

**RULES AND REGULATIONS  
GOVERNING THE ECONOMIC DEVELOPMENT BOND PROGRAM  
UNDER THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT**

**AS**

**ADOPTED**

**ON December 1, 2009**

**BY THE**

**BOARD OF DIRECTORS**

**OF THE**

**NEW MEXICO FINANCE AUTHORITY**

**AND APPROVED BY THE**

**NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE**

**ON**

**December 17, 2009**

## SECTION 1. AUTHORITY

The New Mexico Finance Authority Economic Development Bond Rules and Regulations are adopted by the New Mexico Finance Authority pursuant to the Statewide Economic Development Finance Act, Sections 6-25-1 to 6-25-29 NMSA 1978, as amended, the purposes of which are to stimulate economic development in New Mexico and, to provide a method of implementing the economic development assistance provisions of Article IX, Section 14.D of the Constitution of the State . Section 6-25-5 NMSA 1978, as amended, provides that the New Mexico Finance Authority and the Department of Economic Development will coordinate to identify and evaluate potential projects' suitability for financing assistance and formulate recommendations. Section 6-25-6 NMSA 1978, as amended, gives the New Mexico Finance Authority certain powers and duties to enable it to implement a program to assist in financing projects, including the power to (i) issue project revenue bonds on behalf of an eligible entity, payable from the revenues of a project and other revenues authorized as security for the bonds, to finance a project on behalf of an eligible entity and (ii) to purchase project revenue bonds issued on behalf of an eligible entity or otherwise make loans for projects from the Economic Development Revolving Fund to eligible entities that establish one or more dedicated sources of revenue for repayment. Recovery Zone Facility Bonds authorized by the American Recovery Reinvestment Act of 2009 are bonds the issuance or purchase of which will assist the New Mexico Finance Authority in implementing the Statewide Economic Development Finance Act and these rules and regulations will provide a method of implementing the Recovery Zone Facility Bond provisions of the American Recovery Act of 2009.

## SECTION 2. PURPOSE OF RULES AND REGULATIONS

These rules and regulations are adopted, subject to approval of the New Mexico Finance Authority Legislative Oversight Committee, pursuant to Section 6-25-6(E) NMSA 1978, as amended. The purpose of these rules and regulations is to govern the New Mexico Finance Authority's implementation and administration of the project revenue bond program authorized in the Statewide Economic Development Finance Act which authorizes the Authority to issue project revenue bonds on behalf of an eligible entity (as defined by the Act), payable from the revenue of a project and other revenues authorized as security for the bonds, to finance a project on behalf of an eligible entity, including implementation and administration of the provisions of the ARRA applicable to Recovery Zone Facility Bonds. These rules and regulations do not apply to other programs established or administered by the Authority.

## SECTION 3. DEFINITIONS

A. "Act" means the Statewide Economic Development Finance Act, Sections 6-25-1 to 6-25-29 NMSA 1978, as amended;

B. "Agreement" means the written agreement entered into between the Authority and the Eligible Entity which specify the terms and conditions of obtaining Financial Assistance;

C. “Applicant” means a potential Eligible Entity that has filed an Application with the Authority and the Department for the issuance of Project Revenue Bonds;

D. “Application” means a written document filed with the Authority by an Applicant for the purpose of requesting the Authority to issue Project Revenue Bonds to provide financial assistance for the Applicant’s Project;

E. “American Recovery and Reinvestment Act of 2009” or “ARRA” means Pub. L. No. 111-5 Stat.115 (2009);

F. “Authority” means the New Mexico Finance Authority;

G. “Board” means the New Mexico Finance Authority Board of Directors;

H. “Department” means the New Mexico Department of Economic Development;

I. “Economic Development Committee” means a committee appointed by the chairman of the Board from the members of the Board and/or the Authority staff, and shall include the Secretary of the Economic Development Department (or the Secretary’s designee);

J. “Economic Development Goal” means (i) assistance to Rural and Underserved areas designed to increase business activity, (ii) retention and expansion of existing business enterprises, (iii) attraction of new business enterprises and (iv) creation and promotion of an environment suitable for the support of start-up and emerging business enterprises within the State, all as provided by Section 6-25-3F NMSA 1978, as amended, and is interpreted by the Authority and the Department to give priority to New Mexico-based companies whose Projects increase the State’s economic base, including creation or retention of jobs and increasing gross receipts collection, provide an adequate return on investment and are consistent with the economic development objectives of the State and the communities in which Projects are or will be located;

K. "Economic Development Revolving Fund" means the fund of that name created by the Act;

L. “Economic Development Revolving Fund Bonds” means bonds, notes or other instruments payable from the Economic Development Revolving Fund and issued by the Authority as provided by the Act, all as provided by Section 6-25-3G NMSA 1978, as amended;

M. “Eligible Entity” means a for-profit or not-for-profit business enterprise, including a corporation, limited liability company, partnership or other entity, determined by the Department to be engaged in an enterprise that serves an economic development

goal and is suitable for financing assistance, all as provided by Section 6-25-3H NMSA 1978, as amended;

N. "Financing Assistance" means financing provided by the Authority to or for Eligible Entities pursuant to the Act or the New Mexico Finance Authority Act (Sections 6-21-1 to 6-21-31 NMSA 1978, as amended) that may be in the form of Project Revenue Bonds, loans, loan participations or loan guarantees, and Financing Assistance may be funded from (among other sources) Project Revenue Bonds, the proceeds of Economic Development Revolving Fund Bonds or bond anticipation notes, lines of credit, or available money in the Economic Development Revolving Fund at interest rates determined by the Authority pursuant to the Authority's Economic Development Bond Policy;

O. "Internal Revenue Code" or "Code" means the Internal Revenue Code of 1986, as amended and the applicable regulations there under;

P. "Mortgage" means a mortgage, deed of trust or pledge of any assets as a collateral security, all as provided by Section 6-25-3L NMSA 1978, as amended;

Q. "Opt-In Agreement" means an agreement entered into between the Department and a qualifying county, a school district and, if applicable, a qualifying municipality that provides for county, local school district and, if applicable, municipal approval of a Project, subject to compliance with all local zoning, permitting and other land use rules, and for Payments in Lieu of Taxes to the qualifying county, local school district and, if applicable, qualifying municipality as provided by the Act, all as provided by Section 6-25-3M NMSA 1978, as amended;

R. "Oversight Committee" means the joint interim legislative committee established pursuant to § 6-21-30 NMSA 1978, as amended;

S. "Payment in Lieu of Taxes" means the total annual payment, including any State In-lieu Payment, paid as compensation for the Tax Impact of a Project, in an amount negotiated and determined in the "opt-in agreement" between the Department and the qualifying county, the school district and, if applicable, the qualifying municipality, which payment will be distributed to the county, municipality and school district in the same proportion as property tax revenues are normally distributed to those recipients, all as provided by Section 6-25-3N NMSA 1978, as amended;

T. "Pending Project" means a Project for an Eligible Entity seeking Project Revenue Bonds to be issued and purchased by the Authority (or seeking the receipt of other Financing Assistance involving money in the Economic Development Revolving Fund) that has been approved for submission to the New Mexico Legislature as required by 6-25-6 NMSA 1978 prior to receiving detailed analysis and final approval by the Authority;

U. "Program" means the Project Revenue Bond program authorized by the Act and these rules and regulations;

V. “Project” means a Standard Project or a State Project, all as provided by Section 6-25-3P NMSA 1978, as amended, including any Project that qualifies to be financed through the issuance of Recovery Zone Facility Bonds under the ARRA;

W. “Project Account” means a fund designated exclusively for receipt of Program funds in connection with a Project for an Eligible Entity;

X. “Project Revenue Bonds” means bonds, notes or other instruments authorized in Section 6-25-7 NMSA 1978, as amended, and issued by the Authority pursuant to the Act on behalf of Eligible Entities, all as provided by Section 6-25-3E NMSA 1978, as amended;

Y. “Quantifiable Benefits” means a Project's advancement of an Economic Development Goal as measured by a variety of factors, including (i) the benefits an Eligible Entity contracts to provide, such as local hiring quotas, job training commitments and installation of public facilities or infrastructure, and (ii) other benefits such as the total number of direct and indirect jobs created by the Project, total amount of annual salaries to be paid as a result of the Project, total gross receipts and occupancy tax collections, total property tax collections, total State corporate and personal income tax collections and other fee and revenue collections resulting from the Project as reported at least annually, all as provided by Section 6-25-3R NMSA 1978, as amended;

Z. “Recovery Zone Facility Bonds” bonds authorized by §§ 1400U-1 through 1400U- 3 of the Internal Revenue Code, which sections were added to the Code by the ARRA;

AA. “Rural and Underserved Areas” means communities in New Mexico that execute OptIn Agreements or that request assistance from the New Mexico Finance Authority in issuing Project Revenue Bonds on behalf of Eligible Entities.

BB. “Standard Project” means land, buildings, improvements, machinery and equipment, operating capital and other personal property for which Financing Assistance is provided for adequate consideration, taking into account the anticipated Quantifiable Benefits of the Standard Project, for use by an Eligible Entity as: (i) industrial or manufacturing facilities; (ii) commercial facilities, including facilities for wholesale sales and services; (iii) health care facilities, including hospitals, clinics, laboratory facilities and related office facilities; (iv) educational facilities, including schools; (v) arts, entertainment or cultural facilities, including museums, theaters, arenas or assembly halls; and (vi) recreational and tourism facilities, including parks, pools, trails, open space and equestrian facilities, all as provided by Section 6-25-3O NMSA 1978, as amended;

CC. "State" means the State of New Mexico;

DD. “State in-Lieu Payment” means an annual payment, in an amount determined by the Department, that will be distributed to a qualifying county, a school district

and, if applicable, a qualifying municipality in the same proportion as property tax revenues are normally distributed to those recipients, all as provided by Section 6-25-3T NMSA 1978, as amended;

EE. “Tax Impact of a Project” means the annual reduction in property tax revenue to affected property tax revenue recipients directly resulting from the conveyance of a Project to the Department, all as provided by Section 6-25-3V NMSA 1978, as amended;

FF. “State Project” means land, buildings or infrastructure for facilities to support new or expanding Eligible Entities for which Financing Assistance is provided pursuant to the economic development assistance provisions of Article IX, Section 14.D of the Constitution of the State, all as provided by Section 6-25-3U NMSA 1978, as amended.

If a term defined by this Section 3 and which is also defined by the Act is subsequently redefined by amendment to the Act, then that term as used in these rules and regulations shall be deemed to defined as such term is defined under the Act, as so amended.

#### SECTION 4. ELIGIBLE ENTITIES AND PROJECTS

The Authority is authorized by the Act to issue Project Revenue Bonds on behalf of Eligible Entities for State Projects and Standard Projects. Eligible Entities must be determined by the Department to be engaged in an enterprise that serves an Economic Development Goal and must be suitable for Financing Assistance. Project Revenue Bonds are payable from the revenue derived from a Project being financed by the bonds and from other revenues pledged by an Eligible Entity and may be secured as provided in the Act and determined by the Authority. Project Revenue Bonds are not general obligations of the Authority or the State within the meaning of any provision of the constitution of New Mexico and never give rise to a pecuniary liability of the Authority or the State or a charge against the general credit or taxing power of the State. Project Revenue Bonds may be purchased by the Authority with funds held in the Economic Development Revolving Fund or may be purchased by a third party.

#### SECTION 5. APPLICATION PROCEDURES FOR FINANCIAL ASSISTANCE; PROJECTS GENERALLY; PROJECTS RECEIVING FINANCING ASSISTANCE WITH MONEY IN THE ECONOMIC DEVELOPMENT REVOLVING FUND

A. In accordance with Sections 6-25-5 and 6-25-6 NMSA 1978, as amended, the Authority will coordinate with the Department to administer an outreach program to notify potential Eligible Entities and local governments that the Authority will consider issuing Project Revenue Bonds on behalf of Eligible Entities for Projects and to identify Projects that satisfy the basic requirements of the Program.

B. The Project Revenue Bond issuance process commences when an Applicant files a complete Application with the Authority. Applicants are responsible for notifying the Authority as soon as possible of subsequent material changes in the nature of the Project or the financing.

C. The Authority will provide a form of Application to be used by Applicants for the issuance of Project Revenue Bonds. An Application will include any required application fee in an amount determined by the Authority from time to time. The Authority will require the Applicant to include with the Application, among other items, the information necessary (i) to enable the Department to determine whether the Applicant is engaged in an enterprise that serves an Economic Development Goal, (ii) to enable the Authority to determine whether the Project is suitable for Financing Assistance, (iii) to enable the Authority to determine whether the Project is a State Project or a Standard Project, (iv) for State Projects, to enable the Authority to determine provisions necessary to ensure achievement of the Economic Development Goals of the State Project and to determine the means of recovering public money or other public resources if the Applicant defaults on its obligations to the Authority in connection with Financing Assistance, (v) for Standard Projects, to enable the Authority to determine whether the proposed Standard Project will involve adequate consideration for the Financing Assistance, taking into account the anticipated Quantifiable Benefits of the Standard Project, (vi) for Projects proposed to be financed through the issuance of the Recovery Zone Facility Bonds, to enable the Authority and Department to determine whether the Project meets the requirements of the ARRA applicable to the proposed financing, and (vii) such other information as is necessary or appropriate for the Authority to consider in making the determination whether to issue Project Revenue Bonds.

D. Under the Act, Projects requesting Financing Assistance involving money in the Economic Development Revolving Fund (including but not limited to Projects requesting that the Authority not only issue, but also purchase, some or all of the Project Revenue Bonds) must be approved by law. Because of (i) this approval requirement, (ii) the involvement in such Projects of money in the Economic Development Revolving Fund and (iii) the Authority's duties under the Act with respect to the management of the Fund, the Authority may require an Applicant to include additional information and documentation with an Application for such a Project, including, among other items, the information described in Sections 6.B. and 6.C. of these rules and regulations and any other information necessary to enable the Authority to determine whether to purchase the proposed Project Revenue Bonds (if requested to do so) or provide such other Financing Assistance.

E. The Authority will publish written materials stating the application requirements and shall update them as requirements change.

F. All communications with the Authority regarding Applications for the issuance of Project Revenue Bonds will be directed to the Authority's Chief Executive Officer or other staff member of the Authority designated by the chief executive officer. After a determination by the Department that a Project meets an Economic Development Goal, communications regarding the Application will be just with the Authority.

G. Standard Project Applications for the issuance of Project Revenue Bonds to be purchased by a person other than the Authority and not proposing receipt of Financing Assistance with money in the Economic Development Revolving Fund may be submitted at any time. Project

Revenue Bonds that will be purchased by the Authority (and other Projects proposing receipt of Financing Assistance with money in the Economic Development Revolving Fund) must, however, be approved by the State Legislature. In order to ensure a detailed review of an Application for Project Revenue Bonds to be purchased by the Authority and for other Projects proposing receipt of Financing Assistance with money in the Economic Development Revolving Fund, the completed Application must be received by the Authority no later than December 31 prior to the session of the Legislature at which the Project will be considered. An Application received after December 31 but prior to the end of the next legislative session may, at the option of the Authority, be submitted as a Pending Project to the State Legislature for the approval required by Section 6-25-6 NMSA 1978, as amended. Issuance of Project Revenue Bonds to be purchased by the Authority (and Financing Assistance for other Projects proposing receipt of Financing Assistance with money in the Economic Development Revolving Fund) will not occur prior to approval of the Project by the State Legislature and final approval by the Board. Project Revenue Bonds purchased by a person other than the Authority in a Standard Project, together with Standard Projects not proposing receipt of Financing Assistance with money in the Economic Development Revolving Fund, are not subject to approval by the New Mexico Legislature but must be approved by the Board.

H. All Pending Projects approved by the State Legislature will be subject to further analysis and final approval of financial feasibility by the Authority.

I. If requested by the Authority and whenever there has been a material change in the information submitted to the Authority, the Applicant will update the information provided pursuant to this Section 5, the Authority will share updated information with the Department.

J. If Project Revenue Bonds to be purchased by the Authority have not been issued within the time specified in the law constituting specific authorization for that project, then Project Revenue Bonds will not be issued for that Project until the State Legislature has again provided specific authorization for such Project or unless the Project Revenue Bonds are purchased by a person other than the Authority.

## SECTION 6. EVALUATION OF APPLICATION

The Authority will complete an evaluation of the Application and the proposed Project to determine Project feasibility, the Applicant's financial position, and economic and demographic factors.

A. Upon receipt of a complete Application, Authority staff will evaluate Applications for compliance with the Act, these rules and applicable, Authority policies and procedures. Staff will forward Applications determined to be complete and recommend for approval to the Economic Development Committee within 45 days of the application being deemed complete. Staff will notify Applicant if an Application is incomplete and shall describe the additional information needed to complete the Application for consideration by the Economic Development Committee. Staff will provide written notice to an Applicant of its decision not to recommend a completed Application for consideration by the committee. The written notice shall include an explanation of

the reasons for the decision not to recommend the Application for consideration by the Economic Development Committee.

B. Upon receipt of such written recommendations and upon determination by the Department that the Applicant is engaged in an enterprise that serves an Economic Development Goal, the Economic Development Committee will consider the Application and may confer with outside parties as necessary to obtain more information on the feasibility of the Applicant's Project, the creditworthiness of the Applicant or other relevant matters. Upon completion of its evaluation of the Application, the Economic Development Committee will make a written recommendation to the Board. Such recommendation will propose either approval or disapproval of the issuance of Project Revenue Bonds for specific Projects, will specify the total principal amount of such bonds, and, if applicable, will recommend either approval or disapproval of the purchase of such Project Revenue Bonds by the Authority. The Authority will (i) confirm with the Department that the Applicant is engaged in an enterprise that serves an Economic Development Goal and (ii) determine whether the Applicant is suitable for Financing Assistance and is, therefore, an Eligible Entity. Any recommendation for approval will include a finding that the Applicant is an Eligible Entity and will specify whether the Project is a State Project or a Standard Project, in which case the recommendation will note the consideration being provided and the adequacy thereof and will describe the anticipated Quantifiable Benefits of the Project. The Authority may apply different standards with respect to Quantifiable Benefits or other matter to State Projects than it applies to Standard Projects.

C. The Authority will evaluate each Application for the issuance of Project Revenue Bonds in accordance with this Section 6 of these rules and regulations. The Authority will evaluate an Application for Project Revenue Bonds based on, among other items:

- i. Whether the requirements of the Act and these rules and regulations have been met;
- ii. The industry area and geographic region of the proposed Project;
- iii. Project feasibility, which may include business plans, feasibility studies or appraisals as determined by the Authority;
- iv. The ability of the Applicant and/or the Project to provide revenues sufficient to service the debt involved with the Project Revenue Bonds and the Project;
- v. The ability of the Applicant to secure financing from other sources and the costs of such financing; and,
- vi. The ability of the Project to advance Economic Development Goals and to provide Quantifiable Benefits.

D. The Authority's evaluation will also take into account the Applicant's experience, legal history, financial history and current financial status the economic feasibility of the proposed Project. In this regard, the Authority may consider, among other matters:

- i. Recent Personal Financial Statements for principals with greater than 20% interest in the company and any guarantor, including any personal credit reports;
- ii. The education and work history of the officers, managers, members or partners of the Applicant;
- iii. The Applicant's experience in the industry and in managing projects similar to the proposed Project;
- iv. Assets and liabilities of the Applicant;
- v. Income and expenses of the Applicant;
- vi. Existence of liens or encumbrances on the Applicant's assets;
- vii. The Applicant's ability to service debt;
- viii. Loan-to-value, debt-to-equity or other applicable ratios;
- ix. The level of the Applicant's equity in the proposed project.

E. Once a recommendation has been made on the Application by the Economic Development Committee, the Board will consider the Application no later than the next regular board meeting at which such item may be properly considered, or 45 days after the Economic Development Committee action, whichever comes later. The Board may approve all or part of the Application as recommended by the Economic Development Committee and will either adopt the findings set forth in the recommendation with respect to eligibility, the nature of the Project, and the adequacy of consideration and Quantifiable Benefits or will specify the Board's own findings on those subjects. If the Authority will purchase the Project Revenue Bonds, the Board approval may specify, at the Board's discretion, terms and conditions of the Project Revenue Bonds as necessary to ensure repayment, including but not limited to, maximum bond term and minimum annual payments.

F. If the Authority is considering purchasing the proposed Project Revenue Bonds, the Authority will evaluate each Project to determine its feasibility. If the Authority believes there are basic flaws in the concept, design, or purpose of the Project or that the projected revenues of the Project, together with other dedicated sources of repayment, will not be sufficient to repay the Project Revenue Bonds, the Authority will not purchase the bonds.

G. The Authority will review each Application to determine whether the proposed Project advances the Economic Development Goals of the State in order to assist the Department (if requested) with the Department's determination on such issue. The anticipated Quantifiable Benefits of each proposed Project will be reviewed and considered by the Authority.

H. The Authority will notify the Applicant of the approval or disapproval of the Application by mailing written notification within seven working days of Board action on the Application.

I. During the Application process and, to the extent necessary, the bond issuance process, the Authority will coordinate with the Department to the extent necessary or appropriate to enable the Department to carry out its duties with respect to Opt-In Agreements, Payments in Lieu of Taxes, State In-Lieu Payments and related matters.

## SECTION 7. PROJECT FINANCING

Financing Assistance transactions will be structured, to the extent practicable, to enable the Authority to issue Economic Development Revolving Fund Bonds or bond anticipation notes, or to draw on lines of credit, to replenish the Economic Development Revolving Fund for moneys advanced from the Economic Development Revolving Fund to originate those transactions, through the pledge of all or a portion of the debt service obligations payable under the Financing Assistance for the benefit of Economic Development Revolving Fund Bond owners. The Authority may pledge loans to, and securities purchased from, Eligible Entities as assets under financing and bond documents arising out of the Economic Development Revolving Fund and the Authority may structure Financing Assistance as it deems necessary or appropriate for the placement of assets under various financing and bond documents related to the Economic Development Revolving Fund. The structure, terms and conditions of Financing Assistance, including but not limited to requirements for debt service reserves, revenue and collateral, will be further provided in the Authority's Economic Development Bond Policy. Financing Assistance for a Project or Projects may be pooled, at the discretion of the Authority. To the extent authorized by the Act or otherwise, loan guarantees may be used at the discretion of the Authority to assist Eligible Entities in securing bond credit ratings which result in the lowest interest rate reasonably possible. To the extent authorized by the Act or otherwise, the Authority may pledge available funds to guarantee the loans or bonds of (or issued on behalf of) Eligible Entities in the event that an Eligible Entity is unable to pay principal or interest on an outstanding obligation.

Project Revenue Bonds may be secured by Recovery Zone Facility Bonds purchased by the Authority from an entity authorized to issue Recovery Zone Facility Bonds under the ARRA using monies in the economic development revolving fund or monies otherwise legally available to the Authority, may be issued by the Authority as Recovery Zone Facility Bonds on behalf of eligible entities if authorized pursuant to the provisions of the ARRA, or may be purchased or issued by the Authority in any other form authorized by the ARRA, the Act or otherwise.

## SECTION 8. MECHANICS OF FINANCING TRANSACTION

A. The Authority will adopt Economic Development Bond Policies relating to the Program which will include procedures to be followed by Applicants and the Authority to accomplish the issuance of Project Revenue Bonds. The issuance of Project Revenue Bonds will be subject to all requirements and limitations imposed by the Act, these rules and regulation, such Policies and federal and State law, including without limitation and where applicable, the availability of sufficient volume cap at time of issuance of the bonds. Such Policies will be subject to change from time to time as deemed appropriate by the Authority.

B. All financing documents (which may include a lease agreement, a trust indenture, an official statement or other disclosure document, a bond purchase agreement, the bond resolution, and other documents) and other aspects of the transaction will be subject to review and approval by the Authority and its counsel. Financing documents for Project Revenue Bonds purchased by the Authority will include provisions entitling the Authority to all remedies available at law or in equity in the event of default by the Eligible Entity in the repayment of the bonds.

## SECTION 9. FINANCIAL ASSISTANCE AGREEMENT

Upon Board approval of the issuance of Project Revenue Bonds as provided by Section 6 of these rules and regulations, the Eligible Entity will enter into an Agreement with the Authority. The Agreement will express the terms and conditions of the Project Revenue Bonds and any other Financing Assistance as approved by the Board for the Project and will express the Applicant's acceptance of those terms and conditions. The issuance of the approved Project Revenue Bonds, together with any other approved Financing Assistance, is conditioned upon the execution and delivery by the Applicant of the Agreement and upon the performance by the Applicant of all obligations of the Applicant under the Agreement. Until the Eligible Entity has executed and delivered the Agreement to the Authority, the Authority will not be obligated to take any further action to implement the Financing Assistance approved by the Board and described by the Agreement. The Authority will monitor terms of the Agreement and will enforce all terms and conditions of the Agreement, which may include, without limitation, (i) the terms and conditions of the Project Revenue Bonds approved by the Board, (ii) requirements for delivery of annual or other periodic audit information by the Eligible Entity with respect to the Project and otherwise, (iii) provisions for books of account for the Project and the Eligible Entity governed by generally accepted accounting principals, (iv) provisions governing insurance, title or legal occupancy arrangements, (v) prohibitions against unlawful discrimination, (vi) posting of performance bonds and (vii) other measures necessary or appropriate to assure compliance with the Act, these rules and regulations, applicable policies of the Authority (including but not limited to the Authority's Economic Development Bond Policies), and other applicable laws and regulations. The Authority will take actions as necessary to ensure compliance with the Agreement by the Eligible Entity.

## SECTION 10. OPT-IN AGREEMENTS; TRANSACTION DOCUMENTS

A. Under the Act, the Department is to enter into Opt-In Agreements with counties,

school districts and municipalities for the purpose of facilitating local government approvals necessary to permit Projects to proceed. The Authority will provide the Department with such staffing and other assistance from the Authority as the Department requests in connection with proposed Opt-In Agreements.

B. As provided by Section 6-25-5B NMSA 1978, as amended, Opt-In Agreements will provide (i) for Project compliance with all applicable local land use regulations, (ii) for Payment in Lieu of Taxes to qualifying counties, school districts and, if applicable, qualifying municipalities to mitigate the Tax Impact of a Project, (iii) that Financing Assistance is conditioned upon compliance with all applicable ordinances, regulations and codes of local government concerning planning, zoning and development permitting and such other requirements as the Department and the county, school district and municipality may agree to include, (iv) that the Payments in Lieu of Taxes shall be distributed in a manner and in amounts calculated in accordance with the provisions of Section 6-25-14 NMSA 1978, as amended; and (v) that the county, school district or municipality reserves the right to withdraw from the Opt-In Agreement if it determines that the Project subject to the Opt-In Agreement does not satisfy the requirements enumerated in the Opt-In Agreement.

C. The Authority will prepare or arrange for the preparation of all transaction documents related to Project Revenue Bonds and other Financing Assistance for a Project where the Department is not a signatory. In connection with Projects approved for Financing Assistance which involve transfer of title to Project property to the Department for leasing to the Eligible Entity, the Authority will also prepare or arrange for the preparation of all transaction documents necessary or advisable for such transaction, including but not limited to Mortgages, lease agreements, deeds, bills of sale, collateral assignments, security agreements and financing statements.

#### SECTION 11. DETERMINATIONS WITH RESPECT TO DEPARTMENT LEASES WITH ELIGIBLE ENTITIES

In connection with Project Revenue Bonds, Section 6-25-8 NMSA 1978, as amended, requires the Authority to make certain determinations prior to the Department entering into a lease of Project property with an Eligible Entity. Upon submission by the Department of a proposed lease relating to proposed Project Revenue Bonds, the Authority will promptly determine (i) the amount necessary in each year to pay principal and interest on the Project Revenue Bonds to be issued to finance the Project, (ii) the amount necessary to be paid each year into reserve funds (if any) the Authority establishes in connection with retirement of the proposed Project Revenue Bonds and the maintenance and repair of the Project, and (iii) unless the lessee under such lease is required to maintain the Project property and carry all proper insurance with respect to the Project, the estimated cost of maintaining the Project in good repair and keeping the Project properly insured. The Authority will provide the Department with written results of such determination promptly upon completion of such determination by the Authority, and the determinations by the Authority will be set forth in the resolution of the Board under which the proposed Project Revenue Bonds are to be issued.

## SECTION 12. APPEALS OF CERTAIN MATTERS

A. Actions of the Board under the Act, these rules and regulations and the Authority's Economic Development Bond Policy are final, are not subject to appeal under these rules and regulations and are subject to challenge only as otherwise provided by law. In connection with Board action on a resolution authorizing issuance of Project Revenue Bonds, the Authority is required by the Act to publish notice of adoption of the resolution once in a newspaper of general statewide circulation, and any action attacking the validity of the proceedings taken by the Authority preliminary to and in the authorization and issuance of the Project Revenue Bonds described in the notice is perpetually barred by the Act after the passage of thirty days from such publication.

B. Notwithstanding the foregoing provisions of this Section 12, an Applicant may appeal an adverse decision of Authority staff on an Application by notifying the Authority in writing within fifteen days of the date on which notice of such an adverse decision is given by the Authority to an Applicant. Notice is deemed to be given to an Applicant on the fifth day following the date on which written notice is mailed to the Applicant by the Authority by First Class U.S. Mail. Notice is deemed to be given to the Authority when received by the chief executive officer of the Authority. If the deadline for an appeal falls on a weekend or legal holiday, the deadline shall be extended to the next business day. Appeals not timely or properly made will be barred thereafter. The Board or a designee of the Board will promptly review each timely appeal, will take action on the appeal and will notify the Applicant of the decision on the appeal, in writing, within thirty days after the Authority's decision.

## SECTION 13. ADMINISTRATIVE FEES.

A. The Authority may impose and collect a reasonable application fee in connection with the filing of an Application for the issuance of Project Revenue Bonds, taking into account whether the Authority is being requested to purchase the bonds.

B. The Authority may establish such other usual and customary charges, premiums, fees and penalties as it deems necessary for the administration of the Program.

## SECTION 14. ADMINISTRATION OF THE ECONOMIC DEVELOPMENT REVOLVING FUND; OTHER FUNDS.

The following provisions shall apply to the Economic Development Revolving Fund and shall be in addition to the provisions applicable under Section 12 of the rules and regulations governing the loan participation program under the Act adopted by the Authority on October 27, 2005 and approved by the Oversight Committee on November 2, 2005:

A. The Authority will establish accounts, sub-accounts and funds within the Economic Development Revolving Fund as necessary to implement the Program.

B. Under the Act, the money in the Economic Development Revolving Fund is appropriated to the Authority for the purposes provided by Section 6-25-13C NMSA 1978, as amended. Money in the Economic Development Revolving Fund not needed by the Authority for immediate disbursement (including money held in reserve, as allowed by the Act), may be deposited or invested in the same manner as other funds administered by the Authority under other provisions of New Mexico law.

C. The Authority may designate money on deposit in the Economic Development Revolving Fund as a reserve for Economic Development Revolving Fund Bonds issued for Financing Assistance provided from the Fund, and the Authority may covenant in any resolution or trust indenture to maintain and replenish the reserve from money deposited in the Economic Development Revolving Fund.

D. The Authority may use money in the Economic Development Revolving Fund to purchase Project Revenue Bonds which are payable from a designated source or revenues or collateral. As provided by the express provisions of Section 6-25-13F NMSA 1978, as amended, the purchase and holding of Project Revenue Bonds by the Authority does not result in cancellation or merger of the bonds, even though the Authority as the issuer of the bonds is obligated to make the debt service payments and the Economic Development Revolving Fund is entitled to receive the required debt service payments.

E. Money payable to the Authority from repayments of Project Revenue Bonds will be deposited in the Economic Development Revolving Fund. The Economic Development Revolving Fund will also consist of any other money appropriated, distributed or otherwise allocated to the Economic Development Revolving Fund for the purposes authorized by the Act.

#### SECTION 15. AMENDMENT OF RULES AND REGULATIONS.

These rules and regulations may be amended or repealed at any time by the Authority, with the prior approval of the Oversight Committee.

#### SECTION 16. EFFECTIVE DATE.

These rules and regulations shall be effective upon the adoption of the rules and regulations by the Board and approval of the rules and regulations by the Oversight Committee.