

**COLORADO WATER RESOURCES &
POWER DEVELOPMENT AUTHORITY**

BOARD RETREAT

March 1, 2018

Retreat 1-4 p.m. (lunch provided 12-1 p.m.)

Authority Conference Room

1580 Logan St. Ste. 610, Denver, CO 80203

Board Members: Webb Jones, Judy Skram, Steve Price, Roy Heald, Bob Wolff, Bruce Smith, George Corkle, Mike Berry and Steve Vandiver

Authority Staff: Michael Brod, Keith McLaughlin, Justin Noll, Jim Griffiths, Wesley Williams, John Williams and Sabrina Speed

AGENDA

- 1) Memorandum of Agreement (MOA)/Budget Review – Board discussion (Mike)



COLORADO WATER RESOURCES & POWER DEVELOPMENT AUTHORITY

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MEMORANDUM

March 1, 2018

TO: Board of Directors and Karl Ohlsen

FROM: Mike Brod, Executive Director

RE: Board Retreat - Memorandum of Agreement ("MOA") Discussion
Water Pollution Control Revolving Fund ("WPCRF")
Drinking Water Revolving Fund ("DWRF")

Colorado's DWRF and WPCRF were created by State Statute, and are operated by three State agencies. Duties and responsibilities of each of the three agencies are documented in two SRF MOAs. The two SRF MOAs have been amended from time to time and the most recent versions are attached for review.

The three State agencies are as follows:

- Water Quality Control Division ("WQCD") of the State Health Department;
- Division of Local Government ("DLG") of the Department of Local Affairs;
- Colorado Water Resources and Power Development Authority ("CWRPDA").

Authority Staff will lead a discussion of the MOAs including the interworking of the three agency budget process as it relates to the MOA duties and responsibilities. A "Prezi" presentation will accompany the MOA discussion and a link to the presentation will be provided separately in advance of the retreat.

MEMORANDUM OF AGREEMENT
FOR THE OPERATION OF THE WPCRF PROGRAM

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into this 3rd day of March 2017 by and between the Colorado Department of Local Affairs through the Division of Local Government ("DLG"), the Colorado Department of Public Health and Environment, Division of Administration (otherwise known as the Water Quality Control Division, ("WQCD")), and the Colorado Water Resources and Power Development Authority ("Authority").

Section 1. Background and Purpose.

Title VI of the 1987 Amendments to the Clean Water Act (the "Act") created a state revolving fund program for the funding of construction of publicly-owned treatment works and nonpoint source pollution control projects. Under this program, pursuant to an Operating Agreement and annual Capitalization Grant Agreements, the United States Environmental Protection Agency ("EPA") awards capitalization grants to the State of Colorado (the "State") for a revolving fund to provide assistance for construction of publicly owned treatment works as defined in Section 212 of the Act, and for developing and implementing a conservation and management plan, and funding projects, under Section 319 of the Act relating to nonpoint source pollution control. The State established a revolving fund, the Water Pollution Control Revolving Fund ("WPCRF") in accordance with the requirements of the Act. In addition, the State, acting through the Authority, has provided and continues to provide matching monies, consisting of at least 20% of the capitalization grants provided to the State by the EPA, into the fund. These matching funds may be provided from the proceeds of revenue bonds or other available resources of the Authority.

Money in the WPCRF must be used by (1) providing loans and other types of assistance for projects at or below market interest rates for terms no longer than twenty years (and thirty years for disadvantage communities unless otherwise approved by the Authority Board), after completion of construction; (2) purchasing or refinancing debt obligations of municipalities incurred after March 7, 1985 for construction initiated after March 7, 1985; (3) guaranteeing or purchasing insurance for bond issues by governmental agencies constructing treatment works; (4) pledging funds as a source of revenue or as security for payment of principal and interest on bonds issued by the Authority for these purposes; (5) earning interest on the fund accounts; and (6) providing for reasonable costs of administering the fund (except that such amounts may not exceed 4% of all grant awards).

Projects to be assisted from the fund include publicly-owned treatment works that are included on the state's project priority list under Section 216 of the Act. In addition, under Section 319 of the Act, fund money may be used for the development and implementation of nonpoint source pollution control programs and for loans for nonpoint source pollution control projects that are included on the state's priority list, except that money must first be used to assure maintenance of progress toward compliance with enforceable deadlines, goals, and requirements of the Act, including the municipal compliance deadline.

Senate Bill 87-50, 1987-1988 session, codified at C.R.S. § 37-95-103 (4.5, 10.5), and 37-95-107.6 was enacted to allow the State to meet the requirements of the new program. The statute created the WPCRF as required by the Act, to be held and administered by the Authority. Further, the statute provides for the participation of three entities in the WPCRF program: the WQCD and the DLG, both state agencies, and the Authority, a political subdivision of the State.

Under the statute, the Authority issues revenue bonds or utilizes other available resources of the Authority to provide the State match for the WPCRF, and uses the WPCRF money to provide financial assistance to governmental agencies for construction of publicly-owned treatment works, and for nonpoint source control programs or projects, that are included upon the project eligibility list adopted by the Water Quality Control Commission (WQCC), and then approved by the Colorado Legislature in a joint resolution signed by the Governor, all as required by Senate Bill 50. The project eligibility list includes publicly-owned treatment works projects prioritized in accordance with Section 216 of the Act, and nonpoint source pollution control programs or projects identified in accordance with Section 319 of the Act.

On June 16, 1989, the WQCD, DLG, and Authority entered into a Memorandum of Agreement to identify their respective roles and responsibilities in connection with the operation of the WPCRF program ("Program"), recognizing that the successful implementation of the Program requires cooperation and coordination by all parties with respect to all aspects of the Program.

Subsequent to the execution of the original 1989 Memorandum of Agreement, the parties' respective roles and responsibilities with regard to the Program have evolved and been refined. Accordingly, in recognition of the emerging trends of the Program over the last twenty-seven years, this revised Memorandum of Agreement is to restate the respective roles and responsibilities of the DLG, the WQCD, and the Authority in connection with the operation of the Program, and to specify the terms and conditions under which administrative costs of the DLG, the WQCD, and the Authority, in fulfillment of their duties pursuant to this MOA for the program will be reimbursed by the Authority from available funds in the WPCRF administrative fee account of the WPCRF (the Clean Water Act allows certain funds to be used to cover the reasonable costs of administering the WPCRF).

Section 2. Operation of the Program.

The operation and administration of the Program encompasses the following general activities: (1) budgeting, accounting, and administrative expense reimbursement; (2) periodic modification of the WPCRF Rules adopted by the WQCC and annual modifications to the Intended Use Plan (the "IUP"), which includes the Project Priority List and the Project Eligibility List (the "PEL"); (3) working with eligible systems to assist with project development; (4) establishing, reviewing and periodically updating borrower affordability criteria; (5) processing and administering project applications and loans, including financial and technical review, and monitoring and approving project expenditures in accordance with the loan agreements; (6) annual approval of the capitalization grant agreement, annual reports, audits, annual updates to the IUP, periodic updates to the operating agreement with EPA, and liaison with EPA; (7) marketing the WPCRF program; and (8) loan servicing, covenant monitoring, securities compliance, continuing disclosure and other life-of-the-loan activities. Further definition of the role and responsibility of each party hereto with respect to the general activities of the Program is set forth in sections 3 and 4 below.

Section 3. Roles and Responsibilities of the Parties.

3.1 WQCD.

3.1.1 Budget.

The WQCD shall provide a proposed detailed budget for its WPCRF administrative costs for the following calendar year to the Authority by August 21 of each year. The WQCD's budget for WPCRF administrative costs, including the activities outlined in subsections 3.1.1 through 3.1.5 of this section shall be limited to no more than 11.05 FTE. The current FTE authorized by the Authority Board are for the following tasks that directly support the WPCRF: technical assistance for project development/management, engineering reviews, administrative, data entry, GIS, and measurable results. Subsequent annual WPCRF budgets for the WQCD shall be adjusted by a factor reflecting: (1) State Annual Compensation Survey results as implemented by the General Assembly; (2) any change in responsibilities among the parties; and (3) any change in indirect costs or in responsibilities resulting from changes in federal or state laws, regulations, directives from, or requirements imposed by, the General Assembly in developing the budget for state agencies. A material change to federal funding levels for this program shall require a review and revision to budgeting provisions of this MOA.

3.1.1.1 Multiple Year Appropriation

The WQCD budget may include a request for multiple-year expenditures for projects or limited term FTE to support the mission of the WQCD under the WPCRF. The WQCD will identify in its annual budget the multiple-year expenditures and will seek approval from the Authority Board of Directors for multiple-year expenditures that are subject to Authority annual appropriation. For tracking purposes, the WQCD will include in its annual budget request the total multiple-year expenditure amount, the amount that the WQCD expects to expend within the budgeted year, and the remaining balance of any multiple-year expenditure that will be expended in subsequent year(s). Because of the WQCD's budget due date identified in 3.1.1 and the potential for additional expenditures through the remainder of the year, the WQCD will submit a revised proposed budget to the Authority no later than November 15 of the calendar year. Only funds generated by loan administration fees may be appropriated and expended in subsequent year(s), and may be used only for the following purposes: WPCRF administration, including the activities outlined in subsections 3.1.1 through 3.1.5 of this section; Division administrative services including federal grants administration, state contracts oversight, and general administrative support; water quality monitoring; developing total maximum daily loads (TMDLs); water quality restoration plans; wastewater facility inspections; wastewater facility data systems improvements, and other approved projects that support water quality initiatives.

3.1.2. Project Priority List and Project Eligibility List.

In consultation with the DLG and the Authority, the WQCD shall annually survey wastewater management agencies to estimate the project funding demands from the WPCRF for subsequent years. With the information collected from the survey, the WQCD shall develop proposed additions and modifications to the PEL in accordance with the "State of Colorado Water Pollution Control Revolving Fund Rules," 5 CCR 1002-51 as amended. Projects will be prioritized according to the Rules if the WPCRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year.

On or before September 30 of each year the WQCD shall submit the PEL to the Commission for review and adoption. The WQCD shall provide technical back-up information on additions and modifications to the PEL to the Authority, and, as appropriate, provide testimony to the General Assembly in support of a Joint Resolution on such additions and modifications.

3.1.3. Loan Processing and Administration.

3.1.3.1. Project Development and Loan Applications.

The WQCD shall provide staff to support and participate in project development activities to ensure funding requests are from applicants that are eligible for the program, and project costs and technology are appropriate for the WPCRF program. The WQCD will assist potential applicants with pre-applications, applicant pre-qualification, project needs assessments, and engineering reviews as appropriate. Additionally, decisions related to planning grants, and design and engineering grants will be reviewed by the staff of each of the three agencies.

The WQCD shall be the primary contact for a project loan applicant. The WQCD along with DLG and the Authority shall acquaint applicants with all requirements and the procedures to be followed in seeking assistance from the WPCRF, assist applicants in preparing loan applications or other requests for assistance, and coordinate the preparation and review of all supporting environmental and financial documentation. WQCD shall forward each completed loan application to the DLG and the Authority for review and processing.

3.1.3.2. Financial and Technical Review.

The WQCD will inform applicants about the planning, environmental assessments, design, and applicable data collection required to assure that projects comply with the Title VI documentation requirements of the Act, as well as with the Colorado Water Quality Control Act, C.R.S. § 25-8-101 *et seq.* The WQCD will provide technical project reviews, determine eligible and reasonable costs, and provide engineering and environmental reviews.

3.1.3.3. Monitoring Project Expenditures.

The WQCD shall authorize reimbursement of expenditures for projects for which loan assistance is provided. The WQCD shall monitor loan projects including periodic, or at a minimum, final construction inspections. Loan recipients shall send all requests for disbursement of loan funds for incurred costs to the WQCD, with a copy to the Authority. The WQCD shall approve or deny all such requests for disbursement within five (5) working days of the receipt of the request. If the WQCD denies a request, it shall provide the reasons to the loan recipient and the Authority within such five (5) working day period. Upon approval of each request, the WQCD shall forward the approved request for disbursement to the Authority within the five (5) working day period. All project costs that have been approved by the WQCD shall be subject to audits required by the Operating Agreement and the loan agreement with the project applicant.

3.1.3.4. Files Maintenance and Data Management

The WQCD shall maintain official project files for all projects receiving assistance under the WPCRF. The WQCD shall make such files available to the DLG, the Authority, and EPA for review at the WQCD's offices upon reasonable notice. The WQCD will

also maintain, update and populate the technical and project information in the Authority/WQCD shared portal.

3.1.3. Program Compliance, Reports, Certification, and Liaison.

The WQCD shall serve as the primary contact with the EPA for the programmatic aspects of the Capitalization Grant Agreement required under Title VI of the Clean Water Act and the WPCRF Operating Agreement. The WQCD shall prepare the Third Quarter Estimate of Disbursements required under the Operating Agreement and submit it to the EPA and the Authority. The WQCD shall provide all certifications or other documentation required by EPA that relate to programmatic elements of the WPCRF or of the projects financed thereby. The WQCD, as necessary, shall approve in writing any capitalization grant or agreement between the EPA and the Authority with respect to the WPCRF. The WQCD shall coordinate closely with the Authority in structuring Capitalization Grant Payment Schedules. In addition, in cooperation with the DLG and the Authority, the WQCD shall develop annual IUPs describing the activities proposed for the WPCRF. The annual IUP is adopted by the Commission and submitted to the EPA. In addition, the WQCD, with assistance from the Authority and the DLG, initially prepares an annual report for review by the WPCRF Committee.

The WQCD shall assist the Authority in preparing the annual National Information Management System ("NIMS") report and the required information for completing the Financial Funding Accountability and Transparency Act (FFATA) database for the EPA. The NIMS report provides financial and programmatic information on the activities of the WPCRF and other related loan and grant programs administered by the State.

So long as planning and design and engineering grants remain authorized, and funds are available for them in the WPCRF, the WQCD shall forward requests for such funds, along with a notification of eligibility and recommendation to approve or reject, to the Authority and DLG as necessary. It is the responsibility of the three agencies to approve the request.

3.1.5 Needs Survey.

The WQCD shall participate in the national needs survey with the EPA that determines the State's allocation of funding for the WPCRF. The WQCD and Authority acknowledges the importance of this internal activity.

The WQCD shall annually conduct a State needs survey of wastewater systems, as part of the annual IUP process, to identify eligible projects for the PEL and to estimate the funding demands from the WPCRF for the following five years.

3.1.7. Disadvantaged Communities Activities.

The WQCD shall assist DLG with DLG's responsibility to administer and implement any disadvantaged community program duly established in accordance with the Federal Clean Water Act (and amendments).

3.1.8. Compliance

The WQCD is responsible for ensuring that projects funded through the DWRF has an understanding of the compliance aspects of the program.

3.2 DLG.

3.2.1. Budget.

The DLG shall provide a proposed detailed budget for its WPCRF administrative costs for the following calendar year to the Authority by August 21 of each year. The DLG's budget shall be limited to 1.25 FTE. The duties of the current FTEs include outreach and education, project development, credit reports, review and updating of affordability criteria, publications, and direct loan portfolio monitoring. Subsequent budgets shall be adjusted by a factor reflecting: (1) State Annual Compensation Survey results as implemented by the General Assembly; (2) any change in responsibilities among the parties; and (3) any change in indirect costs or in responsibilities resulting from changes in federal or state laws, regulations, directives from, or requirements imposed by the General Assembly in developing the budget for state agencies. A material change to federal funding levels for this program shall require a review and revision to the budgeting provisions of this MOA. Prior to June 30, 2020, the Authority Board, in consultation with the DLG, shall establish such FTE cap as is warranted by the facts of record at that time; provided, however, that in no case shall the number of FTE's fall below 1.0 absent justification therefore under the above-referenced adjustment factors.

3.2.2. Project Priority List and Project Eligibility List.

As needed, the DLG shall assist the WQCD in assigning points based on a priority system involving financial need, when the WPCRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed in accordance with the WPCRF Rules (51.6 (3)). The DLG shall be available to consult with the WQCD and the Authority in the preparation of the PEL. The DLG shall provide financial back-up information on additions and modifications to the PEL to the Authority, and, as appropriate, provide testimony to the General Assembly regarding the Joint Resolution on such additions and modifications.

3.2.3. Loan Processing and Administration.

3.2.3.1. Project Development and Loan Applications.

The DLG shall provide staff to support and participate in project development activities to ensure funding requests are from applicants that are eligible for the program, and project costs and technology are appropriate for the WPCRF program. The DLG will assist potential applicants with pre-applications, applicant pre-qualification, project needs assessments, and engineering reviews as appropriate. Additionally, decisions related to planning grants, and design and engineering grants will be reviewed by the staff of each of the three agencies.

The DLG shall assist potential loan applicants with project development and financial planning support; shall provide project loan applicants with information concerning the financial disclosure requirements of the loan application; and shall acquaint such applicant with the financial procedures and requirements for receiving assistance from the WPCRF. In the event that the project loan applicant does not have the required financial information available, the DLG will work with the applicant to assemble such data. The DLG shall prepare a preliminary credit report and a credit report to analyze each project loan applicant's ability to repay a loan and submit such report for review before the WPCRF Committee. This analysis shall examine existing revenue

streams for the wastewater system (taxes, tap fees, user charges and other revenue sources) and expenditures such as existing debt repayment (all existing debt including overlapping jurisdictions) and operation and maintenance costs.

During the pre-application phase, if the WPCRF Committee has reason to believe that a project loan applicant is financially unable to repay a loan, the DLG shall review other State and Federal programs for the availability of grants and/or low interest loans to enhance the applicant's repayment capability and include any information developed in the WPCRF Committee findings to be forwarded to the Authority Board.

3.2.3.2. Outreach, Education, Marketing and Assistance.

The DLG will conduct WPCRF outreach education, marketing and assistance efforts. This may include development of and participation in workshops and conferences relevant to the WPCRF, providing financial and managerial assistance to wastewater systems, coordination of funding activities through the Funding Coordination Committee, and promotion of the SRF's to make potential project loan applicants aware of the availability of WPCRF monies. The outreach, education, marketing and assistance program will be coordinated with the staffs of the Authority and the WQCD. The DLG shall develop and maintain the outreach, education, marketing and assistance workplan and continue to review and implement the identified activities. The outreach, education, marketing and assistance plan shall be made available for review by other members of the WPCRF Committee at such time as to permit a summary to be incorporated into the annual IUP. The outreach program will be summarized in the IUP and the annual report.

3.2.3.3. Monitoring Project Expenditures.

The DLG shall not be responsible for monitoring project expenditures.

3.2.3.4. Loan Surveillance.

The DLG shall annually review all WPCRF direct loan borrowers' financial statements and establish financial trends for the WPCRF direct loan borrowers and annually issue a report with copies to the Authority and the WQCD. Financial statement information may be supplemented by other documentation and personal communication with borrower representatives. The DLG serves as a liaison with the local governments utilizing the loan program and analyzes local fiscal and management capacity by using the data it maintains.

The DLG will also support the Authority in its efforts to monitor leveraged loan borrowers through the provision of copies of financial audits and other materials and support as requested. The DLG will also notify the Authority of any missed payments or other defaults on its loans if the borrower has or is considering a WPCRF loan.

3.2.4. Reports and Liaison.

The DLG shall participate with the WQCD and the Authority in the drafting and reviewing of an annual IUP, additions and modifications to the PEL, and the development of an annual report.

The DLG (and WQCD) shall assist the Authority in preparing the annual NIMS report to the EPA.

3.3. Authority

3.3.1. WPCRF Administration.

The Authority shall administer the WPCRF, and to that end shall be responsible for the financial structure of the WPCRF, investments, and disbursements of funds for administrative and project costs.

3.3.2. Budget.

The Authority staff shall prepare a proposed WPCRF budget for the following calendar year based on the budget information provided by the WQCD and the DLG and on information developed internally (the Authority's budget for internal administrative costs including personnel and overhead). Subsequent annual internal administrative WPCRF budgets for the Authority shall be adjusted by a factor reflecting: (1) Board authorizations for a) personnel costs covering staff and associated benefits as well as annual salary adjustments, and b) overhead costs covering rent, utilities, equipment, furniture and fixtures, insurance, etc.; (2) any change in responsibilities resulting from changes in federal or state laws, regulations, directives from, or requirements imposed by, the General Assembly in developing the budget for state agencies. A material change to federal funding levels for this program shall require a review and revision to the budgeting provisions of this MOA. Outside consulting needs for required, but specific, services will be presented separately from the Authority's WPCRF internal administrative budget as part of the standard budget documentation and shall be adjusted to reflect anticipated increases or decreases in the cost of the services. The proposed WPCRF budget incorporating the administrative expenses of the DLG, the WQCD and the Authority for the ensuing calendar year shall be accompanied by the narrative descriptions provided by the WQCD and DLG, and a similar narrative prepared by the Authority staff for the Authority's portion of the proposed WPCRF budget explaining changes in the amounts compared to the previous year, and specifically identifying those costs that are eligible for grant reimbursement.

Once the proposed WPCRF budget has been drafted, it will be incorporated as a component of the Authority's overall proposed Budget for the ensuing calendar year, and a copy will be sent to the WQCD and the DLG at the same time that the proposed overall Authority Budget is forwarded to the Authority's Board for review, usually about the last week of September. From that point in time until the Authority's Board adopts the overall Authority Budget in December (typically around the first Friday in December), the WQCD and the DLG may submit written comments on the proposed WPCRF budget component to the Authority.

Subject to the aforementioned provisions of this MOA, by December 31 of each year, the Authority Board shall review, approve or revise as necessary, and in its sole discretion, adopt the WPCRF budget as a component of the Authority's overall Budget for the ensuing calendar year. The WPCRF component of the Authority's Budget shall be annotated as necessary to identify the FTE's to be funded thereby for the DLG and WQCD.

If as a result of unexpected circumstances, arising after the budget has been adopted, any party believes that additional resources are required over budgeted amounts, such party may request that the Authority amend the budget appropriately.

Within two (2) weeks of the Authority Board's adoption of the WPCRF budget and any amendments thereto, the Authority controller shall confirm to the WQCD and DLG the amounts included in the detailed budget request and the total amount that was included in the WPCRF administrative budget approved by the Authority's Board. The budget confirmation will be emailed to the appropriate managers at the WQCD and DLG.

3.3.3. Project Eligibility List.

The Authority shall participate with the WQCD and the DLG in the establishment of additions and modifications to the PEL. The Authority shall be the lead entity in securing the joint resolution from the Colorado General Assembly authorizing such additions or modifications to the PEL as are adopted by the Commission. To that end, the Authority shall seek sponsors for a joint resolution and have such resolution introduced into the General Assembly by January 15th of each year.

3.3.4. Loan Processing and Administration.

3.3.4.1. Project Development and Loan Applications.

The Authority shall provide staff to support and participate in project development activities to ensure funding requests are from applicants that are eligible for the program, and project costs and technology are appropriate for the DWRP program. The Authority will assist potential applicants with pre-applications, applicant pre-qualification, project needs assessments, and engineering reviews as appropriate. Additionally, decisions related to planning grants, and planning & design grants will be reviewed by the staff of each of the three agencies.

The Authority Board and staff shall review applications for financial assistance from the WPCRF, using the financial analysis of the DLG and the technical analyses of the WQCD. The Authority Board shall approve or disapprove all applications for project loans or other financial assistance. If the Authority Board denies a project loan application, the Authority Board's meeting minutes shall reflect the reasons for denial. The Authority Board shall determine the loan structure, including interest rate and security provisions, for each loan financed by the WPCRF, as well as all other loan provisions and conditions.

3.3.4.2. Financial Services.

The Authority shall negotiate and execute loan agreements for each WPCRF loan. The Authority shall procure all services associated with the issuance of its bonds and the execution of the loan agreements. Such services may include, but will not be limited to, those provided by financial advisers, bond and disclosure counsel, underwriter, general counsel, auditor, accountant, consulting engineer, and trustee, the solicitation of credit ratings, and the selection of bond insurers.

3.3.4.3. Disbursements and Monitoring Project Expenditures.

After the project loan agreements are executed, the Authority shall rely upon the WQCD's approval of requests for payment as set forth in Paragraph 3.1.3.3. above prior to authorizing any loan disbursements to any borrower. Upon approval of requisition requests by the WQCD, the Authority shall be authorized to make disbursements to the loan recipient.

Requisitions shall be reviewed by the Authority for compliance with the loan agreement, if applicable, and shall be approved or denied within five (5) working days of receipt. If a requisition is denied, the Authority shall provide notification of the basis for denial, and confer with the WQCD concerning the same.

If the Authority determines that a loan recipient is in default, it shall be authorized to withhold funds, and will provide the reasons funds are withheld within three (3) working days of receipt of an approved request for disbursement from the WQCD. In addition, the Authority shall be under no obligation to make a disbursement to a loan recipient, whose loan is supported by federal monies, until such time as the cash draw from the EPA automated clearing house (ACH) has been received and deposited into accounts held or caused to be held by the Authority. In the case of approval (by WQCD and the Authority) of requests for disbursement for loans that are supported by federal monies (e.g., EPA ACH cash draws) the Authority shall request ACH cash draws from the United States Treasury within a three (3) working day period. The Authority will also notify the DLG and WQCD of any missed payments or other defaults of its loans.

The Authority shall record payments for project expenditures and fund balances and record fund balances for each project receiving assistance from the WPCRF in accordance with generally accepted procedures.

3.3.4.4. Files Maintenance and Data Management.

The Authority will maintain, update, and populate the basic and financial information on the EPA database and shared DLG/WQCD/Authority database and will also maintain the supporting computer system.

3.3.5 Outreach, Education, Marketing and Assistance.

The Authority, in coordination with the DLG and the WQCD, will assist with the execution of the outreach, education, marketing and assistance program including as developed in section 3.2.3.2 above.

3.3.6. Annual Reports and Liaison with EPA.

The Authority shall serve as primary contact with the EPA for all financial issues involved with the Capitalization Grant Agreement and the Operating Agreement for the WPCRF. The Authority shall participate with the DLG and the WQCD to establish an annual IUP. The Authority will prepare annual financial statements covering all activities of the WPCRF enterprise fund, which will then be audited by an independent, certified public accounting firm as required under Section 606(d) of the Clean Water Act. The annual audit is to be included in the annual report. The Authority shall assist the WQCD in developing the annual report for review by the WPCRF Committee. (The annual report is prepared every year and covers the financial aspects of the WPCRF.) Once the report has been reviewed by the WPCRF Committee, the Authority shall submit the annual report to the EPA on behalf of the State on or before April 30.

The Authority with assistance from the WQCD and the DLG will prepare the annual NIMS report to EPA. The NIMS report provides financial and programmatic information on the activities of the WPCRF and other related loan and grant programs administered by the State.

3.3.7. Operating Agreement and Capitalization Grant Agreement.

Pursuant to C.R.S. §37-95-107.6(7), with the written consent of the Department of Public Health and Environment, the Authority, on behalf of the State of Colorado, shall execute all Operating Agreements and Capitalization Grant Agreements with EPA, and any revisions thereto.

Section 4. WPCRF Committee.

A WPCRF Committee, (the "Committee"), to be composed of a designated representative from the WQCD, the DLG, and the Authority, shall be formed to coordinate the WPCRF. The Committee shall meet as needed. The primary activities of the Committee shall be reviewing loan applications, reviewing the progress of the WPCRF in meeting the goals stated in the IUP and reviewing and recommending policy changes involving the WPCRF. The Committee shall act by unanimous vote of its duly designated members.

4.1. Duties of the Committee.

4.1.1. WPCRF Review.

The Committee shall review: (a) progress on short and long term goals; (b) drafts of the annual report to the EPA; (c) recommend additions and modifications to the PEL and the annual IUP; (d) the Authority's financial statements on the status of the WPCRF; (e) the content and effectiveness of the outreach and marketing programs; (f) make recommendations on policy changes for the WPCRF to the Authority Board and the Water Quality Control Commission; and make recommendations for changes to the funding coordination of the WPCRF.

4.1.2. Project Review.

The Committee shall review each loan application received and the financial analysis and technical information (including but not limited to planning review, plans and specifications review, environmental review and the project sponsor's ability to operate and maintain the system) provided on each such loan application by the DLG and the WQCD respectively, and upon review of such information, forward its findings and recommendations to the Authority Board.

Section 5. Reimbursement of Expenses

5.1. Reimbursable Expenses.

Reimbursable administrative expenses for the Program shall consist of all costs, including salary and benefits and related indirect costs, and other direct costs of all personnel providing services supporting the WPCRF, and the roles and responsibilities of the parties set forth in this MOA. Direct costs shall include operating (e.g., supplies, telecommunications, travel, legal services, workers' compensation insurance, risk management, insurance, rent, incidental expenses, and equipment (e.g., computers, etc.)) costs.

5.2. Rates for Reimbursement.

5.2.1. Reimbursements for salary and benefits and related indirect costs of the parties' personnel fulfilling the roles and responsibilities for the WPCRF as set forth in this MOA shall be for the total indirect and direct hourly salary costs of employees for all hours directly devoted to fulfillment of the responsibilities for the WPCRF pursuant to this MOA.

5.2.2. Reimbursement of other direct costs of the DLG and the WQCD shall be according to the rates and terms of the State of Colorado Fiscal Rules for Travel, Personnel Pay, Allowances and Benefits as they exist on the date of this agreement and any future amendments during the term of this agreement. (The current Rules are found at 1 CCR 101-1 and 1 CCR 101-2.) The Authority shall be reimbursed for other direct costs based on the reimbursement policies adopted by the Authority Board of Directors for the Authority's personnel. Reimbursement from federal grant funds for computers and other equipment shall follow federal regulations associated with the use of grant funds for the purchase of such equipment.

5.3. Reimbursement Procedures.

5.3.1. The parties shall prepare monthly requests for reimbursement and submit them quarterly, in a timely manner, to the Authority's controller. Each request shall be accompanied by supporting documentation in an easily understandable format: (1) indicating the nature of the expenses for which reimbursement is being sought; (2) certifying that employee salary expenses (including benefits and related indirect costs) were determined using OMB Circular A-87 procedures (only if reimbursement is sought from federal funds); (3) certifying that the purpose of all costs for which reimbursement is sought is consistent with WPCRF activities. The DLG and the WQCD shall maintain and shall make available to the Authority, upon request, time sheets or other documentation sufficient to verify employee salary expenses, and receipts, invoices, or other documentation sufficient to verify other direct costs. Reimbursement of salary, benefits, and related indirect costs to be funded by federal grant moneys will be made only after written assurance from the EPA that the time and effort documentation process is satisfactory.

5.3.2. The Authority shall review all requests for reimbursement and shall pay all requests that are accompanied by satisfactory documentation within thirty (30) days. In order for the Authority to prepare annual financial statements in a timely manner, the monthly requests for October and November shall be submitted to the Authority's controller by January 15 of the following year. However, the Authority shall not be required to pay any requests for administrative reimbursement that exceed the overall annual amount budgeted for that party for the WPCRF for the applicable year, or for which money is not available in the WPCRF (from the federal grant or from loan administrative surcharge fees) or the payment of which would violate the terms of C.R.S. § 37-95-107.6, the Clean Water Act, the Operating Agreement or Capitalization Grant Agreement between the United States and the State of Colorado, the MOA, or any other statute, agreement, regulation, covenant, or other document governing the WPCRF. The Authority shall provide 90 days' notice to the DLG and the WQCD if funds are not available in the WPCRF to pay administrative costs.

Section 6. Term.

This MOA shall be in effect from the date of execution until termination by any party for cause by written notice to all other parties hereto, or until statutory revisions to the WPCRF require adjustments to the MOA; provided, however, that if adjustments are required because of statutory

revisions, those portions, if any, of this MOA that are consistent with such statutory revisions shall remain effective until a revised MOA has been executed. This MOA shall be reviewed by all parties at least every five years, but no later than December 31, 2021.

Section 7. Amendments.

The MOA may be amended from time to time to reflect changes in the responsibilities of any Party upon the approval of the WQCD, the DLG, and the Authority.

Section 8. Notices.

All notices required or permitted to be given hereunder shall be in writing and sent by registered or certified mail, and shall be delivered upon deposit in the United States mail as follows:

If to the WQCD: Division Director
 Water Quality Control Division
 Colorado Department of Public Health and Environment
 4300 Cherry Creek Dr. South
 Denver, Colorado 80246-1530

If to the DLG: Executive Director
 Department of Local Affairs
 1313 Sherman Street, Room 521
 Denver, Colorado 80203

If to the Authority: Executive Director
 Colorado Water Resources & Power Development Authority
 1580 Logan Street, Suite 620
 Denver, Colorado 80203-1942

These addresses may be changed by written notice.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

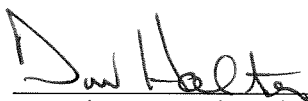
By: _____

Dr. Larry Wolk , MD, MSPH
Executive Director

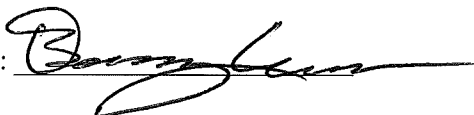
Attest: _____

DEPARTMENT OF LOCAL AFFAIRS

By: _____


Irv Halter, Executive Director

Attest: _____



COLORADO WATER RESOURCES & POWER
DEVELOPMENT AUTHORITY

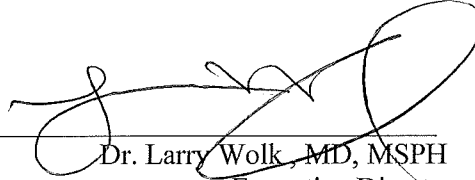
By: _____

Roy Heald, Chair

Attest: _____
Secretary

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

By:



Dr. Larry Wolk, MD, MSPH
Executive Director

Attest: _____

DEPARTMENT OF LOCAL AFFAIRS

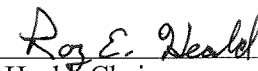
By:

Irv Halter, Executive Director

Attest: _____

COLORADO WATER RESOURCES & POWER
DEVELOPMENT AUTHORITY

By:



Roy Heald, Chair

Attest:



Secretary

MEMORANDUM OF AGREEMENT
FOR THE OPERATION OF THE DWRF PROGRAM

This MEMORANDUM OF AGREEMENT ("MOA") is entered into this 3rd day of March 2017, by and between the Colorado Department of Local Affairs, Division of Local Government (DLG), the Colorado Department of Public Health and Environment, Division of Administration (known as the Water Quality Control Division ("WQCD")), and the Colorado Water Resources and Power Development Authority ("Authority").

Section 1. Background and Purpose.

Section 1452 of the Safe Drinking Water Act (the "SDWA") created, and funded through capitalization grants issued to states pursuant to Operating Agreements and Capitalization Grant Agreements, a program to: (1) assist public water systems with financing the costs of infrastructure needed to achieve or maintain compliance with the SDWA's requirements; (2) ensure new and existing system capacity; (3) ensure source water protection; (4) improve operator certification programs; and (5) provide funding to implement the Drinking Water Program. The State of Colorado ("State") established the Drinking Water Revolving Fund ("DWRF") to provide low cost loans and other types of assistance to eligible public water systems and to carry out certain other facets of the Drinking Water Program in accordance with the requirements of the SDWA. To qualify for a capitalization grant, the State must deposit into the DWRF matching monies, in an amount equal to 20% of the capitalization grants provided to the State by the United States Environmental Protection Agency ("EPA"). These matching funds may be provided from the proceeds of revenue bonds or other available resources of the Authority.

As set forth in Title 40 of the Code of Federal Regulations, Part 35.3525, money deposited in the DWRF may be used: (1) to provide loans to be used for eligible purposes at or below market interest rates for terms no longer than 20 years after completion of construction, (except, and as set by the Authority Board, that loans to disadvantaged communities may be for terms up to 30 years after project completion); (2) to purchase or refinance debt obligations of municipalities incurred after July 1, 1993, for construction initiated after July 1, 1993; (3) to guarantee or purchase insurance for local obligations, the proceeds of which finance eligible projects, in order to improve credit access or lower interest rates; (4) as a source of revenue or as security for payment of principal and interest on bonds issued by the Authority, the proceeds of which are deposited in the DWRF; and (5) to earn interest on the fund prior to disbursement of assistance, though monies deposited must not remain in the fund primarily to earn interest.

The SDWA allows certain monies to be set aside from the Capitalization Grant for other Drinking Water Program functions on an annual basis as described in the SDWA as follows:

up to 4% may be used to cover the reasonable costs of administering ("Admin") the DWRF and to provide technical assistance to public water systems;

up to 10% of the grant may be used: (1) for public water system supervision ("PWSS") programs; (2) to administer or provide technical assistance through source water protection programs; (3) to develop and implement a capacity development strategy; and (4) for an operator certification program; provided that the state matches such expenditures with at least an equal amount (100 percent match requirement) of state funds as specified by SDWA Section 1452 (g)(2);

up to 2% may be used to provide technical assistance to public water systems serving 10,000 people or fewer ("SSTTA");

up to 15% may be used as specified in SDWA 1452 (k): (1) to provide loans to public water systems to acquire land or conservation easements if the purpose is to protect the source water of the system from contamination, or to any community water system to implement local, voluntary source water protection ("SWAP") measures, or to any community water system to provide funding in accordance with Section 1454(a)(1)(B)(i); (2) to provide assistance, including technical and financial assistance, to public water systems as part of a capacity development ("Capacity Development") strategy; (3) to delineate and assess source water protection areas (fiscal years 1996 and 1997 only, or as otherwise authorized by federal law); and (4) to establish and implement wellhead ("Wellhead") protection programs, provided that each such activity may not exceed 10% of the Capitalization Grant annually.

Collectively, these activities and the associated funding authorized under the SDWA are referred to as the "Set-Asides."

Senate Bill 95-083, codified at C.R.S. §37-95-103(4.8), (12.2), §37-95-107.8 and §25-1.5-203(1)(e) was enacted in the 1995 session to allow Colorado to establish a DWRF to meet the requirements of the Drinking Water Program under the SDWA. The statute established and provided for the participation of three entities in the DWRF: the WQCD and DLG, both State agencies, and the Authority, a political subdivision of the State. The Authority is the recipient of the capitalization grants and is responsible, with assistance from WQCD and DLG, for compliance with the capitalization grant agreements.

The arrangement of three entities sharing SDWA Section 1452 program responsibilities, as reflected in this MOA, is intended to capitalize on each entity's expertise to operate an effective, sustainable, and compliant DWRF program to protect public health. The WQCD is the entity responsible for achieving and maintaining primary enforcement responsibility or "primacy" for the public water system supervision (PWSS) program in Colorado (referred to as the "Drinking Water Program"). Further, the WQCD is responsible for managing the DWRF set-asides that are used to support the drinking water program. The Authority provides administrative and financial administration of the DWRF capitalization grant, provides the capitalization grant match required by the federal program as the recipient of the capitalization grant, and issues bonds to leverage the capitalization grants and other funds in the DWRF program. The DLG serves as a liaison with the local governments utilizing the loan program and analyzes local fiscal and management capacity by using the data it maintains. The DLG is also responsible for conducting outreach and financial assistance to promote the use of the DWRF and other subsidized financing. The WQCD, DLG and Authority work together to establish assistance priorities and carry out oversight and related activities with respect to community project development.

The Authority uses the funds received in the capitalization grants to capitalize the DWRF and to fund the set-asides. The Authority uses the monies deposited in the DWRF to provide financial assistance to governmental agencies for eligible projects that are included on the annual project eligibility list adopted by the Water Quality Control Commission (WQCC,) and then approved by the Colorado Legislature in a Joint Resolution (the "Joint Resolution") signed by the Governor, all as required by C.R.S. §37-95-108.8.

On September 15, 1997, the parties entered into a Memorandum of Agreement to identify their respective roles and responsibilities in connection with the operation of the DWRF, recognizing that the successful use of the capitalization grant to fund the DWRF and Set-Asides requires cooperation and coordination by all parties.

Since adoption of the original 1997 Memorandum of Agreement, the duties and coordination of the parties have developed and evolved, and the parties now wish to amend and restate their agreement on this MOA to define further their respective roles and responsibilities with regard to the DWRF and the set-asides.

Section 2. Operation of the DWRF and Set-Asides.

The operation and administration of the DWRF and set-asides encompasses the following general activities: (1) budgeting, accounting, and administrative expense reimbursement; (2) periodic modifications to the DWRF rules and annual modifications to the IUP that includes the Project Eligibility List ("PEL"); (3) working with eligible water systems to assist with project development; (4) establishing, reviewing and periodically updating borrower affordability criteria; (5) processing and administering loan applications and loans, including financial and technical review and monitoring and approving project expenditures in accordance with the loan agreements; (6) administration and execution of the set-asides; (7) financial summary and biennial reports; and (8) annual audits, annual updates to the Intended Use Plan (the "IUP"), periodic updates to the Operating Agreement, annual approval of capitalization grant agreements and compliance with capitalization grant requirements; and liaison with EPA. Further definition of the roles and responsibilities of each party hereto with respect to the general activities of the DWRF and Set-Asides is set forth in Sections 3 and 4 below.

Section 3. Roles and Responsibilities of the Parties.

3.1. WQCD.

3.1.1. Budget.

The WQCD shall provide a proposed detailed budget for its DWRF administrative costs and for the set-asides for the following calendar year to the Authority by August 21 of each year. The WQCD's budget for administrative costs, including the activities outlined in subsections 3.1.1 through 3.1.7 of this section shall be limited to no more than 10.55 FTE. The current FTE authorized by the Authority Board are for the following tasks that directly support the DWRF: technical assistance for project development/management, engineering reviews, administrative, data entry, GIS, and set-aside contracting. Subsequent annual DWRF budgets for the WQCD shall be adjusted by a factor reflecting: (1) State Annual Compensation Survey results as implemented by the General Assembly; (2) any change in responsibilities among the parties; and (3) any change in indirect costs or in responsibilities resulting from changes in federal or state laws, regulations, directives from, or requirements imposed by, the General Assembly in developing the budget for state agencies. A material change to federal funding levels for this program shall require a review and revision to budgeting provisions of this MOA.

3.1.1.1 Multiple Year Appropriation

The WQCD's budget may include a request for multiple-year expenditures for projects or limited term FTE to support the mission of the WQCD under the DWRF. The WQCD will identify in its annual budget the multiple-year expenditures and will seek approval from the Authority Board of Directors for multiple-year expenditures that are subject to Authority annual appropriation. For tracking purposes, the WQCD will include in its annual budget request the total multiple-year expenditure amount, the amount that the WQCD expects to expend within the budgeted year, and the remaining balance of any multiple year expenditure that will be expended in subsequent year(s). Because of the WQCD's budget due date identified in 3.1.1 and the potential for additional expenditures through the remainder of the year, the WQCD will submit a revised proposed budget to the Authority no later than November 15 of the

calendar year. Only funds generated by loan administration fees may be appropriated and expended in subsequent year(s), and may be used only for the following purposes: DWRF administration, including the activities outlined in subsections 3.1.1 through 3.1.7 of this section; WQCD administrative services, federal grants administration, state contracts oversight, and general administrative support; water quality monitoring; drinking water treatment facility sanitary surveys (inspections); drinking water treatment facility design reviews; providing technical assistance to drinking water treatment facilities, including operations and technology application guidance; drinking water sampling; TMF capacity reviews for new public water systems – developing, managing and implementing training on regulations and operations to public water systems and operators; assistance for the Drinking Water Excellence program; drinking water data management system support, and other approved projects that support the protection of public health. The set-asides expenditures will be administered per the EPA guidance.

3.1.2. Project Eligibility List (PEL).

The WQCD shall update the PEL as part of the annual IUP by assigning categories to projects in accordance with the “State of Colorado Drinking Water Revolving Fund Rules” adopted by the WQCC, as amended from time to time, and by deleting projects that have been completed or come into compliance. Further, in consultation with the DLG and the Authority, the WQCD shall develop additions and modifications to the PEL. The WQCD shall include priority points to projects on the Priority/Fundable List (required by EPA) once public water systems have submitted the annual eligibility survey and have indicated a need for financing in the following year’s IUP. The WQCD may revise the priority points once a planning or pre-planning document and an eligibility review had been completed.

The WQCD shall annually submit the PEL to the WQCC for its adoption by September 15th of each year. The WQCD shall provide the Authority assistance for any of the additions and modifications to the PEL, and as appropriate, provide testimony to the General Assembly in support of a Joint Resolution on such additions and modifications.

3.1.3. Set-Asides.

From each capitalization grant, the WQCD shall determine the amount of funds necessary to be set aside to develop and carry out the set-asides. The WQCD shall develop and update as necessary, detailed work plans for the set-asides, in substantial conformance with the activities identified in the annual IUP, for EPA review and approval. Upon EPA approval, the WQCD shall be responsible for implementing the work plan for the set-asides. The WQCD shall submit to the Authority in a timely manner requests for disbursements for set-asides, with appropriate documentation and certification by the WQCD that the requests are accurate and appropriate for payment under the approved work plans.

The WQCD shall provide the 100 percent state match required by the PWSS (Program Management Activities), and shall annually certify by letter that it has provided or will be able to provide the 100 percent match requirement for the PWSS (program management activities) set-aside prior to receipt of PWSS set-aside funds from a capitalization grant.

3.1.4. Loan Processing and Administration.

3.1.4.1. Project Development and Loan Applications.

The WQCD shall provide staff to support and participate in project development activities to ensure funding requests are from applicants that are eligible for the program, and project costs and technology are appropriate for the DWRF program. The WQCD will assist potential applicants with pre-

applications, applicant pre-qualification, project needs assessments, and engineering reviews as appropriate. Additionally, decisions related to planning grants, and planning & design grants will be reviewed by the staff of each of the three agencies.

The WQCD shall be the primary contact for a project loan applicant or for a Section 1452(k)(1)(A) set-aside loan applicant. The WQCD shall acquaint applicants with all requirements and the procedures to be followed in seeking assistance from the DWRP, or from the set-asides; assist applicants in project development, determining needs, preparing loan applications; and coordinate the preparation and review of all supporting environmental and financial documentation. WQCD shall forward each completed loan application to the DLG and the Authority for review and processing.

3.1.4.2. Design and Technical, Managerial and Financial (TMF) Capacity Review.

The WQCD shall inform applicants of their responsibility to obtain and demonstrate sufficient TMF capacity to ensure compliance with all applicable SDWA requirements; the criteria to be used to assess the applicant's TMF capacity; and the process for performing the TMF capacity analysis required by the SDWA.

The WQCD is also responsible for conducting engineering design reviews on the proposed project in accordance with the Colorado Primary Drinking Water Regulations and the approved hand book of procedures (HOP); evaluating eligible and reasonable costs; and providing environmental reviews.

3.1.4.3. Monitoring Project Expenditures.

The WQCD shall authorize reimbursement of expenditures for projects for which loan assistance is provided (including project loans and Section 1452(k)(1)(A) set-aside loans). The WQCD shall monitor loan projects including periodic, or at a minimum, final construction inspections. Loan recipients shall send all requests for disbursement of loan funds for incurred costs to the WQCD, with a copy to the Authority. The WQCD shall approve or deny all such requests for the disbursement within five (5) working days of the receipt of the request. If the WQCD denies a request, it shall provide the reasons to the loan recipient and the Authority within such five (5) working day period. Upon approval of each request, the WQCD shall forward the approved request for disbursement to the Authority within the five (5) working day period. All project costs that have been approved by the WQCD shall be subject to audits required by the operating agreement and the loan agreement with the project applicant.

3.1.4.4. Files Maintenance and Data Management

The WQCD shall maintain official project files for all projects receiving assistance under the DWRP. The WQCD shall make such files available to the DLG, the Authority, and the EPA for review at the WQCD's offices on reasonable notice. The WQCD will also maintain, update and populate the technical and project information in the Authority/WQCD/DLG shared portal.

3.1.5. Program Compliance, Reports, Certification, and Liaison.

The WQCD shall serve as the primary contact with the EPA for the programmatic aspects of the DWRP operating agreement. The WQCD shall provide all certifications or other

documentation required by the EPA that directly relates to the programmatic elements of the DWRF or for projects financed thereby. The WQCD, as necessary, shall approve in writing any capitalization grant or agreement between the EPA and the Authority with respect to the DWRF. The WQCD shall coordinate closely with the Authority in structuring capitalization grant payment schedules. In addition, and in cooperation with the Authority and the DLG, the WQCD shall develop annual IUP's describing the activities proposed for the DWRF and set-asides. The annual IUP is adopted by the WQCC and submitted to the EPA. In addition, the WQCD, with assistance from the Authority and the DLG, initially prepares a biennial report for review by the DWRF Committee. The biennial report is due to the EPA no later than April 30th in which the year it is due.

The WQCD shall assist the Authority in preparing the annual National Information Management System ("NIMS"), Federal Funding Accountability and Transparency Act ("FFATA") report and other necessary reports to the EPA. The NIMS report provides financial and programmatic information on the activities of the DWRF and other related loan and grant programs administered by the State.

So long as planning and design and engineering grants remain authorized, and funds are available for them in the DWRF program, the WQCD shall forward requests for such funds, along with a notification of eligibility and recommendation to approve or reject, to the Authority and DLG. It is the responsibility of the three agencies to approve the request.

3.1.6. Needs Surveys.

The WQCD shall participate in the national needs survey with the EPA that determines the State's allocation of funding for the DWRF. The WQCD and Authority acknowledges the importance of this internal activity.

The WQCD shall annually conduct a State needs survey of drinking water systems, as part of the annual IUP process, to identify eligible projects for the project eligibility list and to estimate the funding demands from the DWRF for the following twenty years.

3.1.7. Disadvantaged Communities Activities.

The WQCD shall assist DLG with DLG's responsibility to administer and implement any disadvantaged community program duly established in accordance with SDWA Section 1452(d).

3.1.8. Compliance

The WQCD is responsible for ensuring that projects funded through the DWRF has an understanding of the compliance aspects of the program.

3.2. DLG.

3.2.1. Budget.

The DLG shall provide a proposed, detailed budget for its DWRF administrative costs for the following calendar year to the Authority by August 21st each year. The DLG's budget for administrative costs shall be limited to FTE. The duties of the current FTEs include outreach and education, project development, credit reports, review and updating of affordability criteria, publications, and direct loan portfolio monitoring. Subsequent budgets shall be adjusted by a factor reflecting: (1)

State Annual Compensation Survey results as implemented by the General Assembly; (2) any change in responsibilities among the parties; and (3) any change in indirect costs or in responsibilities resulting from changes in federal or state laws, regulations, directives from, or requirements imposed by, the General Assembly in developing the budget for state agencies. A material change to federal funding levels for this program shall require a review and revision to the budgeting provisions of this MOA. Prior to June 30, of each year, the Authority Board, in consultation with the DLG, shall establish such FTE cap as is warranted by the facts of record at that time; provided, however, that in no case shall the number of FTE's fall below 1.0 absent justification therefore under the above-referenced adjustment factors.

3.2.2. Project Eligibility List.

As needed, the DLG shall assist the WQCD in assigning points under the Financial Need section of the DWRF Rules. The DLG shall consult with the WQCD and the Authority in the preparation of the PEL. The DLG shall provide supporting financial information on additions and modifications to the PEL, and as appropriate, provide testimony to the General Assembly regarding the Joint Resolution on such additions and modifications.

3.2.3. Set-Asides.

The DLG will assist the WQCD and the Authority, as requested, with financial and management reviews associated with the set-asides.

3.2.4. Loan Processing and Administration.

3.2.4.1. Project Development and Loan Applications.

The DLG shall provide staff to support and participate in project development activities to ensure funding requests are from applicants that are eligible for the program, and project costs and technology are appropriate for the DWRF program. The DLG will assist potential applicants with pre-applications, applicant pre-qualification, project needs assessments, and engineering reviews as appropriate. Additionally, decisions related to planning grants, and planning & design grants will be reviewed by the staff of each of the three agencies.

The DLG shall assist potential loan applicants with project development and financial planning support; shall provide project loan applicants with information concerning the financial disclosure requirements of the loan application; and shall acquaint such applicant with the financial procedures and requirements for receiving assistance from the DWRF. In the event that the project loan applicant does not have the required financial information available, the DLG will work with the applicant to assemble such data. The DLG shall prepare a credit report to analyze each project loan applicant's ability to repay a loan and submit such report for review before the DWRF Committee. This analysis shall examine existing revenue streams for drinking water (taxes, tap fees, user charges and other revenue sources) and expenditures such as existing debt repayment (all existing debt including overlapping jurisdictions) and operation and maintenance costs.

If the DWRF Committee has reason to believe that a project loan applicant is financially unable to repay a loan, the DLG shall review other State and Federal programs for the availability of grants and/or low interest loans to enhance the applicant's repayment capability and include any information developed in the DWRF Committee findings to be forwarded to the Authority Board. The DLG shall assist the Authority in the acquisition of necessary financial data to be presented in any official statement for Authority bond issues under the DWRF.

3.2.4.2. Outreach, Education, Marketing and Assistance

The DLG will conduct DWRF outreach efforts that have been developed and included in the outreach, education, marketing and assistance plan (the "Plan"). This may include development of and participation in workshops and conferences relevant to the DWRF, providing financial and managerial assistance to public water systems, coordination of funding activities through the Funding Coordination Committee and promotion of the SRFs to make potential project loan applicants aware of the availability of DWRF monies. The outreach, education, marketing and assistance program will be coordinated with the staffs of the Authority and the WQCD. The DLG shall develop and maintain the Plan and continue to review and implement the identified activities. The Plan shall be made available for review by other members of the DWRF Committee at such time as to permit a summary to be incorporated into the annual IUP. The outreach program will be summarized in the IUP and the biennial report.

3.2.4.3. Monitoring Project Expenditures.

The DLG shall not be responsible for monitoring project expenditures.

3.2.4.4. Loan Surveillance

The DLG shall annually review all DWRF direct loan borrowers' financial statements and establish financial trends for the DWRF direct loan borrowers and annually issue a report with copies to the Authority and the WQCD. Financial statement information may be supplemented by other documentation and personal communication with borrower representatives. The DLG serves as a liaison with the local governments utilizing the loan program and analyzes local fiscal and management capacity by using the data it maintains.

The DLG will also support the Authority in its efforts to monitor leveraged loan borrowers through the provision of copies of financial audits and other materials and support as requested. The DLG will also notify the Authority of any missed payments or other defaults of its loans if the borrower has or is considering a DWRF loan.

3.2.5. Reports and Liaison.

The DLG shall participate with the WQCD and the Authority in the drafting and reviewing of the annual IUP, additions and modifications to the PEL, and the development of a financial summary or biennial report.

The DLG shall assist the Authority in preparing the annual NIMS report to the EPA.

3.3. Authority.

3.3.1. DWRF Administration.

The Authority shall administer the DWRF, and to that end shall be responsible for the financial structure of the DWRF, investments, and disbursements of funds for administrative and project costs.

3.3.2. State Match.

The Authority shall provide the 20 percent state match required under the SDWA for receipt of the capitalization grant. The Authority Board may issue bonds, utilize administrative surcharges, or other available resources, to provide the state match. The state match is deposited into the DWRF and is not used for funding the set-asides. The Authority shall, from time to time and when funds are available, reimburse themselves for the zero-percent State Match loan provided from Authority resources. Reimbursement shall come from administrative fees charged on DWRF and WPCRF loans.

3.3.3. Budget.

The Authority staff shall prepare a proposed DWRF budget for the following calendar year based on the budget information provided by the WQCD and the DLG and on information developed internally. Subsequent annual internal administrative DWRF budgets for the Authority shall be adjusted by a factor reflecting: (1) Board authorizations for a) personnel costs covering staff and associated benefits as well as annual salary adjustments, and b) overhead costs covering rent, utilities, equipment, furniture and fixtures, insurance, etc.; (2) any change in responsibilities among the parties; and (3) any change in responsibilities resulting from changes in federal or state laws, regulations, directives from, or requirements imposed by, the General Assembly in developing the budget for state agencies. A material change to federal funding levels for this program shall require a review and revision to the budgeting provisions of this MOA. Outside consulting needs for required, but specific, services will be presented separately from the Authority's DWRF internal administrative budget as part of the standard budget documentation and shall be adjusted to reflect anticipated increases or decreases in the cost of the services. The proposed DWRF budget incorporating the administrative expenses of the DLG, the WQCD and the Authority for the ensuing calendar year shall be accompanied by the narrative descriptions, provided by the WQCD and the DLG, and a similar narrative prepared by the Authority staff for the Authority's portion of the proposed DWRF budget, explaining changes in the amounts compared to the previous year and specifically identifying those costs that are eligible for grant reimbursement.

Once the proposed DWRF budget has been drafted, it will be incorporated as a component of the Authority's overall proposed budget for the ensuing calendar year, and a copy will be sent to the WQCD and the DLG at the same time that the proposed overall Authority budget is forwarded to the Authority's Board for review, typically around the last week of September. From that point in time until the Authority's Board adopts the overall Authority budget in December (usually the first Friday in December), the WQCD and the DLG may submit written comments on the proposed DWRF budget component to the Authority.

Subject to the aforementioned provisions of this MOA, by December 31st of each year, the Authority Board shall review, approve or revise as necessary, and in its sole discretion, adopt the DWRF budget as a component of the Authority's overall budget for the ensuing calendar year. The DWRF component of the Authority's budget shall be annotated as necessary to identify the FTE's to be funded thereby for the DLG and the WQCD.

If, as a result of unexpected circumstances arising after the budget has been adopted, any party believes that additional resources are required over budgeted amounts, such party may request that the Authority amend the budget appropriately.

Within two (2) weeks of the Authority Board's adoption of the DWRF budget and any amendments thereto, the Authority controller shall confirm to the WQCD and DLG the amounts included

in the detailed budget request and the total amount that was included in the DWRF administrative budget approved by the Authority's Board. The budget confirmation will be emailed to the appropriate managers at the WQCD and DOLA.

3.3.4. Project Eligibility List.

The Authority shall participate with the WQCD and the DLG in the establishment of additions and modifications to the PEL. The Authority shall be the lead entity in securing the Joint Resolution from the Colorado General Assembly authorizing such additions or modifications to the PEL as are adopted by the WQCC. To that end, the Authority shall seek sponsors for a Joint Resolution and have such Resolution introduced into the General Assembly by January 15th of each year.

3.3.5. Set-Asides.

The Authority, as the capitalization grant recipient, will receive and administer disbursement of all grant funds, including funds used for administrative costs, for financial assistance from the DWRF, and for the set-asides. Disbursements from grant funds or administrative loan surcharge fees for administrative costs shall be made upon submission of invoices (in accordance with section 5 below) from the party incurring such administrative costs. Disbursements for the set-asides shall be made upon request and certification by the WQCD that expenditures are consistent with EPA-approved work plans.

In order to assist the WQCD with the utilization and distribution of the set-aside grant funds, the Authority may be a party to memoranda of understanding ("MOU's") to facilitate the expenditure and commitment of the Set-Aside grant funds. The Authority Board may set specific administrative requirements for review and execution of such MOU's.

3.3.6. Loan Processing and Administration.

3.3.6.1. Project Development and Loan Applications.

The Authority shall provide staff to support and participate in project development activities to ensure funding requests are from applicants that are eligible for the program, and project costs and technology are appropriate for the DWRF program. The Authority will assist potential applicants with pre-applications, applicant pre-qualification, project needs assessments, and engineering reviews as appropriate. Additionally, decisions related to planning grants, and planning & design grants will be reviewed by the staff of each of the three agencies.

The Authority Board and staff shall review applications for financial assistance from the DWRF, using the financial analysis of the DLG and the technical analyses of the WQCD. The Authority Board shall approve or disapprove all applications for project loans. If the Authority Board denies a project loan application, the Authority Board's meeting minutes shall reflect the reasons for denial. The Authority Board shall determine the loan structure, including interest rate and security provisions, for each loan financed by the DWRF, as well as all other loan provisions and conditions.

3.3.6.2. Financial Services.

The Authority shall negotiate and execute loan agreements for each DWRF loan. The Authority shall procure all services associated with the issuance of its bonds and the execution of the loan agreements. Such services may include, but will not be limited to, those provided by financial advisers, bond and disclosure counsel, underwriter, general counsel, auditor, accountant, consulting engineer, and trustee, the solicitation of credit ratings, and the selection of bond insurers.

3.3.6.3. Disbursements and Monitoring Loan Expenditures.

After the project loan agreements or Section 1452(k)(1)(A) set-aside loan agreements are executed, the Authority shall rely upon the WQCD's approval of requests for payment as set forth in Paragraph 3.1.4.3 above prior to authorizing any loan disbursements to any borrower. Upon approval of requisition requests by the WQCD, the Authority shall be authorized to make disbursements to the loan recipient. Requisitions shall be reviewed by the Authority for compliance with the loan agreement, if applicable, and shall be approved or denied within 5 working days of receipt. If a requisition is denied, the Authority shall provide notification of the basis for denial, and confer with the WQCD concerning the same.

If the Authority determines that a loan recipient is in default, it shall be authorized to withhold funds, and will provide the reasons funds are withheld, within five (5) working days of receipt of an approved request for disbursement from WQCD. In addition, the Authority shall be under no obligation to make a disbursement to a loan recipient, whose loan is supported by federal monies, until such time as the cash draw from the EPA automated clearing house (ACH) has been received and deposited into accounts held or caused to be held by the Authority. In the case of approval (by WQCD and the Authority) of requests for disbursement for loans that are supported by federal monies (e.g., EPA ACH cash draws) the Authority shall request ACH cash draws from the United States Treasury within a three (3) working day period. The Authority will also notify the DLG and WQCD of any missed payments or other defaults of its loans.

The Authority shall record payments for loan expenditures for each project loan or Section 1452(k)(1)(A) set-aside loan in accordance with generally accepted accounting procedures.

3.3.7. Annual Reports and Liaison with EPA.

The Authority shall serve as the primary contact with the EPA for all financial issues involved with the capitalization grant agreement required under Section 1452 of the SDWA and the Operating Agreement for the DWRF. The Authority shall participate with the DLG and the WQCD to establish an annual IUP. The Authority will prepare annual financial statements covering all activities of the DWRF enterprise fund, which will then be audited by an independent, certified public accounting firm as required under Section 1452 of the SDWA. The annual audit is to be included in the financial summary and biennial reports. The Authority shall assist the WQCD in developing the biennial report and shall prepare the financial summary report for review by the DWRF Committee. (The financial summary report is prepared every other year and covers the financial aspects of the DWRF and set-asides.) Once the reports have been reviewed by the DWRF Committee, the Authority shall submit the financial summary and biennial reports to the EPA on behalf of the State on or before April 30.

The Authority, with assistance from the WQCD and the DLG, will prepare the annual NIMS report and FFATA reporting to EPA. The NIMS report provides financial and programmatic information on the activities of the DWRF and other related loan and grant programs administered by the State.

3.3.8. Operating Agreement and Capitalization Grant Agreement.

Pursuant to C.R.S. §37-95-107.8(7), with the written consent of the Department of Public Health and Environment, the Authority, on behalf of the State of Colorado, shall execute all Operating Agreements and Capitalization Grant Agreements with EPA, and any revisions thereto.

3.3.9. Outreach, Education, Marketing and Assistance.

The Authority, in coordination with the DLG and the WQCD, will assist with the execution of the outreach, education, marketing and assistance program as developed in section 3.2.4.2. above.

3.3.10 Files Maintenance and Data Management

The Authority will maintain, update and populate the basic and financial information on the EPA database and shared DOLA/WQCD/Authority database and will also maintain the supporting computer system.

Section 4. DWRF Committee.

A DWRF Committee, ("Committee"), to be composed of a designated representative from the WQCD, the DLG, and the Authority, shall be formed to coordinate the DWRF. The Committee shall meet as needed. The primary activities of the Committee shall be reviewing loan applications, reviewing the progress of the DWRF in meeting the goals stated in the SRF work plan and reviewing and recommending policy changes involving the DWRF. The Committee shall act by unanimous vote of its duly designated members.

4.1. Duties of the Committee.

4.1.1. DWRF Review.

The Committee shall review: (a) progress on short and long term goals; (b) compliance with EPA's TMF requirements; (c) drafts of the financial summary and biennial reports to EPA; (d) recommend additions and modifications to the PEL and the annual IUP; (e) the Authority's financial statements on the status of the DWRF; (f) the content and effectiveness of the outreach and marketing programs; (g) make recommendations on policy changes for the DWRF to the Authority Board and the WQCC; and (h) make recommendations for changes to the funding coordination of the DWRF.

4.1.2. Project Review.

The Committee shall review each loan application received and the financial analysis and technical information (including but not limited to planning review, plans and specifications review, environmental review and the project sponsor's ability to operate and maintain the system) provided on each such loan application by the DLG and the WQCD respectively, and upon review of such information, forward its findings and recommendation to the Authority Board.

Based on the TMF capacity analyses by the WQCD and the DLG, the Committee shall determine the adequacy of a borrower's TMF capacity to receive project funding.

4.1.3. Disadvantaged Communities Activities.

When appropriate, the Committee shall develop criteria to define disadvantaged communities and to establish a system that awards disadvantaged communities a higher funding priority or other assistance as authorized by SDWA Section 1452 (d).

Section 5. Reimbursement of Expenses.

5.1 Reimbursable Expenses

Reimbursable administrative expenses from the DWRF shall consist of all costs, including salary and benefits and related indirect costs, and other direct costs of all personnel providing services supporting the DWRF and set-aside activities, and the roles and responsibilities of the parties set forth in this MOA. Direct costs shall include operating (e.g. supplies, telecommunications, travel, legal services, workers' compensation insurance, risk management, insurance, rent, incidental expenses, and equipment (e.g. computers, etc.) costs.

5.2. Rates for Reimbursement.

5.2.1. Reimbursements for salary and benefits and related indirect costs of the parties' personnel fulfilling the roles and responsibilities for the DWRF and the set-asides as set forth in this MOA shall be for the total indirect and direct hourly salary costs of employees for all hours directly devoted to fulfillment of the responsibilities for the DWRF pursuant to this MOA.

5.2.2. Reimbursement of other direct costs of the WQCD and the DLG shall be according to the rates and terms of the State of Colorado Fiscal Rules for Travel, Personnel Pay, Allowances and Benefits as they exist on the date of this agreement and any future amendments during the term of this agreement. (The current Rules are found at 1 CCR 101-1 and 1 CCR 101-2.) The Authority shall be reimbursed for other direct costs based on the reimbursement policies adopted by the Authority Board of Directors for the Authority's personnel. Reimbursement from federal grant funds for computers and other equipment shall follow federal regulations associated with the use of grant funds for the purchase of such equipment.

5.3 Reimbursement Procedures.

5.3.1. The parties shall prepare monthly requests for reimbursement and submit them quarterly, in a timely manner, to the Authority's controller. Each request shall be accompanied by supporting documentation in an easily understandable format: (1) indicating the nature of the expenses for which reimbursement is being sought; (2) certifying that employee salary expenses (including benefits and related indirect costs) were determined using OMB Circular A-87 procedures (only if reimbursement is sought from federal funds); (3) certifying that the purpose of all costs for which reimbursement is sought is consistent with DWRF activities. The DLG and the WQCD shall maintain and shall make available to the Authority, upon request, time sheets or other documentation sufficient to verify employee salary expenses, and receipts, invoices, or other documentation sufficient to verify other direct costs. Reimbursement of salary, benefits and related indirect costs to be funded by federal grant moneys will be made only after written assurance from the EPA that the time and effort documentation process is satisfactory.

5.3.2. The Authority shall review all requests for reimbursement and shall pay all requests that are accompanied by satisfactory documentation within thirty (30) days. In order for the Authority to prepare annual financial statements in a timely manner, the monthly requests for October and November shall be submitted to the Authority's controller by January 15 of the following year. However, the Authority shall not be required to pay any requests for administrative reimbursement that exceed the overall annual amounts budgeted for that party for the DWRF for the applicable year, or for which money is not available in the DWRF (from the federal grant or from loan administrative surcharge fees) or the payment of which would violate the terms of C.R.S. §37-95-107.8 (SB95-083), the Safe Drinking Water Act, the Operating Agreement and Capitalization Grant between the United States and the State of Colorado, the MOA, or any other statute, agreement, regulation, covenant, or other document governing the DWRF. The Authority shall provide 90 days' notice to the DLG and the WQCD if funds are not available in the DWRF to pay administrative costs.

Section 6. Term.

This MOA shall be in effect from the date of execution until termination by any party for cause by written notice to all other Parties hereto, or until statutory revisions to the DWRF require adjustments to the MOA; provided however, that if adjustments are required because of statutory revisions, those portions, if any, of this MOA that are consistent with such statutory revisions shall remain effective until a revised MOA has been executed. This MOA shall be reviewed by all parties at least every five years, but no later than December 31, 2021

Section 7. Amendments.

The MOA may be amended from time to time to reflect changes in the responsibilities of any Party, upon the approval of the WQCD, the DLG and the Authority.

Section 8. Notices.

All notices required or permitted to be given hereunder shall be in writing and sent by registered or certified mail, and shall be delivered upon deposit in the United States mail as follows:

If to the WQCD:	Division Director Water Quality Control Division Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, Colorado 80246-1530
If to the DLG:	Executive Director Department of Local Affairs 1313 Sherman Street – Room 521 Denver, Colorado 80203
If to the Authority:	Executive Director Colorado Water Resources and Power Development Authority 1580 Logan Street – Suite 620 Denver, Colorado 80203-1942

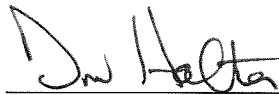
These addresses may be changed by written notice.

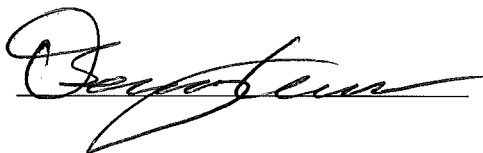
COLORADO DEPARTMENT OF PUBLIC
HEALTH AND ENVIRONMENT

By: _____
Dr. Larry Wolk, MD, MSPH
Executive Director

Attest: _____

DEPARTMENT OF LOCAL AFFAIRS

By:  _____
Irv Halter, Executive Director

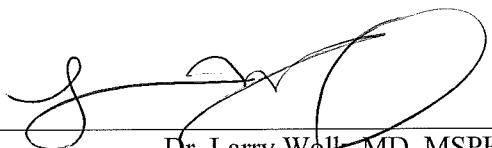
Attest:  _____

COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY

By: _____
Roy Heald, Chair

Attest: _____
Secretary

COLORADO DEPARTMENT OF PUBLIC
HEALTH AND ENVIRONMENT

By: 
Dr. Larry Wolk, MD, MSPH
Executive Director

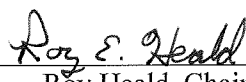
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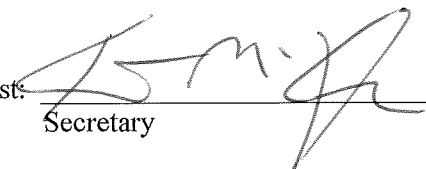
DEPARTMENT OF LOCAL AFFAIRS

By: _____
Irv Halter, Executive Director

Attest: _____

COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY

By: 
Roy Heald, Chair

Attest: 
Secretary