

**THIS NOTE IS IN FULLY REGISTERED FORM AND IS NOT TRANSFERABLE  
EXCEPT ON THE REGISTRATION BOOKS OF BORROWER**

**COCHISE COUNTY REVOLVING LINE OF CREDIT**

**PROMISSORY NOTE**

JPMorgan Chase Bank, N.A.  
201 North Central Ave., Floor 21  
Phoenix, Arizona 85004

**DRAFT**

Date: July 1, 2012

Principal Amount: **\$2,750,000.00**

1. **PROMISE TO PAY AND INTEREST.** For value received, the undersigned, COCHISE COUNTY, ARIZONA, ACTING THROUGH THE COCHISE COUNTY TREASURER, AS ITS AGENT (“Borrower”) promises to pay to JPMORGAN CHASE BANK, N.A., or registered assigns (“Bank”) at its above office, or at such other place as Bank may designate in writing, in lawful money of the United States of America, in the principal sum of Two Million Seven Hundred and Fifty Thousand and NO/100 Dollars (**\$2,750,000.00**), or, if different, the unpaid amount disbursed by Bank by making Advances (as such term is defined in the Business Loan Agreement (Cochise County Revolving Line of Credit), dated of even date herewith (“Loan Agreement”), between Borrower and Bank, as it may be amended, modified, extended, renewed, restated, or supplemented from time to time), as shown on the records of Bank which, when in agreement with the records of Borrower, shall be conclusive as to such unpaid amount, with interest thereon from the date advanced at the Interest Rate. “Interest Rate” means any of the Qualified Tax Exempt Interest Rate set forth in Section 2, the Non-Qualified Tax Exempt Interest Rate set forth in Section 3, or the Taxable Interest Rate set forth in Section 4 below, as may be applicable from time to time

2. **QUALIFIED TAX EXEMPT INTEREST RATE.** If interest payable with respect to an Advance under this Note is not included in the gross income of Bank, or the registered owner if other than Bank, under the Internal Revenue Code of 1986 and the regulations thereunder, as such code and regulations heretofore have been and hereafter may be amended from time to time (“Code and Regulations”), and is not otherwise subject to the federal income tax, and if all of the requirements set forth in both Section 5(a) and Section 5(b) of this Note are met, then the Interest Rate applicable to the specific Advance (the “Qualified Tax Exempt Interest Rate”) shall be a rate per annum equal to \_\_\_\_\_ percent (XX.X%) of the Prime Rate, provided that in no event shall the Qualified Tax Exempt Interest Rate at any time exceed ten percent (10%) per annum. The Qualified Tax Exempt Interest Rate will be re-determined by Bank on each day that the Prime Rate changes and any change in the Qualified Tax Exempt Interest Rate will be effective on and after the date of such change and until the next change in the Qualified Tax Exempt Interest Rate.

3. **NON-QUALIFIED TAX EXEMPT INTEREST RATE.** If interest payable with respect to an Advance under this Note is not included in the gross income of Bank, or the registered owner if other than Bank, under the Code and Regulations, and is not otherwise

subject to the federal income tax, and if all of the requirements set forth in Section 5(a) of this Note are met, but not the requirements set forth in Section 5(b), then the Interest Rate applicable to the specific Advance (the “Non-Qualified Tax Exempt Interest Rate”) shall be a rate per annum equal to \_\_\_\_\_ percent (XX%) of the Prime Rate, provided that in no event shall the Non-Qualified Tax Exempt Interest Rate at any time exceed ten percent (10%) per annum. The Non-Qualified Tax Exempt Interest Rate will be re-determined by Bank on each day that the Prime Rate changes and any change in the Non-Qualified Tax Exempt Interest Rate will be effective on and after the date of such change and until the next change in the Non-Qualified Tax Exempt Interest Rate.

4. TAXABLE INTEREST RATE. If interest payable under this Note is included in the gross income of Bank, or the registered owner if other than Bank, under the Code and Regulations, or is otherwise subject to federal income tax, or if one or more of the requirements set forth in Section 5(a) of this Note are not met, the Interest Rate applicable to the specific Advance (the “Taxable Interest Rate”) during each calendar quarter shall be a rate per annum equal to one hundred ten percent (110.00%) of the previous quarter’s weighted average “prime rate” among the top three financial institutions by asset size in the State of Arizona.

5. REQUIREMENTS

(a) Tax Exempt Interest Rate. For each Advance, Borrower shall meet all of the following requirements to qualify for a Tax Exempt Interest Rate:

(i) Borrower signs and files with the United States Internal Revenue Service a properly completed Form 8038-G as and when required by the Code and Regulations and promptly delivers to Bank a copy of each filed Form 8038-G.

(b) Qualified Tax Exempt Interest Rate. For each Advance, Borrower shall meet all of the following requirements, in addition to the requirements set forth in paragraph (a) above, to qualify for a Qualified Tax Exempt Interest Rate:

(i) Borrower delivers to Bank a Declaration (as defined in the Loan Agreement) certifying that the indebtedness evidenced by this Note with respect to such Advance is a “Qualified Tax Exempt Obligation,” as such term is defined in Section 265 of the Code and Regulations.

(ii) The Advance is a “Qualified Tax Exempt Obligation,” as such term is defined in Section 265 of the Code and Regulations.

6. CERTAIN DEFINED TERMS.

(a) “Prime Rate” means the rate of interest per annum announced from time to time by the Bank, or Bank’s successors, in Phoenix, Arizona, as its prime rate. The Prime Rate is a variable rate and each change in the Prime Rate is effective from and including the date the change is announced as being effective. THE PRIME RATE IS A REFERENCE RATE AND MAY NOT BE THE BANK’S LOWEST RATE.

(b) “Tax Exempt Interest Rate” means either a Qualified Tax Exempt Interest Rate, or a Non-Qualified Tax Exempt Interest Rate.

7. TAXABILITY OF TAX EXEMPT INTEREST.

(a) Borrower agrees that in the event that Borrower pays interest at a Tax-Exempt Interest Rate on any portion of the sums outstanding hereunder, and

(i) the Internal Revenue Service determines that the interest on such portion is not exempt from federal income taxation, or

(ii) Bank is required to pay any sums as federal income taxes because of any assertion by the Internal Revenue Service (whether or not a final determination) that interest paid on such portion of the obligations of Borrower hereunder is not exempt from federal income tax,

then, the applicable interest rate hereunder for that portion shall be deemed always to have been the Taxable Interest Rate and Borrower shall, immediately upon request by Bank, pay to Bank the difference between (A) interest, computed at the Taxable Interest Rate, on any such portion at any time outstanding hereunder and (B) the interest already paid for such portion by Borrower under this Agreement. The obligations of Borrower under this section shall survive the termination of the Loan Documents and the repayment of sums borrowed hereunder.

(b) Borrower agrees that in the event that Borrower pays interest at a Qualified Tax-Exempt Rate on any portion of the sums outstanding hereunder, and

(i) the Internal Revenue Service determines that the interest on such portion is not subject to treatment as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Code, or

(ii) Borrower causes the amount of tax-exempt obligations issued in any calendar year for which such Borrower is paying interest at a Qualified Tax-Exempt Rate to exceed \$10,000,000; or

(iii) Bank is required to pay any sums as federal income taxes because of any assertion by the Internal Revenue Service (whether or not a final determination) that all or any portion of the obligations of Borrower hereunder are not “qualified tax-exempt obligations” as defined in Section 265(b)(3) of the Code,

then, the applicable interest rate hereunder for the portion that no longer qualifies as a Qualified Tax-Exempt Obligation shall be deemed always to have been the Non-Qualified Tax-Exempt Interest Rate and Borrower shall, immediately upon request by Bank, pay to Bank the difference between (A) interest, computed at the Non-Qualified Tax-Exempt Interest Rate, on any such portion at any time outstanding hereunder and (B) the interest already paid for such portion by Borrower under this Agreement. The obligations of Borrower under this section shall survive the termination of the Loan Documents and the repayment of sums borrowed hereunder.

8. PAYMENT IN FULL ON THE MATURITY DATE. Prior to June 30, 2013, or if the Commitment Expiration Date under the Loan Agreement has been extended by mutual agreement between Borrower, acting through its agent, the Cochise County Treasurer, and Bank, such Commitment Expiration Date (the "Maturity Date"), payments under this Note shall be made as Borrower receives "non-restricted operating revenues", as such term is used in Arizona Revised Statutes Section 11-604.01. On the Maturity Date, Borrower shall pay to Bank the unpaid principal, all accrued and unpaid interest, and all other amounts ("Other Amounts") payable by such Borrower to Bank under the Loan Documents. "Loan Documents" means this Note, the Loan Agreement, the Services Proposal (as defined in the Loan Agreement), and any other agreements, documents, and instruments relating to this Note, as they may be amended, modified, extended, renewed, restated, or supplemented from time to time. Nothing set forth in this Section 8 waives or otherwise modifies Borrower's obligation to pay principal, interest, and Other Amounts on dates prior to the Maturity Date, as required herein or in the Loan Agreement.

9. INTEREST.

(a) Principal shall bear interest at the Interest Rate from the date of disbursement until the due date thereof, whether by acceleration or otherwise. Principal, interest, and Other Amounts not paid when due and any judgment therefore shall bear interest from its due date or the judgment date, as applicable, until paid at a rate of ten percent (10%) per annum ("Default Rate"), and such interest shall be immediately due and payable.

(b) All interest under the Loan Documents shall be computed on the basis of a 365-day year and accrue on a daily basis for the actual number of days elapsed. Borrower agrees to pay an effective rate of interest that is the sum of (i) the Interest Rate provided herein and (ii) any additional rate of interest resulting from any other charges or fees paid or to be paid in connection herewith that are determined to be interest or in the nature of interest.

10. PAYMENT IN FULL PRIOR TO THE MATURITY DATE. Notwithstanding any other provision herein or in the Loan Documents, Borrower shall pay to Bank all outstanding principal, interest and Other Amounts on June 30 of each year. So long as Borrower makes such payment, Borrower shall, subject to the provisions of the Loan Agreement, continue to be entitled to Advances pursuant to the Loan Agreement prior to the Commitment Expiration Date specified therein. Principal, interest, and Other Amounts not paid on June 30 of each year shall bear interest from June 30 until paid at the Default Rate, and such interest shall be immediately due and payable.

11. APPLICATION OF PAYMENTS. At the option of Bank, payments shall be applied to principal, interest, and Other Amounts in such order as Bank shall determine.

12. PREPAYMENT. Borrower may prepay the outstanding principal balance hereof, in whole or in part, at any time prior to the Maturity Date without penalty or premium.

13. NO COUNTERCLAIMS, DEDUCTIONS, ETC. All payments and other obligations of Borrower under the Loan Documents will be made and performed without counterclaim, deduction, defense, deferment, reduction, or set-off.

14. EVENTS OF DEFAULT. Each of the following shall be an event of default (“Event of Default”):

(a) Failure by Borrower to pay when due (i) any amount payable by Borrower under any of the Loan Documents, or (ii) any other indebtedness of Borrower to Bank.

(b) Failure by Borrower to perform any material obligation not involving the payment of money, or to comply with any other term or condition applicable to Borrower, in any of the Loan Documents.

(c) Any representation or warranty made by Borrower in any of the Loan Documents or otherwise or any information delivered by Borrower to Bank in obtaining or hereafter in connection with the credit evidenced by this Note is or becomes materially incomplete, incorrect, or misleading from the representations or warranties made of the date of this Note or as of the date made or delivered.

(d) The occurrence of any change or other event that Bank determines has or will materially and adversely affect (i) any or all property, interests in property, or rights to property securing the obligations of Borrower under the Loan Documents, including without limitation the security interest in the non-restricted operating revenues received by the Cochise County Treasurer on behalf of Borrower (“Collateral”) as security for the obligations of Borrower under the Loan Documents, (ii) the financial condition of Borrower, or (iii) the ability of Borrower to pay the monetary obligations of Borrower under the Loan Documents.

(e) Borrower (i) is unable or admits in writing Borrower’s inability to pay Borrower’s monetary obligations as they become due, (ii) is generally not paying its debts as they become due, (iii) makes a general assignment for the benefit of creditors, or (iv) applies for, consents to, or acquiesces in, appointment of a trustee, receiver, or other custodian for Borrower or any or all of the property of Borrower, or in the absence of such application, consent, or acquiescence by Borrower a trustee, receiver, or other custodian is appointed for Borrower or any or all of the property of Borrower.

(f) Commencement of any case under the Bankruptcy Code (Title 9 of the United States Code) or commencement of any other bankruptcy, arrangement, reorganization, receivership, custodianship, or similar proceeding under any federal or state law by or against Borrower.

(g) Attachment, garnishment, levy of execution, or seizure by legal process of any or all Collateral of Borrower, except any pre-judgment attachment or garnishment of any or all Collateral.

(h) Any legal proceeding or other action against or affecting any or all Collateral of Borrower is commenced (including, without limitation, any prejudgment attachment or garnishment) and is not quashed, stayed, or released within twenty (20) days.

(i) Any Collateral of Borrower is sold, disposed of, or otherwise transferred by such Borrower after the date of this Note, not in the ordinary course of operations of Borrower.

(j) Any Collateral of Borrower becomes subject to any lien or security interest, other than the security interest granted to Bank in this Note.

(k) Any Collateral of Borrower is lost, stolen, suffers substantial damage or destruction, or is used in violation of any law, ordinance, regulation, or rule (federal, state, or local).

(l) Borrower abandons or, except for expenditure of funds included in the Collateral in the ordinary operations of Borrower, ceases to have exclusive possession of any Collateral or any books and records of Borrower relating to the Collateral.

(m) Borrower or any other person on behalf of Borrower claims that any Loan Document is not legal, valid, binding, and enforceable against Borrower, that any lien, security interest, or other encumbrance securing any of the obligations under the Loan Documents is not legal, valid, binding, and enforceable, or that the priority of any lien, security interest, or other encumbrance securing any of the obligations in the Loan Documents is different than the priority set forth in Arizona Revised Statutes Section 11-604.01 (except as such priority may be affected by the laws regarding garnishment of wages of Borrower's employees and federal and state tax liens for withholding taxes of Borrower's employees).

(n) The occurrence of any condition or event that is a default or is designated as a default, an event of default, or an Event of Default in any other Loan Document or in any agreement, document, or instrument relating to any other indebtedness of Borrower to Bank.

(o) The occurrence of any condition or event that is designated as a default or an event of default and the expiration of any cure period with respect to any other indebtedness of Borrower to any other person.

(p) The failure of Borrower to repay to Bank within five (5) Business Days of written notice from Bank to Borrower the amount by which the outstanding amount of Advances exceeds the Commitment.

15. RIGHTS AND REMEDIES OF BANK. Upon occurrence of an Event of Default, Bank may, at its option, in its absolute and sole discretion, and without demand or notice, (i) declare the obligations in the Loan Documents to be immediately due and payable, whereupon the obligations in the Loan Documents shall be immediately due and payable, and (ii) exercise any or all other rights and remedies of Bank concurrently or consecutively in such order as Bank elects. The rights and remedies of Bank shall be cumulative and non-exclusive. Delay, discontinuance, or failure to exercise any right or remedy of Bank shall not be a waiver thereof, or of any other right or remedy of Bank, or of the time, of the essence provision. Exercise of any right or remedy of Bank shall not cure or waive any Event of Default or invalidate any act done in response to any Event of Default.

16. LIMIT OF LIABILITY OF BANK. In exercising rights and remedies, neither Bank nor any stockholder, director, officer, employee, agent, or representative of Bank shall have any liability for any injury to the assets, business, operations, or property of Borrower or any other liability to Borrower, other than for its own gross negligence or willful misconduct.

17. PROVISIONS IN LOAN AGREEMENT GOVERN THIS AGREEMENT. This Note is subject to certain terms and provisions in the Loan Agreement, to which reference is made for a statement of such terms and provisions.

18. WAIVER OF STATUTE OF LIMITATIONS. Borrower waives, to the full extent permitted by law, the right to plead any statutes of limitations as a defense to any or all obligations under the Loan Documents.

19. WAIVERS BY BORROWER. Borrower (i) waives, to the full extent permitted by law, presentment, notice of dishonor, protest, notice of protest, notice of intent to accelerate, notice of acceleration, and all other notices or demands of any kind (except notices specifically provided for in the Loan Documents), and (ii) agrees that Bank may enforce this Note and any other Loan Documents against Borrower without first having sought enforcement against any Collateral.

20. JURY WAIVER. BORROWER AND BANK HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) BETWEEN BORROWER AND BANK ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO PROVIDE THE FINANCING DESCRIBED HEREIN.

21. WAIVER OF SPECIAL DAMAGES. BORROWER WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT BORROWER MAY HAVE TO CLAIM OR RECOVER FROM BANK IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

*[Signatures appear on following page]*

COCHISE COUNTY BOARD OF SUPERVISORS

By \_\_\_\_\_  
Title: Chairman, Board of Supervisors

**ATTEST:**

\_\_\_\_\_  
Clerk of the Board

COCHISE COUNTY, ACTING THROUGH THE  
COCHISE COUNTY TREASURER, AS ITS  
AGENT

By \_\_\_\_\_  
Ms. Marsha Bonham, Cochise County Treasurer

**APPROVED AS TO FORM:**

\_\_\_\_\_  
County Attorney