rule 15c2-12 or any amendments thereto (whether required or optional);
  - (ii) to add a dissemination agent for the information required to be provided hereby and to make any necessary or desirable provisions with respect thereto;
  - (iii) to evidence the succession of another person to the Governmental Agency and the assumption by any such successor of the covenants of the Governmental Agency under this Section 2.03;
  - (iv) to add to the covenants of the Governmental Agency for the benefit of the Holders, or to surrender any right or power conferred upon the Governmental Agency pursuant to this Section 2.03;
  - (v) to modify the contents, presentation and format of the Annual Information from time to time as a result of a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the Governmental Agency, or type of business conducted; provided that, (a) there is filed with the Trustee an opinion of counsel having expertise with respect to securities laws of the United States of America or expertise with respect to the issuance of indebtedness by states and political subdivisions thereof, that (i) this Section 2.03, as amended, would have complied with the requirements of Rule 15c2-12 at the time of the offering of the Authority Bonds, after taking into account any amendments or authoritative interpretations of the Rule 15c2-12, as well as any change in circumstances; and (ii) the amendment or change does not materially impair the interests of Holders, or (b) such change or amendment is approved by the vote or consent of Holders of a majority in outstanding principal

amount of the Authority Bonds affected thereby at or prior to the time of such amendment or change.

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

### ARTICLE III.

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

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

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

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

The Authority hereby agrees that in the event that moneys on deposit in the Project Fund are lost due to the negligence or misconduct of the Trustee, the Authority on behalf of the Governmental Agency, shall, upon the written request of the Governmental Agency, pursue its remedies against the Trustee, including, but not limited to, equitable actions or actions for money damages.

If there are moneys on deposit in the Project Fund upon completion of the Project, the Governmental Agency shall advise the Authority in writing that no further requisitions are to

be submitted to the Authority for disbursement of moneys from the Project Fund. Upon receipt of such written advice, the Authority shall file with the Trustee the Certificate required by Section 5.03 of the Bond Resolution and use such moneys to redeem, purchase or provide for the payment of the Authority Bonds. The Authority shall credit ensuing Loan Repayments or portions thereof of the Governmental Agency chosen by the Authority as a result of the use of such to purchase, redeem or pay Authority Bonds.

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

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

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

In the event the Authority issues refunding bonds pursuant to the Bond Resolution in order to refinance the Authority Bonds which refunding results in a decrease in total aggregate Loan Repayments, the Authority shall amend Exhibit C to reflect such decrease in total aggregate Loan Repayments.

- (b) Reserved

(c) The Governmental Agency shall receive as a credit against each of its semiannual interest payment obligations set forth on Exhibit C attached hereto and made a part hereof (and, as applicable under the Bond Resolution, its annual principal obligations to the extent moneys are available therefor), (i) the amount of capitalized interest available to be applied against such obligations, as footnoted on such Exhibit C, and (ii) the amount of investment income, if any, on the Debt Service Fund; provided, however, that the investment income referred to in clause (ii) shall be credited by the Authority at such time and in such manner as the Authority deems equitable.

(d) 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 Trustee later than the fifth (5th) day following its due date, in an amount equal to the greater of (i) twelve percent (12%) per annum or (ii) the Prime Rate plus one half of one



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

(e) The Governmental Agency acknowledges that payment of the Authority Bonds by the Authority, including payment from moneys drawn by the Trustee from the Debt Service Reserve Fund, (including any surety bond deposited therein) other than from the investment income thereon, does not constitute payment of the amounts due under this Loan Agreement or the Governmental Agency Bond. If at any time the amounts on deposit in the Debt Service Reserve Fund shall be less than the requirement therefore as the result of any transfer of moneys (including any draws on a surety bond) from the Debt Service Reserve Fund to the Debt Service Fund as the result of failure by the Governmental Agency to make any Loan Repayments required hereunder, the Governmental Agency agrees to (i) replenish such moneys or amounts drawn from a surety bond, (ii) replenish any deficiency arising from losses incurred in making such transfer as the result of the liquidation by the Authority of investment securities acquired as an investment of moneys in the Debt Service Reserve Fund by making payments to the Authority in equal monthly installments for the lesser of six (6) months or the remaining term of the Loan in amounts necessary to make up any loss caused by such deficiency and (iii) pay any interest required to be paid by the Authority on amounts drawn on a surety bond, provided, however, that any amounts paid pursuant to this said clause (iii) shall be in lieu of, and not in addition to, the late payments required to be paid pursuant to subsection (d) of this Section 3.03.

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

**SECTION 3.05 Loan Agreement to Survive Bond Resolution and Authority Bonds.** The Governmental Agency acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of the Bond Resolution and payment of the principal of, redemption premium, if any, and interest on the Authority Bonds.

The Authority acknowledges that all duties, covenants, obligations and agreements of the Governmental Agency shall (except as and to the extent preserved in subsection (e)(vi) of Section 2.02 hereof) terminate upon the date of payment of all amounts payable to the Authority hereunder.

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

**SECTION 3.07 Option to Prepay Loan Repayments.** Subject in all instances to the prior written approval of the Authority, which approval will not be unreasonably withheld, and satisfaction of the requirements, if any, of the Bond Resolution relating to Loan prepayments, the Governmental Agency may prepay the portion of the Loan Repayments set forth in Exhibit C, in whole or in part (but if in part, in the amount of \$100,000 or any integral multiple of \$100,000), upon prior written notice not less than ninety (90) days in addition to the number of days advance notice to the Trustee required for any optional or special redemption of the Authority Bonds, to the Authority and the Trustee and upon payment by the Governmental Agency to the Trustee of the principal amount of the Loan Repayments to be prepaid, plus the interest to accrue on such amount to the date of the next succeeding optional redemption of the Authority Bonds allocable to such Loan Repayment to be prepaid. In addition, if at the time of such prepayment, the Authority Bonds may only be redeemed at the option of the Authority upon payment of a redemption premium, the Governmental Agency shall add to its prepayment an amount, as determined by the Authority, equal to such redemption premium allocable to such Authority Bonds to be redeemed as a result of the Governmental Agency's prepayment. Prepayments shall be applied first to accrued interest on the portion of the Loan to be prepaid and then to principal payments (including redemption premium, if any) on the Loan in inverse order of Loan Repayments.

The Governmental Agency, in the sole discretion of the Authority, and upon terms and conditions satisfactory to the Authority, may provide for the prepayment in full of the Loan Repayments by depositing with the Authority an amount which, when added to the investment income to be derived from such amount to be deposited with the Authority, shall

provide for the full payment of all such Loan Repayments in the manner provided in this Section 3.07. Any amounts so deposited with the Authority shall be invested solely in direct obligations of the United States of America.

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

**SECTION 3.08 Source of Payment of Governmental Agency's Obligations.** The Authority and the Governmental Agency agree that the amounts payable by the Governmental Agency under this Loan Agreement, including, without limitation, the amounts payable by the Governmental Agency pursuant to Section 3.03, Section 3.06, Section 3.07 and Section 5.04 of this Loan Agreement are payable solely from the Pledged Property and are not payable from any other source whatsoever. Nothing herein shall be deemed to prevent the Governmental Agency from paying the amounts payable under this Loan Agreement from any other legally available source. The obligations of the Governmental Agency under this Loan Agreement do not constitute a debt or indebtedness of the Governmental Agency within the meaning of any constitutional, charter or statutory provision or limitations, and shall not be considered or held to be a general obligation of the Governmental Agency.

**SECTION 3.09 Delivery of Documents.** Concurrently with the execution and delivery of this Loan Agreement, the Governmental Agency will cause to be delivered to the Authority each of the following items:

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

#### **ARTICLE IV.**

#### **ASSIGNMENT**

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

- (a) The Governmental Agency expressly acknowledges that, other than the right, title and interest of the Authority under Sections 3.06, 5.04 and 5.07, all right, title and

interest of the Authority in, to an under this Loan Agreement and the Governmental Agency Bond has been assigned to the Trustee as security for the Authority Bonds, as applicable, as provided in the Bond Resolution, and that if any Event of Default shall occur, the Trustee, pursuant to the Bond Resolution, shall be entitled to act hereunder in the place and stead of the Authority. The Governmental Agency hereby acknowledges the requirements of the Bond Resolution applicable to the Authority Bonds and consents to such assignment and appointment.

The Authority shall retain the right to compel or otherwise enforce observance and performance by the Governmental Agency of its duties, covenants, obligations and agreements under Section 3.06 and Section 5.04.

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

**SECTION 4.02 Assignment by Governmental Agency.** Neither this Loan Agreement nor the Governmental Agency Bond may be assigned by the Governmental Agency for any reason, unless the following conditions shall be satisfied: (i) the Authority and the Trustee shall have approved said assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Code and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Governmental Agency's duties, covenants, agreements and obligations under the Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Governmental Agency under the Loan Agreement; (iv) the Authority shall have received an opinion of bond counsel to the Authority to the effect that such assignment will not adversely affect the exclusion of interest on the Authority Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code; and (v) the Authority shall receive an opinion of counsel to the Authority to the effect that such assignment will not violate the provisions of the Bond Resolution. All costs incurred by the Authority pursuant to this Section 4.02 shall be paid by the Governmental Agency.

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

## **ARTICLE V.**

### **DEFAULTS AND REMEDIES**

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

(a) failure by the Governmental Agency to pay, or cause to be paid, any Loan Repayment, required to be paid hereunder when due, which failure shall continue for a period of ten (10) days;

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

(c) failure by the Governmental Agency to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section 5.01 and other than a failure to comply with the provisions of Section 2.03 hereof, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Governmental Agency by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Trustee may not unreasonably withhold its consent to an extension of such time up to sixty (60) days from the delivery of the written notice referred to above if corrective action is instituted by the Governmental Agency within the applicable period and diligently pursued until the Event of Default is corrected;

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

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

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

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

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

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

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

**SECTION 5.07 Retention of Authority's Rights.** Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of the Bond Resolution, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Governmental Agency at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Governmental Agency to the Authority pursuant to Section 3.03, Section 3.06 and Section 5.04 hereof.

**SECTION 5.08 Default by the Authority.** In the event of any default by the Authority under any duty, covenant, agreement or obligation of this Loan Agreement, the Governmental Agency's remedy for such default shall be limited to injunction, special action,

action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the Authority hereunder as may be necessary or appropriate. The Authority shall on demand pay to the Governmental Agency the reasonable fees and expenses of attorneys and other reasonable expenses in the enforcement of such performance or observation.

## ARTICLE VI.

### MISCELLANEOUS

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

- (a) Authority: Colorado Water Resources and  
Power Development Authority  
1580 Logan Street, Suite 620  
Denver, Colorado 80203  
Attention: Executive Director
- (b) Trustee : Wells Fargo Bank, N.A.  
1740 Broadway  
MAC C7301-024  
Denver, Colorado 80274  
Attention: Corporate Trust Services

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

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

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

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

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

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

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

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

**SECTION 6.09 Compliance with Bond Resolution.** The Governmental Agency covenants and agrees to take such action as the Authority shall reasonably request so as to enable the Authority to observe and comply with, all duties, covenants, obligations and agreements contained in the Bond Resolution insofar as such duties, covenants, obligations and agreements relate to the obligations of the Governmental Agency under this Loan Agreement.

**SECTION 6.10 Further Assurances.** The Governmental Agency shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Loan Agreement and the Governmental Agency Bond.

**SECTION 6.11 Recital.** This Loan Agreement is authorized pursuant to and in accordance with the Charter, the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Loan Agreement is authorized by the Governmental Agency pursuant to Title 11, Article 57, Part 2, C.R.S. Such recital shall conclusively impart full compliance with all provisions and limitations of such laws, and this Loan Agreement delivered by the Governmental Agency to the Authority containing such recital shall be incontestable for any cause whatsoever after its delivery for value.



IN WITNESS WHEREOF, the Authority and the Governmental Agency have caused this Loan Agreement to be executed and delivered, as of the first day of May, 2004.

**COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY**

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

Executive Director

(SEAL)

**CITY OF ENGLEWOOD, COLORADO,  
ACTING BY AND THROUGH ITS  
SEWER UTILITY ENTERPRISE**

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

Mayor

ATTEST: \_\_\_\_\_

City Clerk

**SECURITY DESCRIPTION**

**1. Description of Project**

The Project consists of advanced treatment upgrades to, and construction improvements to increase the wastewater treatment capacity of, the existing Littleton/Englewood joint wastewater treatment plant from 36.3 mgd to 50 mgd.

**2. Description of System**

The System includes all of the Governmental Agency's sanitary sewer facilities and properties now owned or hereafter acquired, whether situated within or without the geographical boundaries of the Governmental Agency, including all present or future improvements, extensions, enlargements, betterments, replacements or additions thereof or thereto including, but not limited to, the Project and the Governmental Agency's rights pursuant to an Agreement between the Cities of Littleton and Englewood, Colorado, for Joint-Use Wastewater Treatment Facilities, dated December 6, 1982, as amended, including the Governmental Agency's rights to 50% of 32 million gallons per day (mgd) of primary, secondary and advanced treatment capacity at the Joint-Use Plant.

**3. Lien Representation**

The pledge and lien of the Pledged Property to the payments due under this Loan Agreement and the Governmental Agency Bond is subject and subordinate to the pledge and lien on the Pledged Property granted to the Governmental Agency's loan dated November 15, 1990 payable to the Authority in an original principal amount of \$12,750,000 ("the 1990 Loan"). 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 except for the lien of the 1990 Loan, and all corporate or other action on the part of the Governmental Agency to that end has been and will be duly and validly taken. As of the date of this Loan Agreement, there are the following outstanding bonds, notes or evidences of indebtedness or contractual obligations payable from the Pledged Property with a lien on the Pledged Property which is on a parity with the lien of the Loan Agreement and Governmental Agency Bond on the Pledged Property; the Governmental Agency's loan dated May 1, 2004, payable to the Authority in an original amount of \$29,564,275. Except as permitted by Exhibit F hereto, the Governmental Agency shall not issue any bonds or other evidences of indebtedness of a similar nature payable out of or secured by a pledge, lien or assignment on the Pledged Property or create a lien or charge thereon.

**4. Pledged Property**

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

"*Net Revenues*" shall mean the Revenues less Operating Expenses.

**"Revenues"** means all income from rates, fees, tolls and charges and tap fees, or any combination thereof, but not special assessments, for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from the System, including without limiting the generality of the foregoing, minimum charges, charges for the availability of service, disconnection fees, reconnection fees and reasonable penalties for any delinquencies, and all income or other realized gain, if any, from any investment of Revenues and of the proceeds of securities payable from Net Revenues (except income or other gain from any investment of moneys held in an escrow fund or account for the defeasance of securities payable from the Net Revenues or any other similar fund) to the extent not required to be rebated to the federal government. Revenues shall also include amounts on deposit in a Rate Stabilization Account. Revenues exclude any refund of rates, tolls and charges due to others. Notwithstanding anything contained above, amounts deposited in a Rate Stabilization Account shall not be deemed Revenues in the calendar year deposited and amounts withdrawn from the Rate Stabilization Account shall be deemed Revenues in the year withdrawn.

**"Operating Expenses"** means such reasonable and necessary current expenses of the Governmental Agency, paid or accrued, of operating, maintaining and repairing the System as may be determined by the Governmental Agency, including, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

- (a) Engineering, auditing, legal and other overhead expenses directly related and reasonably allocable to the administration, operation and maintenance of the System;
- (b) Insurance, surety bond and interest rate cap agreement premiums appertaining to the System;
- (c) The reasonable charges of any paying agent, registrar, transfer agent, depository or escrow bank appertaining to any securities payable from the Net Revenues;
- (d) Annual payments to pension, retirement, health and hospitalization funds appertaining to the System;
- (e) Any taxes, assessments, franchise fees or other charges or payments in lieu of the foregoing;
- (f) Ordinary and current rentals or equipment or other property;
- (g) Contractual services, professional services, salaries, administrative expenses and costs of labor appertaining to the System, the cost of materials and supplies used for current operation or routine maintenance or repair of the System;
- (h) The costs incurred in the billing and collection of all or any part of the Revenues;

- (i) Any costs of utility services furnished to the System by the Governmental Agency or otherwise;
- (j) Any other such expenses considered by the Governmental Agency in determining the amount of sewer rates, fees, tolls and charges imposed for operation and maintenance and;
- (k) Expenses in connection with the issuance of bonds or other securities evidencing any loan to the Governmental Agency and payable from Revenues.

“Operating Expenses” does not include:

- (a) Any allowance for depreciation;
- (b) Any costs of improvement, extension or betterment that qualify as capital items in accordance with generally accepted accounting principles;
- (c) Any accumulation of reserves for capital replacements;
- (d) Any reserves for operation, maintenance or repair of the System;
- (e) Any allowance for the redemption of any bonds or other securities payable from the Net Revenues or the payment of any interest thereon;
- (f) Any liabilities incurred in the acquisition of any facilities constituting part of the System or;

## 5. Rate Covenant

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

- (a) all amounts estimated to be required to pay Operating Expenses (as defined in paragraph (4) of this Exhibit A of this Loan Agreement) during such calendar year;
- (b) a sum equal to 110% of the debt service due on the Governmental Agency Bond and the 1990 Loan for such calendar year and debt service coming due during such calendar year on any indebtedness payable on a parity with the lien or charge of this Loan Agreement on the Pledged Property, in each case computed as of the beginning of such calendar year;

(c) the amount, if any, to be paid during such calendar year into any debt service reserve account and;

(d) a sum equal to the debt service on any subordinated debt for such calendar year computed as of the beginning of such calendar year.

**EXHIBIT B**

**DESCRIPTION OF THE LOAN**

1. **Address of Governmental Agency:**  
City of Englewood, Colorado  
1000 Englewood Parkway  
Englewood, CO 80110
2. **Cost of Project:** \$110,000,000
3. **Maximum Principal Amount of Loan Commitment:** \$19,715,000
4. **Loan Term:** The final Loan Repayment date set forth in Exhibit C.
5. **Description of the Project:** See Exhibit A, 1.
6. **Authorized Officer:** Steward Fonda, Director of Utilities  
Frank Gryglewicz, Director of Finance
7. **Estimated Completion Date:** December, 2008
8. **Execution Date:** May 20, 2004

**EXHIBIT C**

**CITY OF ENGLEWOOD, COLORADO,  
ACTING BY AND THROUGH  
ITS SEWER UTILITY ENTERPRISE**

**LOAN REPAYMENT SCHEDULE**

**Loan Date: May 1, 2004**

**Loan Rate: 4.11%**

<b>Loan Repayment Date</b>	<b>Principal Portion of Loan Repayment</b>	<b>Interest Portion of Loan Repayment (1)</b>	<b>Total Loan Repayment</b>
08/01/04	-	266,955.62	266,955.62
02/01/05	-	475,762.50	475,762.50
08/01/05	5,000.00	475,762.50	480,762.50
02/01/06	-	475,687.50	475,687.50
08/01/06	5,000.00	475,687.50	480,687.50
02/01/07	-	475,612.50	475,612.50
08/01/07	5,000.00	475,612.50	480,612.50
02/01/08	-	475,537.50	475,537.50
08/01/08	5,000.00	475,537.50	480,537.50
02/01/09	-	475,462.50	475,462.50
08/01/09	5,000.00	475,462.50	480,462.50
02/01/10	-	475,387.50	475,387.50
08/01/10	2,220,000.00	475,387.50	2,695,387.50
02/01/11	-	430,987.50	430,987.50
08/01/11	2,305,000.00	430,987.50	2,735,987.50
02/01/12	-	379,125.00	379,125.00
08/01/12	2,410,000.00	379,125.00	2,789,125.00
02/01/13	-	318,875.00	318,875.00
08/01/13	2,530,000.00	318,875.00	2,848,875.00
02/01/14	-	255,625.00	255,625.00
08/01/14	2,655,000.00	255,625.00	2,910,625.00
02/01/15	-	189,250.00	189,250.00
08/01/15	2,790,000.00	189,250.00	2,979,250.00
02/01/16	-	119,500.00	119,500.00
08/01/16	2,925,000.00	119,500.00	3,044,500.00
02/01/17	-	46,375.00	46,375.00
08/01/17	1,855,000.00	46,375.00	1,901,375.00
<b>TOTAL</b>	<b>\$19,715,000.00</b>	<b>\$9,453,330.62</b>	<b>\$29,168,330.62</b>

(1) Net of Accrued Interest

**GOVERNMENTAL AGENCY BOND**

**FOR VALUE RECEIVED**, the undersigned, **CITY OF ENGLEWOOD, COLORADO, ACTING BY AND THROUGH ITS SEWER UTILITY ENTERPRISE** (the "Governmental Agency") hereby promises to pay to the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), or registered assigns, the principal amount of Nineteen Million Seven Hundred Fifteen Thousand Dollars (\$19,715,000), at the times and in the amounts determined as provided in the Loan Agreement dated as of May 1, 2004, by and between the Authority and the Governmental Agency (the "Loan Agreement"), together with interest thereon in the amount calculated as provided in the Loan Agreement, payable on the dates and in the amounts determined as provided in the Loan Agreement.

This Governmental Agency Bond is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the "Loan") and to evidence the obligations of the Governmental Agency set forth in Section 3.03(a) thereof. The Governmental Agency Bond has been assigned to Wells Fargo Bank, N.A., as trustee (the "Trustee") under the Bond Resolution (as defined in the Loan Agreement) and payments hereunder shall, except as otherwise provided in the Loan Agreement, be made directly to the Trustee) for the account of the Authority pursuant to such assignment. Such assignment has been made as security for the payment of the Authority Bonds (as defined in the Bond Resolution) issued to finance or refinance, and in connection with, the Loan and as otherwise described in the Loan Agreement. All of the terms, conditions and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Governmental Agency Bond.

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

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

This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts provided in Section 3.08 of the Loan Agreement.

The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is payable solely from the repayment source described in the Loan Agreement. This Governmental Agency Bond is a special and limited obligation of the Governmental Agency payable solely out of and secured by an irrevocable pledge of a lien (but not necessarily an exclusive lien) upon the Pledged Property (as defined in



paragraph 4. of Exhibit A of the Loan Agreement). This Governmental Agency Bond does not constitute a debt or an indebtedness of the Governmental Agency within the meaning of any constitutional, charter or statutory provision or limitation. This Governmental Agency Bond is not payable in whole or in part from the proceeds of general property taxes, and the full faith and credit of the Governmental Agency is not pledged for the payment of the principal of or interest on this Governmental Agency Bond.

This Governmental Agency Bond is issued pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Governmental Agency Bond is issued pursuant to Title 11, Article 57, Part 2, C.R.S., and the City Charter. Such recital shall conclusively impart full compliance with all provisions and limitations of such laws, and this Governmental Agency Bond issued containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Governmental Agency has caused this Governmental Agency Bond to be duly executed, sealed and delivered, as of this 1st day of May, 2004.

(SEAL)

**CITY OF ENGLEWOOD, COLORADO,  
ACTING BY AND THROUGH ITS  
SEWER UTILITY ENTERPRISE**

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

ATTEST:

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

**OPINION OF GOVERNMENTAL AGENCY COUNSEL**

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

(Date of Closing)

Colorado Water Resources and  
Power Development Authority

Wells Fargo Bank, N.A.  
as Trustee

[Name of Underwriter]

Ladies and Gentlemen:

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

In so acting [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:

1. The Authority's Water Resources Revenue Bond Resolution (City of Englewood, Colorado Project), adopted by the Authority on April 23, 2004 (the "Bond Resolution");
2. the Loan Agreement, dated as of May 1, 2004 (the "Loan Agreement") by and between the Authority and the Governmental Agency;
3. proceedings of the governing members of the Governmental Agency relating to the approval of the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);
4. the Governmental Agency Bond, dated May 1, 2004 (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan;

5. proceedings of the governing body of the Governmental Agency relating to the issuance of the Governmental Agency Bond and the execution, issuance and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents"); and
6. all outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Governmental Agency; and
7. the Official Statement of the Authority related to the Bonds of the Authority dated April 27, 2004 (the "Official Statement").

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

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

1. The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation with the legal right to carry on the business of the System (as defined in the Loan Agreement) as currently being conducted and as proposed to be conducted.
2. The Governmental Agency has full legal right and authority to execute the Loan Documents and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project; subject, however, to the effect of, restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment or other similar laws affecting creditors' rights generally (Creditor's Rights Limitations) heretofore or hereafter enacted.
3. The proceedings of the Governmental Agency's governing members approving the Loan Documents and authorizing their execution, issuance and delivery on behalf of the Governmental Agency, and authorizing the Governmental Agency to undertake and complete the Project have been or will be duly and lawfully adopted and authorized in accordance with applicable Colorado law, (hereinafter collectively called the "Authorizing Resolutions"), which Authorizing Resolutions were or will be duly approved and published in accordance with applicable Colorado law, at a meeting or meetings which were or will be duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present acting throughout.
4. To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, the authorization, execution and delivery of the Loan Documents by the Governmental Agency, the observation and performance by the Governmental Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions

contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Governmental Agency or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed or trust or other agreement to which the Governmental Agency is a party or by which it, the System (as defined in the Loan Agreement) or its property or assets is bound.

5. To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery and performance of the Loan Documents and, other than authorizations, licenses and permits relating to the siting, construction and acquisition of the Project which [insert "I" or "we"] expect the Governmental Agency to receive in the ordinary course of business, the undertaking and completion of the Project have been obtained or made.
6. To the best of [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 the validity, legality or enforceability of the Loan Documents or the undertaking or completion of the Project or which if adversely determined, could (a) materially adversely affect (i) the financial position of the Governmental Agency, (ii) the ability of the Governmental Agency to perform its obligations under the Loan Documents, (iii) the security for the Loan Documents, or (iv) the transactions contemplated by the Loan Documents, or (b) impair the ability of the Governmental Agency to maintain and operate its system.
7. There does not exist any bill, act, law, rule or regulation pending or, to the best of [insert "my" or "our"] knowledge, threatened which, if enacted, could (a) materially adversely affect (i) the ability of the Governmental Agency to perform its obligations under the Loan Documents, (ii) the security for the Loan Documents, or (iii) the transactions contemplated by the Loan Documents, or (b) impair the ability of the Governmental Agency to maintain and operate the System.
8. While [insert "I" or "we"] am not passing upon, and do not assume responsibility for, the accuracy, completeness or fairness of the statements contained in Appendix B to the Official Statement, no facts have come to [insert "my" or "our"] attention in the course of activities described above which lead [insert "me" or "our"] to believe that Appendix B to the Official Statement (other than the financial and statistical data contained therein, as to which [insert "I" or "we"] express no opinion or belief) as of its date contained, or as of the date hereof

contains, any untrue statement of a material fact or as of its date omitted, or as of the date hereof omits, to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

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

Very truly yours,

**OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL**

[LETTERHEAD OF BOND COUNSEL TO GOVERNMENTAL AGENCY]

(Date of Closing)

Colorado Water Resources and  
Power Development Authority

Wells Fargo Bank, N.A.  
as Trustee

[Name of Underwriter]

Ladies and Gentlemen:

[insert "I" or "We"] have acted as bond counsel to the **CITY OF ENGLEWOOD, COLORADO, ACTING BY AND THROUGH ITS SEWER UTILITY ENTERPRISE** (the "Governmental Agency"), which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution and delivery by the Governmental Agency of the Loan Agreement and its Governmental Agency Bond (as hereinafter defined).

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

1. The Authority's Water Resources Revenue Bond Resolution (City of Englewood, Colorado Project), adopted by the Authority on April 23, 2004 (the "Bond Resolution");
2. the Loan Agreement, dated as of May 1, 2004 (the "Loan Agreement") by and between the Authority and the Governmental Agency;
3. proceedings of the governing members of the Governmental Agency relating to the approval of the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Governmental Agency;
4. the Governmental Agency Bond, dated May 1, 2004 (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan (as defined in the Loan Agreement); and

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

[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 to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project; subject, however, to the effect of, restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment or other similar laws affecting creditors' rights generally (Creditor's Rights Limitations) heretofore or hereafter enacted.
3. The Governmental Agency has pledged the Pledged Property (as defined in paragraph (4) of Exhibit A to the Loan Agreement) for the punctual payment of the principal of and interest on the Loan (as defined in the Loan Agreement), and all other amounts due under the Loan Documents according to their respective terms and the Authority has a first lien but not necessarily an exclusive first lien on such source of repayment. No filings or recordings are required under the Colorado Uniform Commercial Code in order to provide a first lien on such source of repayment and all actions have been taken as required under Colorado law to insure the priority, validity and enforceability of such lien.
4. The Loan Documents have been duly authorized, executed and delivered by the authorized officers of the Governmental Agency; and, assuming in the case of the Loan Agreement, that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered the Loan Agreement, the Loan Documents constitute the legal, valid and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from Creditor's Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual obligations generally.
5. Assuming compliance with the covenants contained in the Loan Agreement, the Governmental Agency is not, directly or indirectly, (a) using in excess of ten

percent of the proceeds of the Authority Bonds (as defined in the Loan Agreement) loaned to the Governmental Agency or the Project in a manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended (the "Code"), and at least one-half of such private business use permitted by clause (a) is neither unrelated to the governmental use of the proceeds of the Authority Bonds loaned to the Governmental Agency (within the meaning of Section 141(b)(3)(A)(ii)(I) or (III) of the Code) nor disproportionate related business use (within the meaning of Section 141(b)(3)(A)(ii)(II) or (III) of the Code) nor (B) using, directly or indirectly, any of the proceeds of the Authority Bonds loaned to the Governmental Agency to make or finance loans to persons other than governmental units (as such terms is used in Section 141(c) of the Code).

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

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

Very truly yours,



**ADDITIONAL COVENANTS AND REQUIREMENTS**

**Additional Senior, Parity and Subordinate Lien Bonds.** The Governmental Agency covenants that it will not issue any obligations payable from the Pledged Property, which are superior to the lien of this Loan Agreement on the Pledged Property. In addition, the Governmental Agency covenants that it will not issue any obligations with a lien on the Pledged Property and payable from the Pledged Property which is on a parity with the lien of the Governmental Agency Bond unless the Governmental Agency certifies to the Authority that Net Revenues (as defined in paragraph 4. of Exhibit A to this Loan Agreement and subject to the next sentence) for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued is at least equal to the sum (a) of 110% of the maximum annual debt service of (i) the Governmental Agency Bond and all obligations of the Governmental Agency outstanding during such 12 month period payable on a parity with the Governmental Agency Bond from the Pledged Property, (ii) the 1990 Loan and (iii) such proposed obligations to be issued, and (b) 100% of maximum annual debt service of all other indebtedness secured by and payable from the Pledged Property in determining Net Revenues. Net Revenues determined pursuant to the preceding sentence shall exclude any withdrawals from the Rate Stabilization Fund and shall include only one-half of the average cumulative annual total of tap fees for the three prior years. Net Revenues may be adjusted to reflect any rate increases adopted prior to the issuance of such additional obligations by adding to the actual Net Revenues for the 12 consecutive month period and estimated sum equal to 100% of the estimated increase in Net Revenues which would have been realized during said period had such rate increase been in effect during all of said preceding period. Notwithstanding the foregoing, the Governmental Agency may issue refunding obligations, payable from the Pledged Property without compliance with the requirements stated above, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year. In addition, the Governmental Agency covenants that it will not issue any obligations payable from the Pledged Property which is subordinate to the lien of this Loan Agreement on the Pledged Property unless the Governmental Agency certifies to the Authority that for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued Net Revenues were at least 100% of the maximum annual debt service on all indebtedness outstanding during such period.

**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 or the date of delivery.

**Rate Study.** In the event that Revenues collected during a fiscal year are not sufficient to meet the requirements set forth in the Rate Covenant contained in paragraph 5 of Exhibit A of

this Loan Agreement, the Governmental Agency shall, within 90 days of the end of such fiscal year, cause an independent firm of accountants or consulting engineers, to prepare a rate study for the purpose of recommending a schedule of rates, fees and charges for the use of the System which in the opinion of the firm conducting the study will be sufficient to provide Revenues to be collected in the next succeeding fiscal year which will provide compliance with the Rate Covenant described in paragraph 5 of Exhibit A of this Loan Agreement. Such a study shall be delivered to the Authority and the Trustee. The Governmental Agency shall within six months of receipt of such study, adopt rates, fees and charges for the use of the System, based upon the recommendations contained in such study, which provide compliance with said rate covenant.

**Special Fund.** The Governmental Agency covenants to create or maintain a special fund into which shall be deposited the Revenues (as defined in paragraph 4. of Exhibit A to this Loan Agreement). The Revenues shall be applied, on or before the last day of each month, first to the payment of the Operating Expenses (as defined in paragraph 4. of Exhibit A to this Loan Agreement) and then applied on a pro-rata basis to the payment of the Loan Repayments and other amounts payable on a parity with the Loan Repayments. Any further application shall be as provided by ordinance or resolution of the Governmental Agency.

**Rate Stabilization Account.** The Governmental Agency covenants to create and maintain a Rate Stabilization Account, which shall be annually replenished to maintain a minimum balance of \$5,000,000 as long as the Governmental Agency is relying upon the Rate Stabilization Account to meet the rate covenant contained in paragraph 5. of Exhibit A of this Loan Agreement.



**CERTIFICATE OF THE AUTHORITY AS  
TO DEPOSIT OF MONEYS IN THE PROJECT FUND**

I, Daniel L. Law, Executive Director of the Colorado Water Resources and Power Development Authority (the "Authority"), DO HEREBY CERTIFY that from the proceeds of the Authority's \$19,715,000 principal amount of Water Resources Revenue Bonds (City of Englewood, Colorado Project) 2004 Series B, \$20,914,650.57 is to be deposited in the Project Fund created under the Bond Resolution referred to herein.

All defined terms used herein have the same meaning as those in the Water Resources Revenue Bond Resolution (City of Englewood, Colorado Project) adopted by the Authority on April 23, 2004.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of May, 2004.

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

## **GOVERNMENTAL AGENCY BOND**

**FOR VALUE RECEIVED**, the undersigned, **CITY OF ENGLEWOOD, COLORADO, ACTING BY AND THROUGH ITS SEWER UTILITY ENTERPRISE** (the "Governmental Agency") hereby promises to pay to the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), or registered assigns, the principal amount of Nineteen Million Seven Hundred Fifteen Thousand Dollars (\$19,715,000), at the times and in the amounts determined as provided in the Loan Agreement dated as of May 1, 2004, by and between the Authority and the Governmental Agency (the "Loan Agreement"), together with interest thereon in the amount calculated as provided in the Loan Agreement, payable on the dates and in the amounts determined as provided in the Loan Agreement.

This Governmental Agency Bond is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the "Loan") and to evidence the obligations of the Governmental Agency set forth in Section 3.03(a) thereof. The Governmental Agency Bond has been assigned to Wells Fargo Bank, N.A., as trustee (the "Trustee") under the Bond Resolution (as defined in the Loan Agreement) and payments hereunder shall, except as otherwise provided in the Loan Agreement, be made directly to the Trustee) for the account of the Authority pursuant to such assignment. Such assignment has been made as security for the payment of the Authority Bonds (as defined in the Bond Resolution) issued to finance or refinance, and in connection with, the Loan and as otherwise described in the Loan Agreement. All of the terms, conditions and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Governmental Agency Bond.

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

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

This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts provided in Section 3.08 of the Loan Agreement.

The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is payable solely from the repayment source described in the Loan Agreement. This Governmental Agency Bond is a special and limited obligation of the Governmental Agency payable solely out of and secured by an irrevocable pledge of a lien (but not necessarily an exclusive lien) upon the Pledged Property (as defined in paragraph 4. of Exhibit A of the Loan Agreement). This Governmental Agency Bond does not constitute a debt or an indebtedness of the Governmental Agency within the meaning of any

**GOVERNMENT AGENCY CERTIFICATE**

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

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

(B) to the best of my knowledge, all of the representations of the Governmental Agency contained in Sections 2.01 and 2.02 of the Loan Agreement (the "Loan Agreement"), dated as of May 1, 2004, between the Authority and the Governmental Agency, are true on and as of the date hereof with the same effect as if made on and as of such date;

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

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

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

**CITY OF ENGLEWOOD,  
COLORADO, ACTING BY AND  
ITS SEWER UTILITY  
ENTERPRISE**

Dated: May 20, 2004

  
Stewart H. Fonda  
Director of Utilities