

**CREDIT AGREEMENT**

dated \_\_\_\_\_, 2018

between

CITY AND COUNTY OF DENVER, COLORADO,  
ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS

and

\_\_\_\_\_,  
as Lender

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (as it may be amended and supplemented in writing from time to time, this “*Credit Agreement*”) is entered into \_\_\_\_\_, 2018, between the CITY AND COUNTY OF DENVER, COLORADO, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS (“*Denver Water*”), as borrower, and \_\_\_\_\_, [a national banking association], or its successor (the “*Lender*”), as lender.

The Lender is providing a revolving credit facility to Denver Water on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements contained in this Credit Agreement, the Lender and Denver Water covenant and agree as set forth herein.

### ARTICLE I

#### DEFINITIONS, ACCOUNTING TERMS AND OTHER INTERPRETIVE PROVISIONS

*Section 1.01. Defined Terms.* In addition to the terms defined above, the terms used in this Credit Agreement shall have the meanings set forth in this Section.

“*Advance(s)*” means amounts loaned by the Lender to Denver Water pursuant to this Credit Agreement.

“*Advance Rate*” means the interest rate payable in respect of Advances not subject to another interest rate, as determined pursuant to Section 2.07(b).

“*Applicable Margin*” means the marginal rate of interest applicable to Loans subject to the Advance Rate and the Revolving Term Loan Rate determined pursuant to Section 2.07(a).

“*Audited Financial Statements*” means the annual financial statements of Denver Water prepared and audited in accordance with the laws of the State of Colorado and the City Charter.

“*Authorizing Resolution*” means the resolution with the short title “2018 Credit Facility (\_\_\_\_\_) Resolution” adopted by the Board on \_\_\_\_\_, 2018, authorizing the execution and delivery of this Credit Agreement and the Note, authorizing the Loans, granting to the Lender a subordinate lien on the Net Revenue to secure the Obligations of Denver Water to the Lender under this Credit Agreement and the Note and authorizing and approving various related matters.

“*Availability Period*” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Commitment pursuant to Section 2.11(a), and (c) the date the Lender terminates the Commitment pursuant to Section 7.02.

“*Available Commitment*” means, as of a particular date, the amount of the Commitment available to be drawn (*i.e.*, the difference between the amount of the Commitment and the then Total Outstanding Amount).

“*Basis Point*” equals 0.01% per annum.

“*Board*” means the City and County of Denver, Colorado, acting by and through its the Board of Water Commissioners.

“*Bond Counsel*” means any counsel experienced in matters of municipal law, satisfactory to Denver Water and the Lender, and listed in the list of municipal bond attorneys, as published semiannually by *The Bond Buyer*, or any successor publication.

“*Business Day*” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the State of Colorado.

“*Capital Improvements*” has the meaning specified in the Master (Parity) Bond Resolution.

“*City*” means the City and County of Denver, Colorado.

“*City Charter*” means the home rule charter of the City, as amended from time to time.

“*Closing Date*” means the first date all the conditions precedent in Section 3.01 are satisfied or waived pursuant to Section 8.01.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Commitment*” means the Lender’s obligation to make Loans to Denver Water pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed \$ \_\_, \_\_, 000, as such amount may be increased or decreased pursuant to Section 2.11.

“*Commitment Fee*” means the quarterly fee payable by Denver Water in respect of the amount of the Available Commitment during the Availability Period as determined pursuant to Section 2.08(a).

“*Conversion Notice*” means a notice of a conversion pursuant to Sections 2.03 and 2.04, which shall be substantially in the form of Exhibit B.

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

“*Default*” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“*Default Rate*” means [\_\_\_\_\_ the rate of interest payable in connection with the Loans upon the occurrence of the events described in Section 2.07(e), which rate shall be, in the case of an Advance or a Revolving Term Loan, the interest rate otherwise applicable to such Advance or Revolving Term Loan plus an Applicable Margin of \_\_\_ Basis Points, and in the case of a Term Loan, the interest rate otherwise applicable to such Term Loan plus \_\_\_ Basis Points.]

“*Dollars*” and “*\$*” mean lawful money of the United States.

“*EMMA*” means the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board.

“*Event of Default*” has the meaning specified in Section 7.01.

“*Fitch*” means Fitch Inc., and its successors.

“GAAP” means generally accepted accounting principles in the United States (as modified by applicable governmental auditing and accounting standards).

“Governmental Authority” means the government of the United States or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of such governments in respect of Denver Water.

“Interest Payment Date” means (1) the first Business Day of each January, April, July, and October, and (2) the Maturity Date, the Revolving Term Loan Maturity Date and the Term Loan Maturity Date, as applicable.

“IRS” means the U.S. Internal Revenue Service.

“Lender’s Office” means the Lender’s address set forth on Schedule 8.02 or such other address as the Lender may from time to time provide to Denver Water pursuant to Section 8.02.

[“Lender’s Prime Rate” means on any day, the rate of interest in effect for such day as publicly announced from time to time by the Lender as its “prime rate.” The “prime rate” is a rate set by the Lender based upon various factors including the Lender’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in such rate announced by the Lender shall take effect at the opening of business on the day specified in the public announcement of such change.] [Proposed Alternative]

[“LIBOR Rate” means a rate of interest equal to the rate per annum equal to the London Interbank Offered Rate (or a comparable or successor rate thereto approved by the Lender, as published by Bloomberg (or other commercially available source providing quotations of such rate as selected by the Lender from time to time) as determined for each date on which the LIBOR Rate is adjusted (the “Adjustment Date”) at approximately 11:00 a.m. London time two (2) London Banking Days prior to the Adjustment Date, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a term of one month, as adjusted from time to time in the Lender’s sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available on an Adjustment Date for any reason, then the rate for that interest period will be determined by such alternative method as reasonably selected by the Lender. If the LIBOR Rate shall be less than zero, such rate shall be deemed to be zero for purposes hereof.] [Proposed Alternative]

“Loan” means an Advance, a Revolving Term Loan or a Term Loan.

“Loan Documents” means Authorizing Resolution, this Credit Agreement and the Note.

[“London Banking Day” is a day on which banks in London, England, are open for business and dealing in offshore dollars.]

“Material Adverse Effect” means, as determined in the sole discretion and judgment of the Chief Finance Officer, (a) a material adverse change in, or effect upon, the operations or financial condition of Denver Water; or (b) a material impairment of the ability of Denver Water to provide for any payments due under this Credit Agreement and the Note.

“*Maturity Date*” means \_\_\_\_\_, 20\_\_.

“*Moody’s*” means Moody’s Investors Service, Inc. and its successors.

“*Net Revenue*” has the meaning specified in the Master (Parity) Bond Resolution.

“*Note*” means the promissory note made by Denver Water in favor of the Lender evidencing Loans made by the Lender, substantially in the form set forth in Exhibit C.

“*Obligations*” means all Denver Water’s obligations in respect of the due and punctual payment of principal and interest on the Loans when and as due, and all fees, expenses, reimbursements and other obligations of Denver Water under this Credit Agreement and the Note.

“*Outstanding Amount*” means the outstanding principal amount of a Loan as of a particular date.

“*Parity Bonds*” has the meaning specified in the Master (Parity) Bond Resolution.

“*Master (Parity) Bond Resolution*” means the Master (03-22-17) Bond Resolution adopted by the Board on March 22, 2017, relating to the issuance of Parity Bonds, constituting the amendment and restatement in full of the Prior Master Bond Resolution as defined therein, as the Master (Parity) Bond Resolution may be amended from time to time, together with all Supplemental Resolutions as defined therein.

“*Rating Agency*” or “*Rating Agencies*” means, individually and collectively, Moody’s, S&P and Fitch.

“*Rating(s)*” means the long-term unenhanced credit ratings of the Parity Bonds as assigned by the Rating Agencies.

“*Request for Advance*” means a request for an Advance pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A.

“*Responsible Officer*” means the Chief Finance Officer or the Treasurer of Denver Water or any written designee of the Chief Finance Officer or the Treasurer of Denver Water. Any document delivered hereunder that is signed by a Responsible Officer of Denver Water shall be conclusively presumed to have been authorized by all necessary action on the part of Denver Water and such Responsible Officer shall be conclusively presumed to have acted on behalf of Denver Water.

“*Revolving Term Loan*” has the meaning specified in Section 2.03.

“*Revolving Term Loan Maturity Date*” means the maturity date of a Revolving Term Loan as determined pursuant to Section 2.03.

“*Revolving Term Loan Rate*” means the interest rate payable in respect of a Revolving Term Loan as determined pursuant to Section 2.07(c).

“*S&P*” means S&P Global Ratings, and its successors.

“*Subordinate Lien Obligations*” has the meaning specified in the Master (Parity) Bond Resolution. Denver Water’s Obligations under this Credit Agreement and the Note shall constitute a Subordinate Lien Obligation.

“*System*” has the meaning specified in the Master (Parity) Bond Resolution.

“*Tax Certificate*” means a tax compliance or similar certificate or instrument delivered by Denver Water in connection with an Advance that describes Denver Water’s expectations regarding the use and investment of proceeds of the Advance and other moneys.

“*Term Loan*” has the meaning specified in Section 2.04.

“*Term Loan Base Rate*” has the meaning specified in Section 2.07(d).

“*Term Loan Maturity Date*” means the maturity date of a Term Loan as determined pursuant to Section 2.04.

“*Term Loan Rate*” means the interest rate payable in respect of a Term Loan as determined pursuant to Section 2.07(d).

“*Total Outstanding Amount*” means the aggregate Outstanding Amount of all Loans as of a particular date.

“*United States*” and “*U.S.*” mean the United States of America.

*Section 1.02. Time of Day.* Unless otherwise specified, all references herein to any time of day shall be prevailing Mountain time.

## **ARTICLE II ADVANCES**

*Section 2.01. Agreement to Make Advances.* Subject to the terms and conditions set forth herein, the Lender agrees to make Advances to Denver Water from time to time on any Business Day during the Availability Period. The Total Outstanding Amount of Loans at any time shall never exceed the amount of the Commitment. Within the limits of the Commitment, and subject to the other terms and conditions hereof, Denver Water may borrow under this Section 2.01, repay such amounts under Section 2.06 and re-borrow such amounts under this Section 2.01.

*Section 2.02. Procedure for Making Advances.*

(a) Each Advance shall be made upon Denver Water’s irrevocable notice to the Lender. Each such notice shall be given by delivery to the Lender of a Request for Advance, appropriately completed and signed by a Responsible Officer of Denver Water, in accordance with Section 8.02, at least two (2) Business Days prior to the requested date of the Advance. Each Request for Advance shall specify (i) the requested date of disbursement (which shall be a Business Day), (ii) the principal amount of the Advance (which shall be in a principal amount of at least \$1,000,000) and (iii) the account(s) of Denver Water to which the Advance is to be disbursed.



(b) Upon satisfaction of the applicable conditions set forth in Section 3.02, the Lender shall make all funds so requested available to Denver Water **by 3:00 p.m. on the Business Day specified** in the related Request for Advance by wire transfer of such funds for deposit to an account specified by Denver Water in the Request for Advance, in each case in accordance with instructions provided to (and reasonably acceptable to) the Lender.

(c) The Lender shall promptly notify Denver Water of the interest rate applicable to any Loan upon determination of such interest rate.

*Section 2.03. Conversion to Revolving Term Loan.* Provided that (i) no Default or Event of Default shall have occurred and be continuing and (ii) all representations and certifications and agreements herein are then true and correct, Denver Water may elect at any time prior to the 2<sup>nd</sup> anniversary of the Closing Date to convert all or a portion of the Outstanding Amount of any Advances to one or more term loans (each a “*Revolving Term Loan*”) that shall be payable in full by the earlier of the 3<sup>rd</sup> anniversary of the date of such conversion or the Maturity Date. Such election shall be exercised by Denver Water by delivery to the Lender of a Conversion Notice, appropriately completed and signed by a Responsible Officer of Denver Water, at least three (3) Business Days to the requested date of conversion. Each Revolving Term Loan shall amortize in equal quarterly installments payable on each Interest Payment Date and shall mature on the Revolving Term Loan Maturity Date specified in the Conversion Notice, which date shall be the first day of January, April, July, and October. Interest on a Revolving Term Loan, at the rate determined in accordance with Section 2.07(c), shall be payable on each Interest Payment Date.

Any conversion pursuant to this Section 2.03 shall also be subject to and conditioned upon the receipt by the Lender of an opinion from Bond Counsel that, based on certain conditions and assumptions stated therein, such conversion will not adversely affect the excludability from gross income of interest on the Loans for federal income tax purposes.

*Section 2.04. Conversion to Term Loan.* Provided that (i) no Default or Event of Default shall have occurred and be continuing and (ii) all representations and certifications and agreements herein are then true and correct, Denver Water may elect to convert all or a portion of the Outstanding Amount of Advances and Revolving Term Loans effective as of the Maturity Date to one or more term loans (each a “*Term Loan*”) that shall be payable in full by the 3<sup>rd</sup> anniversary of the Maturity Date. Such election shall be exercised by Denver Water by delivery to the Lender of a Conversion Notice, appropriately completed and signed by a Responsible Officer of Denver Water, at least three (3) Business Days prior to the Maturity Date. Each Term Loan shall amortize in equal quarterly installments payable on each Interest Payment Date and shall mature on the Term Loan Maturity Date specified in the Conversion Notice, which date shall be the first day of January, April, July, and October. Interest on each Term Loan, at the rate determined in accordance with Section 2.07(d), shall be payable on each Interest Payment Date.

Any conversion pursuant to this Section 2.04 shall also be subject to and conditioned upon the receipt by the Lender of an opinion from Bond Counsel that, based on certain conditions and assumptions stated therein, such conversion will not adversely affect the excludability from gross income of interest on the Loans for federal income tax purposes.

*Section 2.05. Repayment of Loans.* Notwithstanding the amortization payment schedule applicable to Revolving Term Loans and Term Loans, all principal and accrued but unpaid interest and all costs or expenses related to the Loans shall be due and payable in full on the Maturity Date (in respect of Advances), the Revolving Term Loan Maturity Date (in respect of Revolving Term Loans) or the Term Loan Maturity Date (in respect of Term Loans).

*Section 2.06. Prepayments.* Denver Water, upon notice to the Lender, at any time or from time to time, may voluntarily prepay any Loan in whole or in part without premium or penalty. Such notice must (i) be received by the Lender not later than 10:00 a.m. Mountain Time on the date of prepayment and (ii) specify the date and amount of such prepayment. Any prepayment shall be in a principal amount of at least \$1,000,000 or, if less, the Outstanding Amount of the Loan, plus all accrued interest on the amount prepaid. The prepayment amount specified in such notice shall be due and payable on the date specified therein.

*Section 2.07. Interest on Loans.*

**(Section 2.07 to be revised based upon accepted proposal).**

(a) *General; Applicable Margins.* Denver Water shall pay interest on each Loan at the applicable interest rate set forth hereafter plus, in the case of the Advance Rate and the Revolving Term Loan Rate, the Applicable Margin set forth in the following table. No Applicable Margin shall apply to the Term Loan Rate. The interest rate applicable to each Loan shall be determined on the date the Loan is made or converted to a different interest rate mode, as the case may be, and shall continue at that rate until the Loan is either paid or becomes subject to a different interest rate mode.

[Remainder of this page intentionally left blank.]

Applicable Margins				
Rating of the Parity Bonds <sup>1</sup>			Applicable Margin (expressed in Basis Points)	
Moody's	S&P	Fitch	Advance Rate	Revolving Term Loan Rate
Aaa	AAA	AAA		
Aa1	AA	AA		
Aa3	AA-	AA-		
A1	A+	A+		
A2	A	A		
A3	A-	A-		
Baa1	BBB+	BBB+		
Baa2	BBB	BBB		
Baa3 or below	BBB- or below	BBB- or below		

<sup>1</sup> If Ratings are assigned by all three Rating Agencies and two of such Ratings are equivalent, the Applicable Margins shall be based upon the level at which the two equivalent Ratings appear; (ii) if Ratings are assigned by all three Ratings Agencies and no two Ratings are equivalent, the Applicable Margins shall be based upon the level at which the middle Rating appears; (iii) if Ratings are assigned by only two Rating Agencies and such Ratings are not equivalent, the Applicable Margins shall be based upon the level at which the lower Rating appears; (iv) if a Rating is assigned by only one Rating Agency, the Applicable Margins shall be based upon the level that is the level of such rating; and (v) if there is no Rating assigned by any Rating Agency, the Applicable Margins shall be based upon the lowest level in the table.

(b) *Advance Rate.* Except to the extent subject to another interest rate pursuant to subsections (c), (d) or (e) below, all Advances shall bear interest at a rate per annum equal to **(Insert Accepted Proposal)** plus the Applicable Margin determined in accordance with the table set forth in subsection (a) above.

(c) *Revolving Term Loan Rate.* **(Insert Accepted Proposal)** Advances converted to a Revolving Term Loan shall after the conversion date bear interest at a rate per annum equal to [\_\_% of the greater of:

- (i) Lender's Prime Rate, or
- (ii) the Federal Funds Rate plus \_\_%;

plus the Applicable Margin determined in accordance with the table set forth in subsection (a) above.]

(d) *Term Loan Rate.* **(Insert Accepted Proposal)** Amounts converted to a Term Loan shall after the conversion date bear interest at a rate per annum equal to [the highest of the following (the "Term Loan Base Rate"):

- (i) Lender's Prime Rate plus \_\_%;
- (ii) the Federal Funds Rate plus \_\_%; or
- (iii) \_\_%;

for the following periods beginning on the Maturity Date:

- Day 1-60: Term Loan Base Rate
- Day 61-120: Term Loan Base Rate plus \_\_%
- Day 121+: Term Loan Base Rate plus \_\_%]

(e) *Default Rate.*

(i) If the principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity or otherwise, the unpaid amount shall thereafter bear interest at the Default Rate until paid.

(ii) If any amount (other than principal of any Loan) payable by Denver Water under this Credit Agreement and the Note is not paid when due (without regard to any applicable grace periods), such amount shall thereafter bear interest at the Default Rate until paid, unless interest on such amount is waived by the Lender.

(f) *Computation of Interest.* All computations of interest shall be made on the basis of a 365-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the applicable Advance is made, and shall not accrue on a Loan or any portion thereof for the day on which the Loan or such portion is paid. Any Loan that is repaid on the same day on which it is made shall bear interest for one day.

(g) *Interest Payments.* Interest on each Loan shall be due and payable in arrears on each Interest Payment Date and at such other times as may be specified herein.

*Section 2.08. Fees.* **(Section 2.08 to be revised based upon accepted proposal).**

(a) *Commitment Fee.* [Denver Water shall pay the Lender a periodic Commitment Fee computed on the amount of the Available Commitment during each day of the Availability Period. The daily Commitment Fee shall be computed as the product of (i) the Available Commitment as of such day (without taking into account any Advance or Loan prepayment made that day) and (ii) the then-applicable Commitment Fee rate divided by 365. The Commitment Fee shall be payable quarterly in arrears on each Interest Payment Date, commencing January 1, 20\_\_, for the period commencing with the previous Interest Payment Date (or in the case of the first Interest Payment Date, the Closing Date) and extending to and including the day immediately preceding the Interest Payment Date on which the Commitment Fee is due and payable. The applicable Commitment Fee rates are as follows:

[Remainder of this page intentionally left blank]

<b>Commitment Fee Rates</b>			
Rating of the Parity Bonds <sup>1</sup>			Commitment Fee Rate (expressed in Basis Points)
Moody's	S&P	Fitch	
Aaa	AAA	AAA	
Aa1	AA	AA	
Aa3	AA-	AA-	
A1	A+	A+	
A2	A	A	
A3	A-	A-	
Baa1	BBB+	BBB+	
Baa2	BBB	BBB	
Baa3 or below	BBB- or below	BBB- or below	

<sup>1</sup> If Ratings are assigned by all three Rating Agencies and two of such Ratings are equivalent, the Commitment Fee shall be based upon the level at which the two equivalent Ratings appear; (ii) if Ratings are assigned by all three Ratings Agencies and no two Ratings are equivalent, the Commitment Fee shall be based upon the level at which the middle Rating appears; (iii) if Ratings are assigned by only two Rating Agencies and such Ratings are not equivalent, the Commitment Fee shall be based upon the level at which the lower Rating appears; (iv) if a Rating is assigned by only one Rating Agency, the Commitment Fee shall be based upon the level that is the level of such rating; and (v) if there is no Rating assigned by any Rating Agency, the Commitment Fee shall be based upon the lowest level in the table.

The Lender shall provide Denver Water with a computation of the amount of the Commitment Fee due on each Interest Payment Date **at least ten (10) days prior** to such Interest Payment Date. Such determination by the Lender of the Commitment Fee due hereunder shall be conclusive and binding for all purposes absent manifest error.

(b) *Amendment Fee.* On the date of any amendment, waiver, transfer or consent hereunder, Denver Water agrees to pay to the Lender a fully earned non-refundable amendment fee of \$[\_\_\_\_\_] (Insert Accepted Proposal) in addition to any amounts due pursuant to Section 8.04. The amendment fee shall not apply to amendments that are solely amendments to the definition of “Maturity Date” to extend the maturity of this Credit Agreement.

*Section 2.09. Evidence of Loans.* In addition to the Note(s), the Loans made by the Lender shall be evidenced by one or more accounts or records maintained by the Lender in the ordinary course of business. The accounts or records maintained by the Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lender to Denver Water and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Denver Water to pay any amount owing with respect to the Obligations. The Lender may attach schedules to the Note and endorse thereon the date, amount and maturity of the Loans and payments with respect thereto.

*Section 2.10. Payments.* All payments to be made by Denver Water pursuant to the Loan Documents shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. All payments by Denver Water hereunder shall be made to the Lender, at the Lender’s Office, in Dollars and in immediately available funds not later than 10:00 a.m. Mountain Time on the dates specified herein. All payments received by the Lender after 10:00 a.m. Mountain Time shall be deemed to have been received on the next succeeding Business Day, and any applicable interest or fee shall continue to accrue.

*Section 2.11. Change in Amount of the Commitment.*

(a) *Termination or Reduction of Commitment.* Denver Water, upon notice to the Lender, may terminate the Commitment, or from time to time permanently reduce the amount of the Commitment. Any such notice shall be received by the Lender not later than 10:00 a.m. Mountain Time three (3) Business Days prior to the date of termination or reduction. Any such partial reduction shall be in an aggregate amount of \$1,000,000 or any multiple thereof. All fees accrued until the effective date of any termination of the Commitment shall be paid on the effective date of such termination.

(b) *Increase in Commitment.* Provided that no Default or Event of Default has occurred and is continuing, upon notice to the Lender, Denver Water may from time to time request an increase in the amount of the Commitment, subject to the Lender's credit approval, by an aggregate amount (for all such requests) not exceeding \$20,000,000. Any such request for an increase shall be in a minimum amount of \$10,000,000, and Denver Water may make a maximum of two such requests. At the time of sending such notice, Denver Water (in consultation with the Lender) shall specify the time period within which the Lender is requested to respond, which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lender. The Lender shall promptly notify Denver Water of the Lender's response to each request made hereunder.

If the amount of the Commitment is increased in accordance with this Section 2.11(b), the Lender and Denver Water shall determine the effective date thereof (the "*Increase Effective Date.*") As a condition precedent to such increase, Denver Water shall deliver to the Lender a certificate of Denver Water dated as of the Increase Effective Date and signed by a Responsible Officer of Denver Water certifying that, as of the Increase Effective Date, the representations and certifications and agreements contained in Article IV hereof remain true and correct with suitable variations in the language of certificate as agreed to between the Lender and Denver Water.

*Section 2.12. Extension of Maturity Date.* At least sixty (60) days and no more than ninety (90) days prior to the Maturity Date, Denver Water may make a written request to the Lender to extend the Maturity Date for a period not to exceed \_\_\_\_\_ ( ) years (**Insert Accepted Proposal**). Not more than thirty (30) days after the Lender receives any such notice from Denver Water, the Lender shall notify Denver Water of the initial consent or non-consent of the Lender to such extension request, which consent shall be at the sole and absolute discretion of the Lender. If the Lender consents to such extension request, the Lender shall deliver to Denver Water written notice of the Lender's election to extend the Maturity Date. The Lender's final consent shall be subject to the preparation, execution and delivery of any required legal documentation in form and substance reasonably satisfactory to the Lender, incorporating substantially the terms and conditions contained in the extension request.

*Section 2.13. Source of Payment of Obligations; Subordinate Pledge of and Lien on the Net Revenue.* All Obligations owed by Denver Water to the Lender pursuant to the Loan Documents shall be payable solely from the Net Revenue; provided, however, that nothing herein shall preclude Denver Water from applying to the payment of such Obligations any other moneys of Denver Water lawfully available therefor.

All Obligations owed to the Lender pursuant to the Loan Documents shall constitute, and shall be expressed to be, Obligations of Denver Water, and to secure such Obligations Denver Water hereby pledges and grants to the Lender a lien on the Net Revenue, which lien shall be subordinate and junior to the prior lien on the Net Revenue of any Parity Bonds issued and outstanding from time to time, and on a parity with the pledge of and lien on the Net Revenue of any Subordinate Lien Obligations hereafter issued by Denver Water with a similar priority lien on the Net Revenue.

The creation, perfection, enforcement and priority of the pledge of Net Revenues, on a subordinate lien basis, to secure or pay the Obligations of Denver Water pursuant to the Loan Documents shall be governed by Section 11-57-208, C.R.S., the Loan Documents and the Master (Parity) Bond Resolution. Such pledge shall be valid and binding from and after the date of delivery of this Credit Agreement, and the Net Revenue pledged to the payment of the amounts due under the Loan Documents shall immediately be subject to the subordinate lien of such pledge without any physical delivery, filing or further act. The subordinate lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract or otherwise against Denver Water (except as herein otherwise provided) irrespective of whether such persons have notice of such subordinate lien.

*Section 2.14. Special Obligations.* All Obligations of Denver Water due under the Loan Documents shall be payable and collectible solely out of the Net Revenue, which is hereby pledged, on a subordinate lien basis, to the payment of such Obligations. The Lender may not look to any other revenues or sources of funds of Denver Water for the payment of such Obligations. The Loan Documents and the Loans shall not constitute a debt or an indebtedness of Denver Water within the meaning of any constitutional, statutory or City Charter provision or limitation; and none of the Loan Documents or the Loans shall be considered or held to be a general obligation of Denver Water but rather shall constitute its special obligation. No constitutional, statutory or City Charter provision enacted after the execution and delivery of the Loan Documents shall in any manner be construed as limiting or impairing the obligation of Denver Water to comply with the provisions of the Loan Documents or to pay the Obligations of Denver Water under the Loan Documents as herein provided.

*Section 2.15. No Pledge of Property.* The Obligations of Denver Water under the Loan Documents are not secured by an encumbrance, mortgage or other pledge of property of Denver Water, except for the pledge of Net Revenue on a subordinate lien basis. No property of Denver Water, subject to such exception, shall be liable to be forfeited or taken in payment of such Obligations.

*Section 2.16. No Recourse Against Officers and Agents.* No recourse shall be had for the payment of the Obligations of Denver Water under the Loan Documents, or for any claim based thereon, or otherwise upon the Loan Documents, against any member of the Board or any officer, employee or other agent of Denver Water, past, present or future, either directly or indirectly through the Board, or otherwise, whether by virtue of any penalty or otherwise.

**ARTICLE III**  
**CONDITIONS PRECEDENT**

*Section 3.01. Conditions Precedent to Effectiveness of this Credit Agreement.* This Credit Agreement shall become binding on the parties hereto upon the satisfaction of the following conditions precedent:

(a) Lender's receipt of the following, in electronic files unless otherwise specified, each properly executed and in form and substance satisfactory to the Lender:

(i) copies of the Master (Parity) Bond Resolution and the Authorizing Resolution (providing for the pledge by Denver Water, on a subordinate lien basis, of the Net Revenue to secure the Obligations of Denver Water to the Lender under this Credit Agreement and certified by the Secretary or an Assistant Secretary of Denver Water as being in full force and effect on the Closing Date;

(ii) executed counterparts of this Credit Agreement;

(iii) the Note duly executed by Denver Water;

(iv) an incumbency certificates of a Responsible Officer of Denver Water evidencing the identity, authority and capacity of each Responsible Officer;

(v) a certificate signed by a Responsible Officer of Denver Water certifying (A) that there has been no event or circumstance since the date of Denver Water's most recent Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a material adverse effect on Denver Water's ability to perform its obligations under the Loan Documents; and (B) with the certification of general counsel to Denver Water of other matters concerning Denver Water and the Loan Documents, including the absence of litigation affecting Denver Water's power to operate the System, collect the Gross Revenues (as defined in the Master (Parity) Bond Resolution) and enter into this Credit Agreement and the Note; and

(vi) such other assurances, certificates, documents, consents or opinions as the Lender may reasonably require.

(b) Any fees required to be paid by Denver Water in respect of this Credit Agreement on or before the Closing Date shall have been paid.

*Section 3.02. Conditions Precedent to Advances.* The obligation of the Lender to honor any Request for Advance is subject to the following conditions precedent:

(a) *Request for Advance.* The Lender shall have received a timely Request for Advance under Section 2.02(a).

(b) *No Legal and Regulatory Changes.* There shall not have occurred any legal, administrative or regulatory changes that would render the transactions contemplated hereby unlawful.



(c) *No Adverse Events or Conditions.* There shall not have occurred any event or condition that has had or could be reasonably expected to have, in the determination of Denver Water, either individually or in the aggregate, a material adverse effect on Denver Water's ability to perform its obligations under the Loan Documents.

(d) *No Default.* No Default or Event of Default shall have occurred and be continuing or will exist upon making the requested Advance.

(e) *Representations and certifications.* All the representations and certifications set forth in this Credit Agreement shall be true and correct in all material respects as though made on and as of the date of Advance except as otherwise previously disclosed to the Lender in a notice.

(f) *Compliance.* Denver Water shall have performed and complied with all agreements, terms and conditions contained in this Credit Agreement required to be performed or complied with by Denver Water prior to or on the date of the Advance.

(g) *Tax Documents and Bond Counsel Opinion.* Denver Water shall have executed and delivered a Tax Certificate and IRS Form 8038-G applicable to such Advance and shall have delivered an opinion from Bond Counsel applicable to such Advance that, based on certain conditions and assumptions stated therein, interest on the applicable Loan will be excludable from gross income for federal income tax purposes.

(h) *Payment of Fees.* The Lender shall have received all fees and other amounts which are due and payable by Denver Water prior to the date of the Advance.

(i) *Other Conditions.* The Lender shall have received such other assurances, certificates, documents, consents or opinions as the Lender may reasonably require.

Each Request for Advance submitted by Denver Water shall be deemed to be a representation that the conditions specified in subsections (c), (d), (e) and (f) above have been complied with.

#### **ARTICLE IV REPRESENTATIONS AND CERTIFICATIONS**

Denver Water represents to the Lender that:

*Section 4.01. Existence, Powers and Authority; Enterprise Status.* Denver Water is an independent, autonomous and non-political entity organized under the Charter of the City and County of Denver, Colorado.

*Section 4.02. Authorization; No Contravention.* The execution, delivery and performance by Denver Water of the Loan Documents have been duly authorized by all necessary legislative action and do not and will not contravene or result in the violation of or constitute a default under, any provision of the Constitution of the State of Colorado, the City Charter or applicable law or regulation or any order, rule or regulation of any court,

governmental agency or instrumentality or any other agreement, resolution or instrument to which Denver Water is a party or by which it or any of its property is bound.

*Section 4.03. Validity of Loan Documents.* The Loan Documents constitute, or when executed and delivered will constitute, the legal, valid and binding obligations of Denver Water enforceable against Denver Water in accordance with their respective terms, subject to limitations as to enforceability which might result from bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and subject to limitations on the availability of equitable remedies.

*Section 4.04. Other Governmental Authorization and Consents.* No approval, consent, exemption, authorization or other action by, notice to or filing with any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Denver Water of the Loan Documents, except such consents, authorizations, orders and approvals (copies of which have been furnished to the Lender) as have been obtained, were validly issued and are in full force and effect.

*Section 4.05. Financial Statements.* The Audited Financial Statements of Denver Water as of and for the fiscal year ended December 31, 2017, which have been delivered to the Lender fairly present the financial position of Denver Water at such date, and the results of its operations and changes in financial position for the fiscal year then ended, in conformity with GAAP consistently applied (except as stated therein). Since the date of such Audited Financial Statements, there has been no change in the business or financial condition of Denver Water that has had or could reasonably be expected to have, in the determination of Denver Water, a material adverse effect on Denver Water's ability to perform its obligations under the Loan Documents, except as may have been disclosed in writing to the Lender.

*Section 4.06. No Litigation.* There is no action, suit, proceeding or investigation pending or, to the best of the knowledge of Denver Water, threatened against or affecting Denver Water, or relating to the Loan Documents or the Master (Parity) Bond Resolution, in any court or before or by any Governmental Authority (nor to the best of the knowledge of Denver Water is there any basis therefor) which, if adversely determined, might in the determination of Denver Water materially affect the ability or authority of Denver Water to perform its obligations under the Loan Documents or the Master (Parity) Bond Resolution, or which in any manner questions the validity or enforceability of any of the Loan Documents or the Master (Parity) Bond Resolution, except as may have been disclosed in writing to the Lender.

*Section 4.07. No Existing Defaults.* Denver Water is not in default under (i) any order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to it, (ii) any law or regulation, or (iii) any contract, agreement or instrument to which Denver Water is a party or by which it or its property is bound (including, without limitation, the Master (Parity) Bond Resolution and the Parity Bonds issued pursuant thereto), which default could, either individually or in the aggregate, reasonably be expected to have, in the determination of Denver Water, a material adverse effect on Denver Water's ability to perform its obligations under the Loan Documents, nor has any event occurred which with notice or the passage of time, or both, would constitute such a default under any such documents which, when taken as a whole, would either individually or in the aggregate reasonably be expected to have, in the determination of Denver Water, a material adverse effect on Denver Water's ability to

perform its obligations under the Loan Documents, except as may have been disclosed in writing to the Lender.

*Section 4.08. Taxes.* Denver Water has paid all federal, state and other material taxes, assessments, fees and other governmental charges, if any, levied or imposed upon Denver Water or its properties, income or assets, and due and payable, except those which are being contested in good faith by Denver Water.

*Section 4.09. Compliance with Requests for Information.* To the best of Denver Water's knowledge and belief, Denver Water has complied with all information requests, made in writing, of the Lender. All reports, statements and other information heretofore and hereafter provided by Denver Water to the Lender pursuant to this Credit Agreement are and shall be, to the best of Denver Water's knowledge and belief, true, accurate, complete and correct in all material respects as of the dates the same are provided to the Lender.

*Section 4.10. Compliance with Laws.* Denver Water is in compliance in all material respects with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of laws or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have, in the determination of Denver Water, a material adverse effect on Denver Water's ability to perform its obligations under the Loan Documents, except as may have been disclosed in writing to the Lender.

*Section 4.11. Environmental Laws.* Denver Water has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action, when taken as a whole, could reasonably be expected to have, in the determination of Denver Water, a material adverse effect on Denver Water's ability to perform its obligations under the Loan Documents, except as may have been disclosed in writing to the Lender.

*Section 4.12. Use of Proceeds.* The proceeds of the Loans will be applied by Denver Water solely for Capital Improvements of Denver Water.

*Section 4.13. Ownership of Property.* Denver Water's ownership of the System is not in dispute and is free and clear of any material claims or liens other than as heretofore disclosed to the Lender.

**ARTICLE V**  
**AFFIRMATIVE COVENANTS**

So long as any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, Denver Water makes the following affirmative covenants:

*Section 5.01. Financial Statements and Budget* Denver Water shall deliver or make available to the Lender the following; provided that availability of any such information on EMMA or on Denver Water's website shall constitute delivery of such information:

(a) as soon as available, and in any event within two hundred seventy (270) days after the end of each fiscal year of Denver Water, a copy of the Audited Financial Statements of Denver Water for such fiscal year; and

(b) as soon as available, and in any event within thirty (30) days after the commencement of each fiscal year of Denver Water, the authorized budget of Denver Water for such fiscal year.

*Section 5.02. Other Information.* Denver Water shall deliver or make available to or for inspection by the Lender, in form and detail satisfactory to the Lender, the following; provided that availability of any such information on EMMA or on Denver Water's website shall constitute delivery of such information:

(a) within ten (10) days after receipt thereof by a Responsible Officer of Denver Water, copies of each notice or other correspondence received from the IRS or the U.S. Securities and Exchange Commission concerning any investigation or possible investigation or other inquiry by either such agency regarding Denver Water;

(b) within ten (10) Business Days after the issuance of any Parity Bonds or other securities of Denver Water, copies of any prospectus, official statement, offering circular, placement memorandum or similar document, and any supplements thereto, that Denver Water made available in connection with the offering for sale of such Parity Bonds or other securities; and

(c) promptly, such additional information, to the extent that such information is by law available to the general public, regarding the business or financial affairs of Denver Water, or compliance with the terms of the Loan Documents, as the Lender may from time to time reasonably request.

*Section 5.03. Incorporation of and Compliance with Provisions of the Master (Parity) Bond Resolution.* Except to the extent compliance in any case or cases is waived in writing by the Lender, Denver Water shall perform and comply with, abide by and be restricted by each and every agreement, covenant, obligation and undertaking contained in the Master (Parity) Bond Resolution, subject in each case to the cure periods and exceptions set forth in the Master (Parity) Bond Resolution, which agreements, covenants, obligations and undertakings, together with the related definitions, exhibits and ancillary provisions and cure provisions and exceptions applicable thereto, are incorporated herein by reference and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety.

*Section 5.04. Rate Covenant; Issuance of Additional Obligations Payable from and Secured by a Lien on the Net Revenue.*

(a) *Maintenance of Rates.* Denver Water will use its best efforts to maintain, enforce and collect rates, fees, system development charges, participation payments, tap fees, availability fees, tolls and charges for services furnished by or the use of the System to create Gross Revenue, together with any Other Available Funds, each Fiscal Year sufficient to pay Operation and Maintenance Expenses and to create Net Revenue in an amount equal to not less than 100% of the amount necessary to pay when due any amounts required to be paid under this Credit Agreement, the Note and the Loans.

(b) *Additional Obligations Payable from the Net Revenue.* Nothing in the Loan Documents shall be deemed to preclude Denver Water from issuing additional obligations in compliance with the Master (Parity) Bond Resolution that are payable from and are secured by a lien on the Net Revenue that is superior to the lien of this Credit Agreement, the Note and the Loans. Additional Subordinate Lien Obligations may be issued by Denver Water for any lawful purpose provided that the following requirements have been complied with:

(i) At the time of issuance of any Additional Subordinate Lien Obligation, Denver Water is not in default in making any payments required by this Credit Agreement, the Note or the Loans.

(ii) The Net Revenue for the 12-month period ending with the most recently completed calendar quarter for which financial statements are available, together with any Other Available Funds, is sufficient to pay an amount representing not less than 100% of the average annual debt service requirements for the Outstanding Note and Loans and the additional Subordinate Lien Obligations proposed to be issued. For purposes of this test, the Net Revenue may be increased if there has been adopted a schedule of increases in rates, fees, system development charges, participation fees, tap fees, availability fees, tolls and charges during or since such preceding 12-month period by adding to the actual Gross Revenue for such preceding 12-month period an estimated sum equal to 100% of the estimated increase in Gross Revenue that would have been realized during such preceding 12-month period had such increase been in effect during all of the preceding 12-month period.

A written certificate by a Responsible Officer that the requirements of (i) and (ii) above have been met shall conclusively determine the right of Denver Water to authorize, issue, sell and deliver additional Subordinate Lien Obligations.

*Section 5.05. Compliance with Laws.* Denver Water shall comply in all material respects with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which such requirement of laws or order, write, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted.

*Section 5.06. Federal Tax Matters.* Denver Water shall not take any action or omit to take any action with respect to the Loans, the proceeds thereof or any other funds of Denver Water if such action or omission (i) would cause the interest on the Loans to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code or (ii) would

cause the interest on the Loans to lose its exclusion from State of Colorado taxable income or State of Colorado alternative minimum taxable income under State of Colorado taxable income under present State of Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full of the Loans until the date on which all obligations of Denver Water in fulfilling this covenant under the Code have been met.

## **ARTICLE VI NEGATIVE COVENANTS**

So long as any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, Denver Water covenants as follows:

*Section 6.01. Liens on the Net Revenue.* Denver Water shall not create, incur, assume or suffer to exist any lien upon any of the Net Revenue other than the liens created or permitted by the Master (Parity) Bond Resolution and the Loan Documents.

*Section 6.02. Amendment of the Master (Parity) Bond Resolution.* Denver Water shall not, without the prior written consent of the Lender, amend, supplement, modify or waive any of the provisions of the Master (Parity) Bond Resolution that in the sole determination of Denver Water will materially adversely affect the rights or security of the Lender under the Loan Documents; provided, however, that in no event shall the adoption of a supplement to the Master (Parity) Bond Resolution to authorize the issuance of additional Parity Bonds in accordance with the provisions of the Master (Parity) Bond Resolution be deemed to have a material adverse effect on the Lender.

*Section 6.03. Additional Obligations.* Except to the extent permitted by the Master (Parity) Bond Resolution, Denver Water shall not issue, enter into or incur any other financial obligation that has a pledge of or lien on the Net Revenue that is superior to the pledge and subordinate lien thereon of the Loans.

## **ARTICLE VII EVENTS OF DEFAULT AND REMEDIES**

*Section 7.01. Events of Default.* Any of the following shall constitute an Event of Default hereunder:

(a) *Non-Payment.* Denver Water fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any interest on any Loan within five (5) days after the same becomes due, or (ii) any other amount due under the Loan Documents within sixty (60) days after written notice thereof; or

(b) *Specific Covenants.* Denver Water fails to perform or observe any other covenant or agreement (other than in subsection (a) above) contained in the Loan Documents on its part to be performed or observed and such failure remains un-remedied for sixty (60) days after written notice thereof shall have been given by Denver Water to the Lender.

*Section 7.02. Remedies Upon Event of Default.* If any Event of Default occurs and is continuing, the Lender may take any or all of the following actions:

- (a) cease making any further Advances;
- (b) convert a Loan to a Term Loan, which such Term Loan shall conform to the provisions of Sections 2.04 and 2.07(d) hereof;
- (c) cause the Default Rate to apply to all outstanding Obligations of Denver Water; and
- (d) pursue any other remedies to which it is entitled under this Credit Agreement, at law or in equity.

*Section 7.03. Application of Funds.* After the exercise of remedies provided for in Section 7.02, any amounts received on account of the Obligations shall be applied by the Lender in the following order, subject in all cases to Section 7.04:

FIRST, to payment of that portion of the Obligations constituting fees, expenses and other amounts (including fees, charges and disbursements of counsel to the Lender) payable to the Lender in its capacity as such;

SECOND, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations;

THIRD, to payment of that portion of the Obligations constituting unpaid principal of the Loans; and

LAST, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Denver Water or as otherwise required by law.

*Section 7.04. Priority of Remedies Upon an Event of Default.* Notwithstanding anything contained in this Article to the contrary, upon the occurrence of an Event of Default, the rights and remedies of the Lender are subject to the superior rights and priority of the owners of any outstanding Parity Bonds.

## **ARTICLE VIII MISCELLANEOUS**

*Section 8.01. Amendments, Etc.* No amendment or waiver of any provision of the Loan Documents shall be effective unless in writing signed by the Lender and Denver Water.

*Section 8.02. Notices; Effectiveness; Electronic Communications.*

(a) *Notices Generally.* All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic transmission, to the applicable mailing address, electronic mail address or telephone number specified for such person on Schedule 8.02.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received.

(b) *Electronic Communications.* The Lender or Denver Water may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *Change of Address, Etc.* Denver Water or the Lender may change its address (physical or electronic) or telephone/facsimile number for notices and other communications hereunder by written notice to the other party.

(d) *Reliance by the Lender.* The Lender shall be entitled to rely and act upon any notices purportedly given by or on behalf of Denver Water even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Lender may be recorded by the Lender, and Denver Water hereby consents to such recording.

*Section 8.03. No Waiver; Cumulative Remedies; Enforcement.* No failure by the Lender to exercise, and no delay by the Lender in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained th the Loan Documents, the authority to enforce rights and remedies under the Loan Documents against Denver Water shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Lender in accordance with Section 7.02 for the benefit of the Lender.

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*Section 8.04. Expenses.*

(a) *Costs and Expenses.* [To be Proposed.]

(b) *Payments.* All amounts due under this Section shall be payable by Denver Water not later than ten (10) Business Days following receipt from the Lender of a demand therefor accompanied by a written statement of such amounts, together with supporting invoices or other documentation evidencing the amounts for which payment is demanded.

(c) *Survival.* The agreements in this Section shall survive the repayment, satisfaction or discharge of all the Obligations.

*Section 8.05. Binding Effect; Successors and Assigns.* The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Denver Water may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender.

*Section 8.06. Counterparts; Integration.* This Credit Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. The Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

*Section 8.07. Survival of Representations and Certifications.* All representations and certifications made under the Loan Documents or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and certifications have been or will be relied upon by, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default at the time of any Advance, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

*Section 8.08. Severability.* If any provision of the Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of the Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

*Section 8.09. Governing Law; Venue*

This Credit Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, the City Charter and any applicable resolution of the Board, including but not limited to the Master (Parity) Bond Resolution. The Master (Parity) Bond Resolution and the City Charter are expressly incorporated into this Credit Agreement.

Venue for any legal action relating to this Credit Agreement will be in the District Court of the State of Colorado Second Judicial District or, if jurisdictional prerequisites are met, in the U.S. District Court for the District of Colorado.

*Section 8.10. USA Patriot Act Notice.* The Lender hereby notifies Denver Water that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies Denver Water, which information includes the name and address of Denver Water and other information that will allow the Lender to identify Denver Water in accordance with such Act.

*Section 8.11. Time of the Essence.* Time is of the essence of the Loan Documents.

*Section 8.12. Electronic Execution of Assignments and Certain Other Documents.* The words “execution,” “signed,” “signature” and words of like import in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable laws, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

*Section 8.13. No Advisory or Fiduciary Responsibility.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification of the Loan Documents), Denver Water acknowledges and agrees that: (a) (i) the services regarding this Credit Agreement provided by the Lender are arm’s-length commercial transactions between Denver Water, on the one hand, and the Lender, on the other hand, (ii) Denver Water has consulted its own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (iii) Denver Water is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) (i) the Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary, for Denver Water, and (ii) the Lender does not have any obligation to Denver Water with respect to the transactions contemplated hereby except those obligations expressly set forth in the Loan Documents; and (c) the Lender and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Denver Water, and the Lender has no obligation to disclose any of such interests to Denver Water.

*Section 8.14. Governmental Immunity Act.* The parties understand and agree that the Board is relying upon, and has not waived, the monetary limitations, and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*, as it may be amended from time to time.

[Signature Page Follows]

IN WITNESS WHEREOF, Denver Water has caused this Credit Agreement to be duly executed as of the date first above written.

ATTESTED:

**CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS**

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

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

DATE: \_\_\_\_\_

APPROVED:

REGISTERED AND COUNTERSIGNED:  
CITY AND COUNTY OF DENVER

By: \_\_\_\_\_  
Chief Finance Officer

By: \_\_\_\_\_  
Timothy M. O'Brien, CPA  
Auditor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of General Counsel

IN WITNESS WHEREOF, the Lender has caused this Credit Agreement to be duly executed as of the date first above written.

\_\_\_\_\_, as Lender

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

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

Title: \_\_\_\_\_

**SCHEDULE 8.02  
CERTAIN ADDRESSES**

**BORROWER/DENVER WATER:**

City and County of Denver, Colorado,  
Acting by and through its Board of Water Commissioners  
1600 West 12<sup>th</sup> Avenue  
Denver, CO 80204  
Attention: \_\_\_\_\_  
Telephone: (303) \_\_\_\_ - \_\_\_\_  
Fax: (303) \_\_\_\_ - \_\_\_\_

***Denver Water's Account  
(for loan proceeds):***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Lender:**

***Lender's Office  
(for Requests for Advances):***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_ - \_\_\_\_

Attention: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
E-mail Address: \_\_\_\_\_

***Lender's Office  
(for payments):***

\_\_\_\_\_ ABA# \_\_\_\_\_  
\_\_\_\_\_, \_\_ - \_\_\_\_

Acct# \_\_\_\_\_

For Further Credit To:  
City and County of Denver, Colorado,  
Acting by and through its Board of Water Commissioners  
Obligor # \_\_\_\_\_

***Lender's Office  
(for other notices):***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_ - \_\_\_\_

Attention: [Government Services]  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
E-mail Address: \_\_\_\_\_

**EXHIBIT A  
FORM OF REQUEST FOR ADVANCE**

Date: \_\_\_\_\_, 20\_\_

To: \_\_\_\_\_  
\_\_\_\_\_

E-mail Address: \_\_\_\_\_

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated \_\_\_\_\_, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "*Agreement*;" the terms defined therein being used herein as therein defined), between the City and County of Denver, Colorado, acting by and through its Board of Water Commissioners ("*Denver Water*"), and \_\_\_\_\_, as Lender.

The undersigned, on behalf of Denver Water, hereby requests an Advance:

1. On \_\_\_\_\_ (a Business Day).
2. In the amount of \$ \_\_\_\_\_.
3. To the following account: **[Select appropriate Account below]**

<p><b>[CP Account]</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><b>[Denver Water's Account]</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
--	--

The Advance requested herein complies with the proviso to the first sentence of Section 2.01 of the Agreement.

Denver Water hereby represents that the conditions specified in Sections 3.02(c), (d), (e) and (f) of the Agreement have been complied with or are true and correct, as applicable, as of the date hereof.

CITY AND COUNTY OF DENVER, COLORADO,  
ACTING BY AND THROUGH ITS BOARD OF WATER  
COMMISSIONERS

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

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

Title: \_\_\_\_\_

**EXHIBIT B**  
**FORM OF CONVERSION NOTICE**

To: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

Ladies and Gentlemen:

This Conversion Notice is delivered pursuant to that certain Credit Agreement, dated \_\_\_\_\_, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "*Agreement*;" the terms defined therein being used herein as therein defined), between the City and County of Denver, Colorado, acting by and through its Board of Water Commissioners ("*Denver Water*"), and \_\_\_\_\_, as Lender.

1. You are hereby notified that:

Denver Water has elected to convert the followings Loan(s) to a Revolving Term Loan effective as of \_\_\_\_\_, 20\_\_, and maturing on \_\_\_\_\_, 20\_\_ (which date is not later than the 3<sup>rd</sup> anniversary of the conversion date):

Loan Date	Outstanding Principal Amount
-----------	---------------------------------

**-or-**

Denver Water has elected to convert the followings Loan(s) to a Term Loan effective as of the Maturity Date and maturing on \_\_\_\_\_, 20\_\_ (which date is not later than the 3<sup>rd</sup> anniversary of the Maturity Date):

Loan Date	Outstanding Principal Amount	Principal Amount to be Converted
-----------	---------------------------------	-------------------------------------

2. No Default or Event of Default has occurred and is continuing under the Agreement.

3. All representations and certifications of Denver Water in the Agreement are true and correct as of the date of this notice.

CITY AND COUNTY OF DENVER, COLORADO,  
ACTING BY AND THROUGH ITS BOARD OF WATER  
COMMISSIONERS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT C**

**FORM OF NOTE**

\$\_\_\_\_,\_\_\_\_,000

\_\_\_\_\_, 2018

FOR VALUE RECEIVED, the undersigned ("*Denver Water*"), hereby promises to pay to \_\_\_\_\_ or registered assigns ("*Lender*"), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of each Loan from time to time made by the Lender to Denver Water under that certain Credit Agreement, dated \_\_\_\_\_, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "*Agreement*;" the terms defined therein being used herein as therein defined), between Denver Water and the Lender.

Denver Water promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Lender for the account of the Lender in Dollars in immediately available funds at the Lender's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Note is authorized by the Agreement and entitled to the benefits thereof, and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also secured by a subordinate lien on the Net Revenue as provided in the Agreement. Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

Denver Water, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

[Remainder of this page intentionally left blank.]

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF COLORADO.

ATTESTED:

**CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS**

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

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

DATE: \_\_\_\_\_

APPROVED:

**REGISTERED AND COUNTERSIGNED:  
CITY AND COUNTY OF DENVER**

By: \_\_\_\_\_  
Chief Finance Officer

By: \_\_\_\_\_  
Timothy M. O'Brien, CPA  
Auditor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of General Counsel

**LOANS AND PAYMENTS WITH RESPECT THERETO**

DATE	AMOUNT OF LOAN MADE	AMOUNT OF PRINCIPAL OR INTEREST PAID THIS DATE	OUTSTANDING PRINCIPAL BALANCE THIS DATE	NOTATION MADE BY
<hr/>				

