

Standard Form  
Net Revenues of the System  
Disadvantaged Funding Options  
Contingent Intercept Options  
Reserve Account Options  
Prepayment Options  
Capitalized Interest Options  
Additional Debt Terms, 10/23/25

[insert loan amount]

## LOAN AGREEMENT

dated

[insert closing date]

by and between the

NEW MEXICO FINANCE AUTHORITY

and [the]

[insert BORROWER'S NAME], NEW MEXICO

Certain interests of the NMFA under this Loan Agreement may be assigned to BOKF, NA, as trustee under the Indenture, as defined in Article I.

## LOAN AGREEMENT

THIS LOAN AGREEMENT dated the Closing Date is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the “NMFA”), and the [insert **BORROWER’S NAME**], NEW MEXICO (the “Governmental Unit”), a political subdivision duly organized and existing under the laws of the State of New Mexico (the “State”).

### W I T N E S S E T H:

WHEREAS, the NMFA is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the “NMFA Act”); and

WHEREAS, one of the purposes of the NMFA Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the NMFA to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the NMFA Act; and

WHEREAS, the Governing Body of the Governmental Unit, has determined that it is in the best interests of the Governmental Unit and its constituents that the Governmental Unit enter into this Loan Agreement with the NMFA and accept a loan from the NMFA to finance the costs of the Project; and

WHEREAS, the Governmental Unit is permitted and authorized to pay the Loan Agreement Payments through the Net Revenues of the System; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the NMFA has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the constituents of the Governmental Unit; and

WHEREAS, the Governmental Unit may qualify as a Disadvantaged Qualified Entity, as shown on the Term Sheet.

WHEREAS, the NMFA may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as shown on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement has been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Authorizing Legislation; and

WHEREAS, the execution and performance of this Loan Agreement has been authorized, approved and directed by all necessary and appropriate action of the NMFA; and

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants contained in this Loan Agreement, the parties agree:

## **ARTICLE I DEFINITIONS**

Capitalized terms defined in the recitals shall have the same meaning when used in this Loan Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement including the recitals, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined).

“Act” means the general laws of the State, including, the laws and enactments of the Governing Body relating to this Loan Agreement, including the Authorizing Legislation, as shown on the Term Sheet, all as amended and supplemented.

“Additional Payment Obligations” means payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required pursuant to the provisions of Article IX and Article X.

“Aggregate Annual Debt Service Requirement” means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorizing Legislation” means the Ordinance or Resolution, as shown on the Term Sheet, adopted by the Governing Body, approving this Loan Agreement, and pledging the Pledged Revenues to the payment of the Loan Agreement Payments.

“Authorized Officers” means, in the case of the Governmental Unit, the persons as shown on the Term Sheet and, in the case of the NMFA, the Chair, Vice-Chair and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the NMFA designated in writing by an Authorized Officer.

“Blended Interest Rate” means the rate of interest on this Loan Agreement as shown on the Term Sheet.

“Board Approval Date” means the date the Board of Directors of the NMFA approved the execution of this Loan Agreement, as shown on the Term Sheet.

“Bond Counsel” means nationally recognized bond counsel experienced in matters of municipal law satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semi-annually by The Bond Buyer’s Municipal Marketplace, or any successor publication.

“Bonds” means public project revolving fund revenue bonds, if any, issued by the NMFA to fund or reimburse this Loan Agreement.

“Capitalized Interest Account” means a subaccount established under the NMFA Debt Service Account in the name of the Governmental Unit, if any, held and administered by the NMFA pursuant to the Indenture.

“Capitalized Interest Amount” means the amount shown as the Capitalized Interest Account deposit on the Term Sheet, which amount shall be used for the payment of the initial Interest Components.

“Closing Date” means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Disadvantaged Loan Amount” means the portion of the Loan Agreement Principal Amount loaned to a Governmental Unit determined to be a Disadvantaged Qualified Entity at a below-market interest rate as shown on the Term Sheet.

“Disadvantaged Qualified Entity” means a disadvantaged qualified entity within the meaning of the NMFA’s Public Project Revolving Fund Loan Management Policies.

“Event of Default” means one or more events of default as defined in Section 10.1.

“Fiscal Year” means the period beginning on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may establish for the Governmental Unit as its fiscal year.

“Governing Body” means the duly organized governing body of the Governmental Unit and any successor governing body of the Governmental Unit as shown on the Term Sheet.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System and from the sale and use of water and sanitary sewer services or facilities, as applicable, or any other service, commodity or facility or any combination furnished to the inhabitants in the Service Area.

Gross Revenues do not include:

- (a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;
- (b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and
- (c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption, and except as provided in Section 2.1(dd) of this Loan Agreement.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the NMFA and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the NMFA and the Trustee, or the Junior Lien General Indenture of Trust and Pledge dated as of March 28, 2024, as amended and supplemented, by and between the NMFA and the Trustee, as determined by the NMFA pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Independent Accountant” means: (i) an accountant employed by the State and under the supervision of the State Auditor; or (ii) any certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Governmental Unit who (a) is, in fact, independent and not under the domination of the Governmental Unit; (b) does not have any substantial interest, direct or indirect, with the Governmental Unit; and (c) is not connected with the Governmental Unit as an officer or employee of the Governmental Unit, but who may be regularly retained to make annual or similar audits of the books or records of the Governmental Unit.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit “B”.

“Loan Agreement” means this loan agreement and any amendments or supplements, including the exhibits attached to this loan agreement.

“Loan Agreement Payment” means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit “B”.

“Loan Agreement Principal Amount” means the original principal amount of this Loan Agreement as shown on the Term Sheet.

“Loan Agreement Reserve Account” means the loan agreement reserve account established in the name of the Governmental Unit, if any, funded pursuant to Section 5.2(c) and as shown on the Term Sheet, and administered by the Trustee pursuant to the Indenture.

“Loan Agreement Reserve Requirement” means, as shown on the Term Sheet, the amount that does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

“Loan Agreement Term” means the term of this Loan Agreement as provided under Article III.

“Net Revenues” means the Gross Revenues after deducting Operation and Maintenance Expenses.

“NMFA Debt Service Account” means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the NMFA to pay principal and interest, if any, on this Loan Agreement as the same become due.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limitation:

- (a) Legal and overhead expenses of the various Governmental Unit departments directly related and reasonably allocable to the administration of the System;
- (b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;
- (c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;
- (d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;
- (e) The costs of audits of the books and accounts of the System;
- (f) Amounts required to be deposited in any rebate fund;
- (g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and
- (h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit's general fund, liabilities incurred by the Governmental Unit as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Parity Obligations" means this Loan Agreement, and any other obligations, now outstanding or subsequently issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

"Permitted Investments" means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or S&P Global Ratings; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, as amended, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to the Authorizing Legislation, as shown on the Term Sheet.

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit "B".

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

"Project" means the project(s) as shown on the Term Sheet.

"Service Area" means the area served by the System, whether situated within or without the limits of the Governmental Unit.

"Senior Obligations" means, if any, the Governmental Unit's outstanding obligations with a superior lien on the Pledged Revenues, and meeting the requirements of the Loan Agreement applicable to the issuance of Senior Obligations, including any such obligations shown on the Term Sheet.

"System" means the Governmental Unit owned public utility designated as the Governmental Unit's system shown on the Term Sheet consisting of all properties, real, personal,

mixed or otherwise, now owned or subsequently acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the system, and used in connection with or relating to the system, and any other related activity or enterprise of the Governmental Unit designated by the Governing Body as part of the system, whether situated within or without the limits of the Governmental Unit.

“Term Sheet” means Exhibit “A”.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed Trustee by the NMFA.

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit. The Governmental Unit represents, covenants and warrants for the benefit of the NMFA as follows:

(a) Binding Nature of Covenants; Enforceability. All representations, covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the representations, covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such representations, covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and enforceable in accordance with their terms, and upon any board or body to which any powers or duties affecting such representations, covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Authorizing Legislation shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No representation, covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a representation, covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Loan Agreement.

(c) Authorization of Loan Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, the Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and to carry out its special, limited obligations. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement less the deposits to the Loan Agreement Reserve Account, if any, and the NMFA Debt Service Account, if any, to the acquisition of the Project.

(e) Payment of Loan Agreement Payments. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B", according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from (i) the Pledged Revenues, (ii) special reserve funds of the NMFA (as determined by the NMFA, and subject to repayment from the Pledged Revenues), or (iii) the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may issue subject to Article VIII; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with the Act.

(g) Necessity of Project. The completion and acquisition of the Project under the terms and conditions provided for in this Loan Agreement are necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and are in the best interests of the Governmental Unit and the public it serves.

(h) Legal, Valid and Binding Special, Limited Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement, and this Loan Agreement constitutes a legal, valid and binding special obligation of the Governmental Unit enforceable in accordance with its terms.

(i) Loan Agreement Term. As shown on the Term Sheet, the weighted average maturity of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The Loan Agreement Principal Amount does not exceed the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve

Requirement, if any; and (iii) an amount necessary to pay the costs related to issuance of this Loan Agreement, if any.

(m) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement and the other documents related to the transaction, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the other documents related to the transaction, nor the consummation of the transactions contemplated by this Loan Agreement or the other documents related to this transaction, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Authorizing Legislation, shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, or provision for such payment has been made under Article VIII of the Loan Agreement, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments. The Governmental Unit shall not impair the rights of the NMFA or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding.

(o) Outstanding Debt. Except for the Parity Obligations or Senior Obligations, if any, shown on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity or superior lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness authorized by this Loan Agreement out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding. Prior to entering into additional indebtedness to be secured by a parity lien on the Pledged Revenues, the Governmental Unit shall comply with the terms of Section 5.5 and shall seek the written consent of the NMFA, and such consent shall not be unreasonably withheld. During the Loan Agreement Term, prior to entering into any indebtedness secured by a subordinate lien on the Pledged Revenues or a lien on any revenues of the Governmental Unit other than the Pledged Revenues, the Governmental Unit shall notify the NMFA in writing of such indebtedness.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or to comply with its obligation under this Loan Agreement. Neither the execution and delivery of this Loan Agreement by the Governmental Unit, nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(s) Expected Coverage Ratio The Pledged Revenues (giving credit for any increase in the Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, the amount shown on the Term Sheet, of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any Interest Component.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its legal identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the NMFA.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the NMFA, as the NMFA may require, that shall include, but not be limited to, annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the NMFA pursuant to the Indenture, and notification of any event deemed material by the NMFA.

(w) Use Charges. The Governmental Unit has established and will continue to charge reasonable rates for services rendered by the Governmental Unit for use of the System taking into account the cost and value of the System, Operation and Maintenance Expenses, proper allowances for depreciation, and the amounts necessary to make debt services payments from Net Revenues of the System. There shall be charged against users, rates and amounts which shall be increased from time to time, if necessary, and which shall produce Gross Revenues sufficient to pay the annual Operation and Maintenance Expenses and the amount shown on the Term Sheet, of the maximum Aggregate Annual Debt Service Requirement payable during the then current Fiscal Year.

(x) Efficient Operation. The Governmental Unit will operate the System so long as this Loan Agreement is outstanding, will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and sufficient to supply reasonable public and private demands for System services within the Service Area.

(y) Records. So long as the Loan Agreement remains outstanding, proper books of record and account will be kept by the Governmental Unit, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of customers separately for each utility system facilities; (ii) the revenues separately received from

charges by classes of customers, including but not necessarily limited to classification by utility system facilities; and (iii) a detailed statement of the expenses of the System.

(z) Right to Inspect. The NMFA and the Trustee shall have the right to inspect at all reasonable times all records, accounts and data relating to the System and to inspect the System and all properties comprising the System.

(aa) Audits. The Governmental Unit further agrees that, except where the State Auditor of the State performs the audit or where the due date for the audit has been postponed as may otherwise be required by the State Auditor or any other State office or agency with appropriate authority, the Governmental Unit will, within one hundred eighty (180) days following the close of each Fiscal Year, cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant. Each audit will be available for inspection by the NMFA. The Governmental Unit will provide the NMFA with a copy of each audit promptly upon the request of the NMFA. All expenses incurred in the making of the audits and reports required by this Section shall be regarded and paid as an Operation and Maintenance Expense.

(bb) Billing Procedure. Bills for public utility services or facilities, or any combination, furnished by or through the System, shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the Governmental Unit. If permitted by law, if a bill is not paid within the period of time required by such ordinance, the public utility services shall be discontinued as required by such ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Public utility services may be billed jointly with each other, provided that each such joint bill shall show separately the System charges.

(cc) Charges and Liens Upon System. The Governmental Unit will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the System. The Governmental Unit will not create or permit any lien or charge upon the System or the Gross Revenues except as provided in this Loan Agreement, or it will make adequate provisions to satisfy and discharge within sixty (60) days after the same accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the System or the Gross Revenues. However, the Governmental Unit shall not be required to pay or cause to be discharged, or make provision for any tax assessment, lien or charge before the time when payment becomes due or so long as the validity is contested in good faith by appropriate legal proceedings and there is no adverse effect on the NMFA or the Trustee.

(dd) Insurance. The Governmental Unit will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by

governmental entities which operate public utility systems. “Qualified Self Insurance” means insurance maintained through a program of self-insurance or insurance maintained with a fund, company or association in which the Governmental Unit may have a material interest and of which the Governmental Unit may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Governmental Unit determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged, and any remainder may be used to redeem Parity Obligations or be treated as Gross Revenues.

(ee) Alienating System. The Governmental Unit will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the System, or any part, including any and all extensions and additions that may be made, until this Loan Agreement shall have been paid in full, including the Principal Component and the Interest Component, except that the Governmental Unit may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of this Loan Agreement, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues of the System as provided in this Loan Agreement.

(ff) Competent Management. The Governmental Unit shall employ or contract for experienced and competent personnel to manage the System.

(gg) Performing Duties. The Governmental Unit will faithfully and punctually perform all duties with respect to the System required by the Constitution and the laws of the State and the ordinances and resolutions of the Governmental Unit and participants, if any, relating to the System and this Loan Agreement, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System.

(hh) Other Liens. Except as shown on the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the System or the revenues derived or to be derived from the operation of the System.

(ii) Completion Bonds. In order to insure the completion of the Project, the Governmental Unit will require that the contractor to whom is given any contract for construction appertaining to the Project supply a completion bond or bonds satisfactory to the Governmental Unit, and that any sum or sums derived from said completion bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

Section 2.2 Representations, Covenants and Warranties of the NMFA. The NMFA represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement. The NMFA is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement, by proper action, has duly authorized the execution and delivery of this Loan Agreement based upon the NMFA's findings that:

(i) As shown on the Term Sheet, the Governmental Unit may qualify as a Disadvantaged Qualified Entity in that its median household income is less than the percentage of the State median household income shown on the Term Sheet. The Disadvantaged Loan Amount is shown on the Term Sheet, if applicable.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the constituents of the Governmental Unit.

(b) Assignment of Rights. The NMFA may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, nor the consummation of the transactions contemplated in this Loan Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the NMFA is a party or by which the NMFA is bound or constitutes a default and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the NMFA or its property and which conflict or violation will have a material adverse effect on the NMFA or the financing of the Project.

(d) No Litigation. To the knowledge of the NMFA, there is no litigation or proceeding pending or threatened against the NMFA or any other person affecting the right of the NMFA to execute or deliver this Loan Agreement or to comply with its obligations under this Loan Agreement. Neither the execution and delivery of this Loan Agreement by the NMFA, nor compliance by the NMFA with its obligations under this Loan Agreement requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement constitutes the legal, valid and binding obligation of the NMFA enforceable in accordance with its terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The NMFA intends to reimburse the public project revolving fund (as defined in the NMFA Act) for the amount of the Loan Agreement Principal Amount from the proceeds of tax-exempt bonds which the NMFA expects to issue within eighteen (18) months of the Closing Date.

(g) Size of Loan Agreement Principal Amount. The Chief Executive Officer of the NMFA may determine to increase the amount of the Loan Agreement Principal Amount,

which amount is an increase from the principal amount approved by the Board of Directors of the NMFA and which increase is not more than ten percent (10%) of the principal amount approved by the Board of Directors of the NMFA, as required by the Public Project Revolving Fund Portfolio Management Policies.

### **ARTICLE III LOAN AGREEMENT TERM**

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII.

### **ARTICLE IV LOAN; APPLICATION OF MONEYS**

On the Closing Date, the NMFA shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited in the Governmental Unit's Program Account to be disbursed by the Trustee pursuant to the Indenture and pursuant to Section 6.2 of this Loan Agreement at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

(b) To the Trustee, the amount shown on the Term Sheet as the Loan Agreement Reserve Account deposit, if any, shall be deposited in the Governmental Unit's account maintained in the Loan Agreement Reserve Fund by the Trustee pursuant to the Indenture; and

(c) To the NMFA, the amount shown on the Term Sheet as the NMFA Debt Service Account deposit, if any, shall be deposited into the NMFA Debt Service Account to be maintained by the NMFA or its assignee and utilized as provided in Section 5.2; and

(d) To the NMFA, the amount shown on the Term Sheet as the Capitalized Interest Amount deposit, if any, shall be deposited into the Capitalized Interest Account.

### **ARTICLE V LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT**

Section 5.1 Loan Agreement Principal Amount to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The NMFA lends to the Governmental Unit and the Governmental Unit borrows from the NMFA an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the Pledged Revenues or special reserve funds of the NMFA (as determined by the NMFA, and subject to repayment from the Pledged Revenues), the Loan Agreement Payments. The Governmental Unit does convey, assign and pledge unto the NMFA and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent

required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the NMFA Debt Service Account, such account being held by the NMFA; (iii) the Program Account and the Loan Agreement Reserve Account, if any, such accounts being held by the Trustee; (iv) the Capitalized Interest Account, if any; and (v) all other rights granted in this Loan Agreement, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, according to the true intent and meaning of this Loan Agreement, or shall provide for such payments as permitted by Article VIII and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created under this Loan Agreement shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached as Exhibit "B".

The pledge of the Pledged Revenues and the lien created on the Pledged Revenues shall be effective upon the Closing Date. The Governmental Unit and the NMFA acknowledge and agree that the Loan Agreement Payments of the Governmental Unit are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

#### Section 5.2 Payment Obligations of Governmental Unit.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations) and the Capitalized Interest Account, if any, the Governmental Unit shall remit to the NMFA and the NMFA shall transfer and deposit into the NMFA Debt Service Account the Interest Components and the Principal Components from the Capitalized Interest Account or the Pledged Revenues received from the Governmental Unit, which the NMFA shall transfer to the Trustee in accordance with the Indenture.

(i) Interest Components. Amounts necessary to pay the Interest Components coming due on this Loan Agreement of each Fiscal Year as shown in Exhibit "B";

(ii) Principal Payments. Amounts necessary to pay the Principal Components coming due on this Loan Agreement of each Fiscal Year as shown in Exhibit "B".

(b) Each Loan Agreement Payment shall be transferred by the NMFA from the NMFA Debt Service Account to the Trustee in accordance with the Indenture.

(c) Loan Agreement Reserve Account.

(i) As shown on the Term Sheet, the Loan Agreement Reserve Requirement applies a second charge and lien on the Pledged Revenues received from the Governmental Unit after deposits in subsections (a) and (b) of this Section 5.2 have been made, and the Trustee shall transfer and deposit to the Loan Agreement Reserve Account, if any, amounts necessary to replenish the Loan Agreement Reserve Account, if any, to the Loan Agreement Reserve Requirement. Moneys in the Loan Agreement Reserve Account, if any, shall be held and administered by the Trustee and shall be used only to prevent deficiencies in the payment of the Principal Component and Interest Component of the Loan Agreement Payments resulting from a failure to deposit into the NMFA Debt Service Account sufficient funds to pay debt service requirements; provided, that the final two Interest Components and the final Principal Component on the Loan Agreement Payments shall be payable from the Loan Agreement Reserve Account, if any. If funds are withdrawn from the Loan Agreement Reserve Account, if any, to pay debt service, at the direction of the NMFA or the Trustee, additional Pledged Revenues shall be deposited into the Loan Agreement Reserve Account, if any, in amounts in annual installments sufficient to restore the amount on deposit in the Loan Agreement Reserve Account to the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided, that no additional Pledged Revenues shall be deposited to replenish the Loan Agreement Reserve Account, if any, following the transfer of the amount in the Loan Agreement Reserve Account, if any, to the NMFA Debt Service Account for payment of the final two Interest Components and the final Principal Component.

(ii) As shown on the Term Sheet, no deposit shall be required in the Loan Agreement Reserve Account so long as on the Closing Date or at any time thereafter, except in those events as shown on the Term Sheet, in which event the Governmental Unit shall promptly notify the Finance Authority and shall begin making substantially equal monthly deposits into the Loan Agreement Reserve Account from the first legally available Pledged Revenues such that after twenty-four (24) months an amount equal to the Loan Agreement Reserve Requirement will be held in the Loan Agreement Reserve Account. If funds are withdrawn from the Loan Agreement Reserve Account to pay debt service on the Loan at the direction of the Finance Authority or the Trustee, additional Pledged Revenues shall be deposited into the Loan Agreement Reserve Account in amounts sufficient to restore the amount on deposit therein to the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided, that no additional Pledged Revenues shall be deposited to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Component. Such accumulations required by this subsection (c) shall be made from Pledged Revenues, second and subordinate to the payments referred to in Section 5.2(a) of this Loan Agreement and to the payments for debt service on additional Parity Obligations.

The moneys (if any) in the Loan Agreement Reserve Account shall be accumulated and maintained as a continuing reserve to be used only to prevent deficiencies in the payment of the principal of and interest on the Loan Agreement resulting from failure to deposit

into the Finance Authority Debt Service Account sufficient funds to pay the principal and interest as the same become due.

(d) Notwithstanding any other provisions, the NMFA shall have the right to waive the requirement of the Loan Agreement Reserve Account, if any, and the Loan Agreement Reserve Requirement, and any moneys in the Loan Agreement Reserve Account, if any, may, at the written direction of the NMFA, be applied to the NMFA Debt Service Account, applied to the prepayment of the Loan Agreement pursuant to Article VIII, or released to the Governmental Unit for the Project or used for any other purposes provided by law. If amounts in the Loan Agreement Reserve Account, if any, are released by the NMFA, the references in this Loan Agreement to the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement shall be of no further force and effect.

(e) Subject to the deposits described in this Section 5.2, the NMFA or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit shall be paid in lawful money of the United States of America to the NMFA at the address designated in Section 11.1, for remittance to the Trustee. The obligation of the Governmental Unit to make payments, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided under this Loan Agreement, and payment shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the NMFA, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits under this Loan Agreement, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required under this Loan Agreement.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the NMFA under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6), the Governmental Unit shall obtain the written consent of the NMFA and it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the NMFA Debt Service Account and Loan Agreement Reserve Account, if any.

(b) No default shall exist in connection with any of the covenants or requirements of the Authorizing Legislation or this Loan Agreement.

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the “Historic Test Period”) shall have been sufficient to pay an amount representing the percentage shown on the Term Sheet (the “Additional Parity Bonds Test”), of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the Governmental Unit’s Treasurer or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(e) With prior written notice to the NMFA, no provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit’s option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subsection (e) of Section 5.5 and in subsections (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

**Section 5.7 Investment of Governmental Unit Funds.** Money on deposit in the NMFA Debt Service Account established by the NMFA may be invested by the NMFA in Permitted Investments at the discretion of the NMFA. Money on deposit in the Program Account and the Loan Agreement Reserve Account, if any, held by the Trustee and created under this Loan Agreement may be invested by the Trustee in Permitted Investments at the written direction of the NMFA or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit in said accounts and in accordance with the requirements of the Code.

**Section 5.8 Governmental Unit May Budget for Payments.** The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of the Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

## **ARTICLE VI THE PROJECT**

Section 6.1 Agreement to Acquire and Complete the Project. The Governmental Unit agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to complete the Project. The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2.

Section 6.2 Disbursements from the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approving opinion of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of Acquisition of the Project. Upon completion of the acquisition of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the NMFA and the Trustee substantially in the form of Exhibit "D" attached stating that, to the best of his or her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3, or in the event that the NMFA and the Trustee shall not have received a certificate of completion as required by Section 6.3 by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the NMFA Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

## **ARTICLE VII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS**

Section 7.1 Further Assurances and Corrective Instruments. The NMFA and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or

cause to be executed, acknowledged and delivered, such supplements and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention of this Loan Agreement.

Section 7.2 NMFA and Governmental Unit Representatives. Whenever the approval of the NMFA or the Governmental Unit is required, or the Governmental Unit or the NMFA is required to take some action at the request of the other, such approval or such request shall be given for the NMFA or for the Governmental Unit by an Authorized Officer of the NMFA or the Governmental Unit, as the case may be, and any party shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the NMFA shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

Section 7.6 Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers of the Governmental Unit are authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the NMFA and such additional certificates as shall be necessary to establish that this Loan Agreement is not an “arbitrage bond” within the meaning of Section 148 of the Code and the applicable Treasury Regulations promulgated or proposed, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and such Arbitrage and Tax Certificate will be incorporated by reference to the same extent as if set forth in this Loan Agreement. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term

with the requirements of Sections 103 and 141 through 150 of the Code and the applicable regulations proposed or promulgated. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date. If Bank Designation applies to this Loan Agreement as shown on the Term Sheet, the Governmental Unit further represents and covenants to comply with Section 7.7, which designates this Loan Agreement as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code.

**Section 7.7 Bank Designation of Loan Agreement.** As shown on the Term Sheet, for purposes of and in accordance with Section 265 of the Code, the Governmental Unit designates this Loan Agreement as an issue qualifying for the exception for certain qualified tax-exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax-exempt interest. The Governmental Unit reasonably anticipates that the total amount of tax exempt obligations (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by the Governmental Unit and by any aggregated issuer during the current calendar year will not exceed \$10,000,000. For purposes of this Section 7.7, “aggregated issuer” means any entity which: (i) issues obligations on behalf of the Governmental Unit; (ii) derives its issuing authority from the Governmental Unit; or (iii) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit represents that: (a) it has not created and does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 265(b)(3)(C) or (D) of the Code; and (b) the total amount of obligations so designated by the Governmental Unit, and all aggregated issuers for the current calendar year does not exceed \$10,000,000.

**Section 7.8 Arbitrage Rebate Exemption.** As shown on the Term Sheet, the Governmental Unit certifies and warrants, for the purpose of qualifying for the exception contained in Section 148(f)(4)(D) of the Code, to the requirement to rebate arbitrage earnings from investments of the proceeds of the Loan Agreement (the “Rebate Exemption”), that: (i) this Loan Agreement is issued by the Governmental Unit which has general taxing powers; (ii) neither this Loan Agreement nor any portion is a private activity bond as defined in Section 141 of the Code (“Private Activity Bond”); (iii) all of the net proceeds of this Loan Agreement are to be used for local government activities of the Governmental Unit (or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Governmental Unit); and (iv) neither the Governmental Unit nor any aggregated issuer has issued or is reasonably expected to issue any Tax-Exempt Bonds other than (A) Private Activity Bonds (as those terms are used in Section 148(f)(4)(D) of the Code) and (B) bonds issued to refund (other than to advance refund (as used in the Code)) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, during the current calendar year, which would in the aggregate amount exceed \$5,000,000. For purposes of this Section, “aggregated issuer” means any entity which: (a) issues obligations on behalf of the Governmental Unit; (b) derives its issuing authority from the Governmental Unit; or (c) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit represents that it has not created, does not intend to create and does not expect

to benefit from any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D) of the Code.

Accordingly, with respect to the Loan Agreement, the Governmental Unit will qualify for the rebate exemption granted under Section 148(f)(4)(D) of the Code and the Governmental Unit shall be treated as meeting the requirements of subsections (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States.

The Governmental Unit further represents and covenants that if it is determined that rebatable arbitrage, as that term is defined under Section 148 of the Code and related regulations, is required to be paid to the United States, that it will pay such rebatable arbitrage.

## **ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS**

Section 8.1 Prepayment. As shown on the Term Sheet, the Governmental Unit is granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after the time period shown on the Term Sheet without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the NMFA and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan Agreement Payments such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments shall also be deemed to have been paid, the Governmental Unit's payment obligations shall be terminated, this Loan Agreement and all obligations contained in this Loan Agreement shall be discharged and the pledge released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Governmental Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the NMFA have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the NMFA. Governmental Obligations within the meaning of this Section 8.2, unless otherwise approved by the NMFA, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

## **ARTICLE IX INDEMNIFICATION**

From and to the extent of the Pledged Revenues, and to the extent permitted by law, the Governmental Unit shall and agrees to indemnify and save the NMFA and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment of the Loan Agreement proceeds. The Governmental Unit shall indemnify and save the NMFA and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought and, upon notice from the NMFA or the Trustee, shall defend the NMFA or the Trustee, as applicable, in any such action or proceeding.

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

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsection (a) of this Section 10.1, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the NMFA or the Trustee unless the NMFA and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the NMFA or the Trustee but cannot be cured within the applicable thirty (30) day period, the NMFA and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part contained in this Loan Agreement, the Governmental Unit shall not be deemed in default under this subsection (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or

liquidation law of any jurisdiction, whether now or later in effect, and is not dismissed within thirty (30) days after such filing, but the NMFA and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or later in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession of any of its property and such order remains in effect or such possession continues for more than thirty (30) days, but the NMFA and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3, the NMFA or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the NMFA and the Trustee under this Loan Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained in this Loan Agreement;

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the NMFA or the Trustee;

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues;

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues;

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and to become due under this Loan Agreement or to enforce any other of its rights; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3, no remedy conferred upon or reserved to the NMFA or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement as now or later existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the NMFA or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The NMFA or the Trustee may in its sole discretion waive by written waiver any Event of Default and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the NMFA or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the NMFA or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the NMFA and the Trustee shall be restored to their former positions and rights, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained in this Loan Agreement should be breached by either party and waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions of this Loan Agreement and the NMFA or the Trustee shall employ attorneys or incur other expenses for the collection of payments, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit contained in this Loan Agreement, the Governmental Unit agrees that it shall on demand therefor pay to the NMFA or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed given when delivered as shown on the Term Sheet. The Governmental Unit, the NMFA, and the Trustee may, by notice given, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the NMFA, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Integration. This Loan Agreement and any other agreements, certifications and commitments entered into between the NMFA and the Governmental Unit on the Closing Date constitute the entire agreement of the parties regarding the funding of the Project as of the Closing Date, and the terms of this Loan Agreement supersede any prior applications, discussions, understandings or agreements between or among the parties in connection with the Loan Agreement, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Loan Agreement.

Section 11.4 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the NMFA, and, if the Loan Agreement has been pledged under the Indenture, without the prior written consent of the Trustee, the NMFA and the Governmental Unit, pursuant to the Indenture.

Section 11.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the NMFA, either directly or through the NMFA, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute, constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the NMFA is expressly waived and released by the Governmental Unit and by the NMFA as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.6 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Loan Agreement.

Section 11.7 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.8 Assignment by the NMFA. Pursuant to the Indenture, this Loan Agreement may be assigned and transferred by the NMFA to the Trustee, which assignment and transfer is acknowledged and approved by the Governmental Unit.

Section 11.9 Compliance with Governing Law. It is declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.10 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.11 Captions. The captions or headings are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

Section 11.12 Photographs and Other Media. Borrower hereby authorizes NMFA to reproduce and display any media (including, without limitation, photographs, video recordings, electronic images, illustrations and brief biographical information) of the Project, its principals and/or the Project Business submitted to the NMFA by Borrower, in connection with publicizing and promoting the NMFA, the Opportunity Enterprise Revolving Fund or for any other lawful purpose. Borrower represents and warrants to the NMFA that Borrower has obtained any and all licenses and/or permissions necessary for Borrower's and NMFA's use of such media.

*[Signature pages follow]*

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the NMFA, on behalf of itself, and as approved by the Board of Directors of the NMFA on the Board Approval Date, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Marquita D. Russel, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS OF  
THE NEW MEXICO FINANCE AUTHORITY:  
Sutin, Thayer & Browne A Professional Corporation  
As Loan Counsel

By \_\_\_\_\_  
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF  
THE NEW MEXICO FINANCE AUTHORITY:

By \_\_\_\_\_  
Mark Chaiken, General Counsel

[INSERT BORROWER'S NAME],  
NEW MEXICO

[SEAL]

By \_\_\_\_\_  
[insert name and elected title]

ATTEST:

By \_\_\_\_\_  
[insert name and administrative title]

7492019

SAMPLE

## **EXHIBIT “A”**

### **TERM SHEET**

New Mexico Finance Authority Loan No. PPRF-[insert number]

First Interest Payment Date: [insert first interest payment date]

First Principal Payment Date: [insert first principal payment date]

Final Payment Date: [insert final payment date]

### **Article I, Definitions**

Act: [if municipality: Sections 3-31-1 through 3-31-12] [if county: Sections 4-62-1 through 4-62-10] and [if conservancy district: Sections 73-14-1 through 73-14-92] OR [soil and water or watershed district: Sections 73-20-1 through 73-20-49] OR [water and sanitation district: Sections 73-21-1 through 73-21-55] OR [solid waste authority: Sections 74-10-1 through 74-10-100], NMSA 1978, as amended

Authorized Officers: [insert Borrower’s authorized officers]

Authorizing Legislation: [insert if Ordinance: Ordinance No. [insert] adopted on [insert date of adoption] OR [insert if Resolution: Resolution No. [insert] adopted on [insert date of adoption]

Blended Interest Rate: [insert from Final DSS]

Board Approval Date: [insert the board approval date – check minutes]

Closing Date: [insert closing date]

Governing Body: [insert name of Governing Body]

Governmental Unit: [insert Borrower’s Name], New Mexico

Loan Agreement  
Principal Amount: [insert amount from Final DSS]

Pledged Revenues: Net Revenues of the System

Project: [insert Project description from NMFA Staff Report] [include professional fees, attorney’s fees or costs of issuance, if applicable]

System: [Insert System description from NMFA Staff Report, e.g., water system, wastewater system, etc.]

## **Article II, Representations, Covenants and Warranties**

Loan Agreement Term

Section 2.1(i):

Reasonably Expected Life  
of the Project: [insert]

Weighted Average Maturity  
of the Loan Agreement: [insert]

Parity Obligations

Section 2.1(o): [insert from NMFA Staff Report and verify from transcripts for parity obligations]

Senior Obligations

Section 2.1(o): [insert from NMFA Staff Report and verify from transcripts for senior obligations]

Expected Coverage Ratio

Section 2.1(s): [insert from NMFA Staff Report]

Disadvantaged Qualified Entity

Section 2.2(a): The Governmental Unit [is **OR** is not] a Disadvantaged Qualified Entity.

Governmental Unit's Median

Household Income: [insert]

State Median Household Income: [insert]

Percentage of State Median  
Household Income: [insert]

Disadvantaged Loan Amount

Section 2.2(a)(i): [insert from Final DSS]

## **Article IV, Application of Moneys**

Program Account deposit

Section 4(a): [insert from Final DSS]

Loan Agreement Reserve Account deposit

Section 4(b): [insert from Final DSS]

NMFA Debt Service Account deposit:

Section 4(c): [insert from Final DSS]

Capitalized Interest Amount deposit

Section 4(d): [insert from Final DSS]

Capitalized Interest

Payment Dates:

[insert]

[insert]

[insert]

[insert]

## **Article V, Loan to the Governmental Unit, Payments by the Governmental Unit**

Loan Agreement Reserve

Account Deposit

Section 5.2(c)

[Insert if applicable: Section 5.2(c)(i) is applicable to this Loan Agreement.] **OR** [Section 5.2(c)(ii) is applicable to this Loan Agreement.] **OR** [Section 5.2(c) is not applicable to this Loan Agreement.]

Springing Reserve

Section 5.2(c)(ii):

[insert coverage or credit rating from NMFA staff report] **OR** [Section 5.2(c)(ii) is not applicable to this Loan Agreement.]

Additional Parity Bonds Test

Section 5.6(c):

[insert from NMFA Staff Report]

## **Article VII, Compliance with Laws and Rules, Other Covenants**

Tax Covenants

Section 7.6:

[insert as applicable: Section 7.6 is applicable to this Loan Agreement.] **OR** [Section 7.6 does not apply to this Loan Agreement.]

Bank Designation

Section 7.7:

[insert as applicable: Section 7.7 is applicable to this Loan Agreement.] **OR** [Section 7.7 does not apply to this Loan Agreement.]

Arbitrage Rebate Exemption

Section 7.8:

[insert as applicable: Section 7.8 is applicable to this Loan Agreement.] **OR** [Section 7.8 does not apply to this Loan Agreement.]

## **Article VIII, Prepayment of the Loan Agreement Payments**

Prepayment

Section 8.1:

[insert from NMFA Staff Report: (i.e., 10 years, 1 year)] **OR** [There is no option to prepay this Loan Agreement in whole or in part.]

## **Article IX, Miscellaneous**

Notices

Section 11.1:

Governmental Unit, [obtain address from Borrower],  
Attention: [obtain title from Borrower]

New Mexico Finance Authority, 810 W. San Mateo  
Road, Santa Fe, New Mexico 87501, Attention: Chief  
Executive Officer

Trustee, BOKF, NA, 100 Sun Avenue N.E., Suite 500,  
Albuquerque, New Mexico 87109, Attention: Trust  
Division

**PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A  
LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE NMFA BY  
BOND COUNSEL TO THE NMFA**

### **OR for Equity Funded Loans:**

**PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS  
THE NMFA APPROVES A LONGER PERIOD IN WRITING**

**EXHIBIT “B”**

**DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT**

[SEE ATTACHED]

**[obtain Final DSS from NMFA Staff]**

SAMPLE

**EXHIBIT "C"**  
**FORM OF REQUISITION**

RE: [insert loan amount] Loan Agreement by and between the [insert Borrower's name], New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA  
c/o New Mexico Finance Authority  
[PPRF@nmfa.net](mailto:PPRF@nmfa.net)

You are authorized to disburse from the Program Account - [insert Borrower's name], New Mexico ([insert year and purpose of loan]), with regard to the above-referenced Loan Agreement the following:

LOAN NO. PPRF-[insert number]

CLOSING DATE: [insert closing date]

REQUISITION NUMBER: \_\_\_\_\_

AMOUNT OF PAYMENT: \$ \_\_\_\_\_

PURPOSE OF PAYMENT: \_\_\_\_\_

|                                |  |
|--------------------------------|--|
| Payee's Name:                  |  |
| Address line 1 (no P.O. Boxes) |  |
| Address line 2 (optional)      |  |
| City                           |  |
| State                          |  |
| Postal Code                    |  |
| Country                        |  |

Each obligation, item of cost or expense mentioned is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – [insert Borrower's name], New Mexico ([insert year and purpose of loan]).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and (the) [insert Borrower's name], New Mexico, is not in breach of any of the covenants contained in the Loan Agreement.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, (the) [insert Borrower's name] shall and understands its obligation to complete the acquisition of the Project from other legally available funds.

Capitalized terms are used as defined or used in the Loan Agreement.

DATED: \_\_\_\_\_

By \_\_\_\_\_  
Authorized Officer of Governmental Unit

\_\_\_\_\_  
Print Name and Title

**EXHIBIT “D”**

**CERTIFICATE OF COMPLETION**

RE: **[insert loan amount]** Loan Agreement by and between the **[insert Borrower’s name]**, New Mexico, and the New Mexico Finance Authority (the “Loan Agreement”).

TO: New Mexico Finance Authority  
[PPRF@nmfa.net](mailto:PPRF@nmfa.net)

Rich Wood  
Senior Vice President, Corporate Trust  
BOKF, NA  
100 Sun Avenue NE, Suite 500  
Albuquerque, New Mexico 87109

LOAN NO. **PPRF-[insert number]**

**CLOSING DATE:** **[insert closing date]**

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. This certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms, are used as defined or used in the Loan Agreement.

DATED: \_\_\_\_\_

By \_\_\_\_\_

Authorized Officer of Governmental Unit

\_\_\_\_\_  
Print Name and Title