Loan/Grant Standard Form
GRT Pledge

[Note: If there is a Fiscal Administrator use Standard Form for Fiscal Administrator]
[Note: If 'System' is not a utility system revise accordingly]
Legislative Changes 05/2024

[**$ Total Amount of Loan/Grant**]

WATER PROJECT FUND LOAN/GRANT AGREEMENT

dated

[**Date of Closing**]

by and between the

NEW MEXICO FINANCE AUTHORITY,

and [the]

[**NAME OF ENTITY**], [**COUNTY**], NEW MEXICO

WATER PROJECT FUND
LOAN/GRANT AGREEMENT

THIS LOAN/GRANT AGREEMENT (the "Loan Agreement") dated the Closing Date is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the "NMFA"), and the [**NAME OF ENTITY**] in [**COUNTY NAME OR NAMES**], NEW MEXICO (the "Governmental Unit").

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 NMSA 1978, Sections 6-21-1 through 6-21-31, as amended (the "NMFA Act"); and

WHEREAS, the NMFA Act provides that the NMFA may make loans and grants from the Water Project Fund to Qualifying Entities for Qualifying Water Projects; and

WHEREAS, pursuant to the Act, the Water Trust Board has established the Board Rules governing the terms and conditions of loans and grants made from the Water Project Fund, as set out in Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC; and

WHEREAS, pursuant to the Board Rules, and as provided in the Policies, a Qualifying Entity is expected to receive some portion of its funding as a loan in order to maximize the potential for the return of funds to the Water Project Fund, thereby increasing the limited financial resources expected to be available in the Water Project Fund; and

WHEREAS, the Governmental Unit is a Qualifying Entity under the Act, is duly organized and validly existing under and pursuant to the laws of the State and more specifically, the applicable laws described in the Term Sheet, and is qualified for financial assistance as determined by the NMFA and approved by the Water Trust Board pursuant to the Board Rules, the Policies and the Act; and

WHEREAS, the Governmental Unit has determined that it is in the best interests of the Governmental Unit and the constituents it serves that the Governmental Unit enter into this Loan Agreement with the NMFA to borrow the Loan Amount from the NMFA and to accept the Grant Amount from the NMFA to finance the costs of the Project, this Project being more particularly described in the Term Sheet; and

WHEREAS, the Governmental Unit submitted applications for the Project on the Application Dates shown on the Term Sheet; and

WHEREAS, the Water Trust Board has recommended that the NMFA enter into and administer this Loan Agreement in order to finance the Project; and

WHEREAS, the NMFA approved financial assistance in the form of the Loan/Grant to the Governmental Unit, as shown on the Term Sheet (the “NMFA Board Approval Date”); and

WHEREAS, the Governmental Unit is willing to pledge the Pledged Revenues to the payment of the Loan Payments and Administrative Fee, with a super subordinate lien (but not an exclusive super subordinate lien) on the Pledged Revenues on parity with the Super Subordinate Obligations and subordinate to the lien on the Pledged Revenues of the Senior Obligations and the Subordinate Obligations; and

WHEREAS, the plans and specifications or project plan for the Project will be or have been approved by the NMFA (or by the New Mexico Environment Department or other appropriate agency or entity on behalf of the NMFA, pursuant to an agreement between such agency or entity and the NMFA), prior to the commencement of construction, and the plans and specifications or project plan for the Project incorporates available technologies and operational design for water use efficiency; and

WHEREAS, the execution and performance of this Loan Agreement have been authorized, approved and directed by all necessary and appropriate action of the Water Trust Board and the NMFA, and their respective officers and directors.

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).

“ACH Authorization” means the authorization for direct payment to the NMFA by ACH made by the Governmental Unit on the form required by the bank or other entity at which the account is held, from which the Pledged Revenues will be paid, as applicable and shown on the Term Sheet.

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

“Additional Funding Amount” means either (i) the amount to be provided by the Governmental Unit which includes the total value of the Soft Match or Hard Match (each as defined in Section 4.2 of the Policies) which, in combination with the Loan/Grant Amount and other moneys available to the Governmental Unit, is sufficient to complete the Project and to provide matching funds required to complete the Project or (ii) the portion of the Loan Amount being loaned to the Governmental Unit in lieu of the Soft Match or Hard Match, as shown on the Term Sheet.

"Administrative Fee" means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Governmental Unit and hardship waivers of payments granted to the Governmental Unit pursuant to Section 5.1(a)(iii).

"Application Dates" means, as shown on the Term Sheet, the New Mexico Water Trust Board Application date and the New Mexico Water Trust Board Readiness Application date of the Governmental Unit and pursuant to which the Governmental Unit requested funding for the Project.

"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 Payments.

"Authorized Officers" means, with respect to the Governmental Unit, the persons as shown on the Term Sheet; and with respect to 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.

"Board Rules" means Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC.

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

"Colonias Infrastructure Act" means NMSA 1978, Sections 6-30-1 through 6-30-8, as amended.

"Conditions" means the conditions to be satisfied prior to the submission of a request for payment or the disbursement of the Loan/Grant Amount, or any portion of the Loan/Grant Amount, from the Water Project Fund, or which otherwise apply to the performance of this Loan Agreement, including those set forth in the Term Sheet.

"County Gross Receipts Tax" means the revenues of a county local option gross receipts tax imposed pursuant to the Act and enacted by the Tax Ordinance on the gross receipts of all persons engaging in business within the Governmental Unit which provides for the Pledged Revenues, if applicable.

"DFA" means the department of finance and administration of the State.

"Distributing State Agency" means the department or agency of the State, as shown on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Eligible Items" means eligible Project costs for which grants and loans may be made pursuant to NMSA 1978, Section 72-4A-7(C), as amended, of the Act, the Board Rules and applicable Policies, and includes, without limitation, Eligible Legal Costs.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Governmental Unit for transaction of the Project, in an amount not exceeding ten (10) percent of the Loan/Grant Amount, but does not include adjudication services.

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

“Final Debt Service Schedule” means the schedule of Loan Payments due on this Loan Agreement following the Final Requisition, as determined on the basis of the Loan Amount.

“Final Requisition” means the final requisition of moneys to be submitted by the Governmental Unit, which shall be submitted by the Governmental Unit on or before the expiration of the Interim Period as provided in Section 5.3.

“Fiscal Year” means the period commencing 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.

“Force Majeure” means acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; an order of any kind of the Government of the United States or of the State or civil or military authority or any court of competent jurisdiction; or any other act or condition that was beyond the reasonable control of, without fault or negligence of, or not reasonably foreseeable by the party claiming the Force Majeure event; except for (i) general economic conditions; or (ii) an inability of a party claiming the Force Majeure event to pay any debts when due.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Governmental Unit, consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board, or other principle-setting body acceptable to the NMFA, establishing accounting principles applicable to the Governmental Unit.

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

“Grant” or “Grant Amount” means the amount provided to the Governmental Unit as a grant pursuant to this Loan Agreement for the purpose of funding the Project and shall not exceed the total amount of the grant, as shown on the Term Sheet.

“Hardship Waiver” means a determination by the NMFA pursuant to Section 5.1(a)(iii) that the annual principal payment by the Governmental Unit should be forgiven because such payment would cause undue hardship for the Governmental Unit or the constituents it serves.

“Interest Component” means the portion of each Loan Payment paid as interest on this Loan Agreement, if any, as shown on <u>Exhibit “B”</u>.

“Interim Debt Service Schedule” means the anticipated schedule of Loan Payments due on this Loan Agreement following the Final Requisition, assuming disbursement of the entire Loan

Amount within twenty-four (24) months of the Closing Date. The Interim Debt Service Schedule is attached as Exhibit "B".

"Interim Period" means the period no greater than twenty-four (24) months, unless a longer period is approved by the NMFA as provided in Section 5.3, beginning on the Closing Date, during which the NMFA will disburse moneys to the Governmental Unit to pay costs of the Project.

"Lien Status" means the designation of this Loan Agreement as a Senior Obligation, Subordinate Obligation, or Super Subordinate Obligation, as shown on the Term Sheet.

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

"Loan" or "Loan Amount" means the amount provided to the Governmental Unit as a loan pursuant to this Loan Agreement for the purpose of funding the Project and if applicable, includes the Additional Funding Amount, and shall not equal more than Loan Amount shown on the Term Sheet.

"Loan/Grant" or "Loan/Grant Amount" means the combined amount partially provided to the Governmental Unit as the Grant Amount and partially borrowed by the Governmental Unit as the Loan Amount pursuant to this Loan Agreement for the purpose of funding the Project and shall not equal more than the Loan/Grant Amount shown on the Term Sheet.

"Loan Payments" means, collectively, the Principal Component, Administrative Fee and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit "B".

"Municipal Gross Receipts Tax" means the revenues of a municipal local option gross receipts tax imposed pursuant to the Act and enacted by the Tax Ordinance on the gross receipts of all persons engaging in business within the Governmental Unit which provides for the Pledged Revenues, if applicable.

"Parity Obligations" means any obligations of the Governmental Unit under this Loan Agreement and any other obligations now outstanding or subsequently issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, consistent with the Lien Status of this Loan Agreement.

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

"Policies" means the Water Trust Board Water Project Fund Project Management Policies approved by the Water Trust Board and the NMFA, as amended and supplemented from time to time.

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

“Project” means the project(s) described on the Term Sheet.

“Project Account” means the book account established by the NMFA in the name of the Governmental Unit for purposes of tracking expenditure of the Loan/Grant Amount by the Governmental Unit to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the NMFA.

“Project Phase” means the design and/or construction phase of the Project, as shown on the Term Sheet.

“Qualifying Entity” means, as defined by the Act, a state agency, a political subdivision of the state, an intercommunity water or natural gas supply association or corporation organized under NMSA 1978, Sections 3-28-1 through 3-28-22, as amended, a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in the State or an association of such entities created pursuant to the Joint Powers Agreements Act pursuant to NMSA 1978, Sections 11-1-1 through 11-1-7, as amended, or other authorizing legislation for the exercise of their common powers.

“Qualifying Water Project” means a water project for (i) storage, conveyance or delivery of water to end-users; (ii) implementation of the federal Endangered Species Act of 1973 collaborative programs; (iii) wastewater conveyance and treatment; (iv) restoration and management of watersheds; (v) flood prevention; or, (vi) water conservation or recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to NMSA 1978, Section 72-4A-9(B), as amended.

“Senior Obligations” means the outstanding “Senior Obligations” shown on the Term Sheet, and any other obligations now outstanding or hereafter issued or incurred, payable from or secured by a senior lien (but not an exclusive senior lien) on the Pledged Revenues and issued with a lien on the Pledged Revenues senior to the lien on the Pledged Revenues of any Subordinate Obligations and Super Subordinate Obligations.

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

“Subordinate Obligations” means the outstanding “Subordinate Obligations” shown on the Term Sheet, and any other obligations now outstanding or hereafter issued or incurred, payable from or secured by a subordinate lien (but not an exclusive subordinate lien) on the Pledged Revenues and issued with a lien on the Pledged Revenues subordinate to the lien on the Pledged Revenues of any Senior Obligations and senior to the lien on the Pledged Revenues of any Super Subordinate Obligations.

“Super Subordinate Obligations” the outstanding Super Subordinate Obligations shown on the Term Sheet and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a super subordinate lien (but not an exclusive super subordinate lien) on the Pledged Revenues and issued with a lien on the Pledged Revenues subordinate to the lien on the Pledged Revenues of any Senior Obligations and Subordinate Obligations.

“State” means the State of New Mexico.

"State Board of Finance" means the State board of finance created pursuant to NMSA 1978, Sections 6-1-1 through 6-1-13, as amended.

"State Shared Gross Receipts Tax" means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4, NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Distributing State Agency to the Governmental Unit as authorized by Sections 7-1-6.1, 7-1-6.4 and 7-1-6.15 NMSA 1978, all as amended, and which remittances as of the date of adoption of the Resolution are equal to the product of the quotient of one and two hundred twenty-five thousandths percent (1.225%) divided by the tax rate imposed by Section 7-9-4, NMSA 1978, as amended, multiplied by the net receipts, except net receipts attributable to a nonprofit hospital licensed by the department of health, for the month attributable to the gross receipts tax from business locations pursuant to Section 7-1-6.4, NMSA 1978, as amended, subject to any increase or decrease made pursuant to Section 7-1-6.15, NMSA 1978, as amended, which revenues are designated as the "state-shared gross receipts tax," which provides for the Pledged Revenues, if applicable.

"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.

"Supplemental Municipal Gross Receipts Tax" means the revenues of a supplemental municipal gross receipts tax imposed pursuant to the Act and enacted by the Tax Ordinance on the gross receipts of all persons engaging in business within the Governmental Unit which provides for the Pledged Revenues, if applicable.

"Tax Ordinance" means, if any, the ordinance passed and approved by the Governmental Unit pursuant to the Act, as shown on the Term Sheet.

"Term Sheet" means Exhibit "A".

"Useful Life" means the structural and material design life of the Project including planning and design features, as required by the Act and the Board Rules.

"Water Project Fund" means the fund of the same name created pursuant to the Act and held and administered by the NMFA.

"Water Trust Board" means the water trust board created and established pursuant to the Act.

"WTB Approval Date" means the date the Water Trust Board approved the execution of this Loan Agreement, as shown on the Term Sheet.

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) Authorization of Agreement. The Governmental Unit is a Qualifying Entity as defined in the Act and the Board Rules. Pursuant to the laws of the State and in particular, the laws governing its creation and existence, as amended and supplemented from time to time, the Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations under this Loan Agreement. The Governmental Unit has duly authorized and approved its acceptance of the Loan and the execution and delivery of this Loan Agreement and the other documents related to the transaction described in this Loan Agreement, and this Loan Agreement and the other documents related to the transaction to which the Governmental Unit is a party constitute legal, valid and binding special obligations of the Governmental Unit enforceable against the Governmental Unit in accordance with their respective terms.

(c) Nature and Use of Loan Agreement Proceeds. The Governmental Unit acknowledges that the distribution of the Loan/Grant Amount shall be deemed to be a distribution to the Governmental Unit of proceeds representing the Loan Amount and the Grant Amount on a *pro rata* basis from the maximum Loan Amount and Grant Amount. The Governmental Unit shall apply the proceeds of the Loan/Grant solely to Eligible Items that will facilitate the completion of the Project, and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant Amount, together with the Additional Funding Amount and other moneys reasonably expected to be available to the Governmental Unit, is sufficient to complete the Project in its entirety.

(d) Payment of Loan Amount. The Governmental Unit shall promptly pay the Loan Amount and Administrative Fee, as specified in Exhibit "B", except when a Hardship Waiver is obtained pursuant to Section 5(a)(iii). The Loan Payments shall be payable solely from Pledged Revenues and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to make the Loan Payments from any general or other fund of the Governmental Unit other than the Pledged Revenues; however, nothing in this Loan Agreement 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.

(e) Scope of Project; Completion of Project; Compliance with Laws. The Project is for (i) storage, conveyance or delivery of water to end users; (ii) implementation of federal Endangered Species Act of 1973 collaborative programs; (iii) wastewater conveyance and treatment; (iv) restoration and management of watersheds; (v) flood prevention; or (vi) water conservation or recycling, treatment or reuse of water as provided by law, as shown on the Term Sheet. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. The Project is more particularly described in the Term Sheet. The Project will be completed with all practical dispatch and will be completed, operated and maintained so as to comply with all applicable federal, state and local laws, ordinances, resolutions and regulations and all current and future orders of all courts having jurisdiction over the Governmental Unit relating to the acquisition, operation, maintenance and completion of the Project and to the use of the Loan/Grant proceeds.

(f) Necessity of Project. The completion and operation of the Project under the terms and Conditions provided in this Loan Agreement are necessary, convenient, and in furtherance of the governmental purposes of the Governmental Unit and are in the best interest of the Governmental Unit and the constituents it serves.

(g) Lien. The Loan Payments constitute an irrevocable lien on the Pledged Revenues, the priority of which is consistent with the Lien Status.

(h) Loan Agreement Term Not Less than Useful Life. The Loan Agreement Term is not less than the Useful Life of the Project, as required by NMSA 1978, Section 72-4A-7, as amended, of the Act.

(i) Amount of Agreement. The sum of the Grant Amount, the Loan Amount, and the Additional Funding Amount does not exceed the cost of the Project.

(j) 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, 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.

(k) 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 the Project has been fully acquired and completed, and the Loan Amount, including all principal and interest has been repaid, or provision made for payment under this Loan Agreement, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of the Loan Payment or which would result in any use of the proceeds of this Loan Agreement in a manner not permitted or contemplated by the terms of this Loan Agreement. 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 Loan Agreement is outstanding.

(l) 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 and the other documents related to the transaction or to comply with its obligations under this Loan Agreement and the other documents related to the transaction. Neither the execution and delivery of this Loan Agreement and the other documents related to the transaction by the Governmental Unit nor compliance by the Governmental Unit with the obligations under this Loan Agreement and the other documents related to the transaction, 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.

(m) 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.

(n) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Payments, as and when due, is not needed or budgeted to pay current or future System and/or Project-related expenses of the Governmental U.

(o) Expected Coverage Ratio. The Pledged Revenues 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 of the maximum annual principal and interest due on all outstanding obligations of the Governmental Unit payable from the Pledged Revenues.

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

(q) Financial Capability; Budgeting of Pledged Revenues. The Governmental Unit meets and will meet during the Loan Agreement Term the requirements of financial capability set by the Water Trust Board and the NMFA. The Pledged Revenues will be sufficient to make the Loan Payments, as and when due. The Governmental Unit will adequately budget for the Loan Payments and other amounts payable by the Governmental Unit under this Loan Agreement.

(r) Pledged Revenue Covenants. As shown on the Term Sheet:

(i) The Governing Body has duly adopted the Tax Ordinance imposing the County Gross Receipts Tax, the Municipal Gross Receipts Tax or the Supplemental Municipal Gross Receipts Tax, as applicable, which constitutes the Pledged Revenues. The Tax Ordinance has not been repealed or superseded and is in full force and effect; or

(ii) The Governmental Unit is entitled to and receives gross receipts tax distributions each month pursuant the State Shared Gross Receipts Tax.

(s) <u>Governmental Unit's Existence</u>. The Governmental Unit will maintain its legal identity and existence so long as this Loan Agreement remains outstanding unless another political subdivision, State agency, or other entity by operation of law succeeds to the liabilities, rights and duties of the Governmental Unit under this Loan Agreement without adversely affecting to any substantial degree the privileges and rights of the NMFA.

(t) <u>Use of Project; Continuing Covenant</u>. During the Loan Agreement Term, the Governmental Unit will at all times use the Project for the benefit of the Governmental Unit and the constituents it serves.

(i) If the Project is design-only as shown as Project Phase on the Term Sheet, the engineering design or engineering feasibility reports shall not involve or anticipate a sale, lease, mortgage, pledge, or the relocation or disposal of any part of the Project or System designed during its Useful Life; provided, however, that if the Project is a joint project of the Governmental Unit and other Qualifying Entities, the Governmental Unit and the other Qualifying Entities may, with the express written approval of the NMFA and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during the Loan Agreement Term. Any such agreement shall provide that the NMFA, or either of them, shall have the power to enforce the terms of this Loan Agreement, without qualification, as to each and every Qualifying Entity other than the Governmental Unit, owning or operating any portion of the Project during the Loan Agreement Term. The Governmental Unit will operate and maintain the Project, so that it will function properly over its Useful Life.

(ii) If the Project is construction-only or includes both design and construction as shown as Project Phase on the Term Sheet, the Governmental Unit shall not sell, lease, mortgage, pledge, relocate or otherwise dispose of or transfer the Project or System, or any part of the Project or System so long as this Loan Agreement is outstanding; provided, however, that if the Project is a joint project of the Governmental Unit and other Qualifying Entities, the Governmental Unit and the other Qualifying Entities may, with the express written approval of the NMFA and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during the Loan Agreement Term. Any such agreement shall provide that the NMFA, or either of them, shall have the power to enforce the terms of this Loan Agreement, without qualification, as to each and every Qualifying Entity other than the Governmental Unit, owning or operating any portion of the Project during the Loan Agreement Term. The Governmental Unit will operate and maintain the Project, so that it will function properly over its Useful Life.

(u) <u>Title and Rights of Way</u>. As required by NMSA 1978, Section 72-4A-7(A)(3) of the Act, as amended, and the Board Rules, the Governmental Unit shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that the Governmental Unit has proper title to, easements, rights of way or use permits on the real property upon or through which the Project (i) is being constructed, located, completed or extended (if the Project Phase includes construction as shown on the Term Sheet); (ii) will be conducted and completed (if the Project Phase includes design-only as shown on the Term Sheet); or (iii) will be designed, constructed or located pursuant to the Project plans and specifications (if the Project Phase includes both design and construction as shown on the Term Sheet). If any portion of the Project will be designed, constructed, located, completed or extended on real property owned by a Qualifying Entity other than the Governmental Unit, or such other Qualifying Entity has title to such real property, the Governmental Unit shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that such other Qualifying Entity has proper title to such real property. The Governmental Unit shall exercise its power of eminent domain, if needed to comply with this Section 2.1(u) and Section 4.1(b).

(v) Additional Funding Amount. Together with the Loan/Grant Amount and other amounts available to the Governmental Unit, the Additional Funding Amount is now available to the Governmental Unit, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project. If any other additional expenses are incurred, the Governmental Unit shall be responsible for payment of such expenses.

(w) Audit Requirement. During the Loan Agreement Term the Governmental Unit shall comply with the requirements of the State Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-15, as amended. Upon request by the NMFA, the Governmental Unit shall provide the NMFA a copy of any review or audit, report of agreed upon procedures, or any other document prepared pursuant to or required by the State Audit Act.

(x) Reserved.

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

(z) Records. So long as this Loan Agreement remains outstanding, proper books of record and account will be kept by the Governmental Unit in accordance with Generally Accepted Accounting Principles, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System or the Project. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of customers for the System or the Project; (ii) the revenues separately received from charges by classes of customers, including but not necessarily limited to classification by facilities; and (iii) a detailed statement of the expenses of the System or the Project.

(aa) 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, resolution or regulation of the Governmental Unit. If permitted by law, if a bill is not paid within the period of time required by such ordinance, resolution or regulation, the public utility services shall be discontinued as required by such ordinance, resolution or regulation, 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.

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

(cc) Readiness Requirements. The Governmental Unit has met the requirements of Executive Order 2013-006 and it has met or will meet prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant by the NMFA and the Water Trust Board.

(dd) Additional Debt. Except for any Senior Obligations, Subordinate Obligations, and Super Subordinate Obligations 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 lien on the Pledged Revenues superior to or on a parity with the lien of this Loan Agreement. Prior to entering into additional indebtedness secured by a lien on the Pledged Revenues that is senior to or on parity with this Loan Agreement, the Governmental Unit will seek the written consent of the NMFA, which consent will not be unreasonably withheld. Prior to entering into additional indebtedness secured by a lien on the Pledged Revenue subordinate to this Loan Agreement or a lien on any revenues of the Governmental Unit other than the Pledged Revenues, the Governmental Unit will notify the NMFA in writing of such indebtedness.

(ee) Other Liens. Except as shown on the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the Pledged Revenues.

Section 2.2 Representations and Warranties of the NMFA. The NMFA represents as follows:

(a) Authorization of Agreement. The NMFA is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, and is 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 and, by proper action, has duly authorized the execution and delivery of this Loan Agreement.

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

ARTICLE III
LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall terminate at the end of the Useful Life of the Project, as required by NMSA 1978, Section 72-4A-7, as amended, of the Act.

ARTICLE IV
LOAN AGREEMENT CONDITIONS

Section 4.1 Conditions Precedent to Closing of the Loan/Grant. Prior to the Closing Date, the following Conditions and readiness to proceed items shall be satisfied:

(a) The NMFA, on behalf of the Water Trust Board, shall have determined that the Governmental Unit has met the Conditions and readiness to proceed requirements established for the Loan/Grant by the NMFA and the Water Trust Board including any Conditions set out in the Term Sheet;

(b) The Governmental Unit shall have provided written assurance addressed to the NMFA and signed by an attorney (or shall have provided a title insurance policy) that the Governmental Unit has proper title to or easements, rights of way, or permits on the real property upon or through which the Project is to be designed, constructed, located, completed or extended, consistent with the Project Phase shown on the Term Sheet; provided that if such written assurance has not been provided prior to the Closing Date, the Governmental Unit shall provide written assurance signed by an attorney that the Governmental Unit has the power of eminent domain and has initiated the exercise of such power for the purpose of acquiring proper title to, easements, rights of way permits on the real property on which the Project will be designed, constructed, located, completed or extended consistent with the Project Phase shown on the Term Sheet;

(c) If any portion of the Project will be constructed, located, completed or extended on real property owned by a Qualifying Entity other than the Governmental Unit, the Governmental Unit shall have provided written assurance addressed to the NMFA and signed by an attorney (or shall have provided a title insurance policy) that such other Qualifying Entity has proper title to such real property;

(d) Prior to the disbursement of any portion of the Loan/Grant Amount for purposes of construction of the Project, the plans and specifications or project plan (if the Project is a Watershed Restoration Project as shown on the Term Sheet) funded with the proceeds of this Loan Agreement will be approved by the NMFA or on behalf of the NMFA as required by NMSA 1978, Section 72-4A-7(B), as amended, by the New Mexico Environment Department, the Office of the State of Engineer, or other agent of the NMFA, and the Governmental Unit shall have provided written evidence of such approval to the NMFA;

(e) Except as otherwise expressly provided in the Conditions, the Governmental Unit shall have certified to the NMFA that, if applicable, the Additional Funding Amount is available for the Project, and, in addition, shall have provided additional evidence reasonably acceptable to the NMFA of the availability of the Additional Funding Amount; and

(f) The Governmental Unit shall be in compliance with the provisions of this Loan Agreement.

Section 4.2 Determination of Eligibility Is Condition Precedent to Disbursement. No request for payment shall be made, nor shall any disbursement be made from the Water Project Fund, for any requisition of any portion of the Loan/Grant Amount, except upon a determination by the NMFA in its sole and absolute discretion that such disbursement is for payment of Eligible Items, and that the request for payment or disbursement does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and the Policies governing the Water Project Fund. The NMFA, as a condition precedent to submitting any request for payment to the State Board of Finance or making any requested disbursement from the Water Project Fund, may require submittal of such documentation as the NMFA deems necessary, in its sole and absolute discretion, for a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.

Section 4.3 Condition to Closing. Notwithstanding anything in this Loan Agreement to the contrary, the NMFA shall not be obligated to execute the Agreement and may not make the Loan/Grant until the Governmental Unit has provided to the NMFA the documents listed on Exhibit "F", all of which must be in form and content acceptable to the NMFA.

ARTICLE V
LOAN TO THE GOVERNMENTAL UNIT; GRANT TO THE GOVERNMENTAL UNIT; APPLICATION OF MONEYS

Section 5.1 Loan and Grant to the Governmental Unit.

(a) Loan to the Governmental Unit. The NMFA lends to the Governmental Unit and the Governmental Unit borrows from and agrees to pay the NMFA, without interest, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit "B".

(i) Subordinate Nature of Loan Amount and Administrative Fee Obligation. The obligation of the Governmental Unit to make the Loan Payments and to pay the Administrative Fee shall be subordinate to all other indebtedness secured by the Pledged Revenues existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues; except, however, that the obligation of the Governmental Unit to make the Loan Payments and to pay the Administrative Fee shall be on parity with any other obligation, present or future, of the Governmental Unit to repay a loan provided by the NMFA pursuant to the Act or the Colonias Infrastructure Act.

(ii) Administrative Fee. The Governmental Unit shall, on an annual basis beginning on the first payment date following the completion of the Project or exhaustion of all Loan/Grant Amounts as set out in Section 5.3, pay to the NMFA the Administrative Fee, taking into account both payments made by the Governmental Unit and Hardship Waivers granted to the Governmental Unit as provided by this Loan Agreement. Any such Administrative Fee payment shall be due irrespective of whether or not a Hardship Waiver is granted to the Governmental Unit for the principal payment otherwise due on June 1 of the applicable year or any other year.

(iii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, no later than April 1 of each such year, the Governmental Unit may apply in writing to the NMFA for a determination of whether the annual principal payment on the Loan Amount otherwise due on the upcoming June 1 of such year should be forgiven because such payment would cause undue hardship for the Governmental Unit or the public it serves. The Governmental Unit shall submit such application to the NMFA for determination with sufficient documentation of the existence of such undue hardship as is reasonably required by the NMFA to make a determination, and the Governmental Unit shall promptly respond to additional requests for information from the NMFA. Such application for Hardship Waiver shall be executed by the Authorized Officers of the Governmental Unit. An "undue hardship" exists if the NMFA determines that the Governmental Unit is facing unforeseen events or an emergency that has caused the Governmental Unit to be unable to pay on a timely basis the annual principal payment on the Loan Amount. The NMFA may consult the DFA in determining whether to grant the Hardship Waiver. The NMFA shall make a determination no later than May 15 of the applicable year, and the NMFA shall promptly communicate to the Governmental Unit in writing the results of its determination. Upon receipt of written notice of the determination, either the principal payment otherwise due on June 1 of such year shall be forgiven (in the event of a determination of undue hardship) or the principal payment shall remain outstanding and due and payable on June 1 (in the event no undue hardship is determined to exist).

(b) Grant and Acceptance. The NMFA grants to the Governmental Unit and the Governmental Unit accepts from the NMFA an amount equal to the Grant Amount.

(c) Project Account. The NMFA shall establish and maintain the Project Account as a book account only, on behalf of the Governmental Unit, which account shall be kept separate and apart from all other accounts of the NMFA.

(d) Constitutional and Statutory Debt Limitations. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Water Trust Board, the NMFA, the State or the Governmental Unit within the meaning of any constitutional or statutory debt limitation.

Section 5.2 Application of Loan/Grant Amount. Following the determination by the NMFA in its sole and absolute discretion that the Conditions to the disbursement of the Loan/Grant Amount have been satisfied, the NMFA shall make an entry in its accounts, and in particular in the Project Account, reflecting the proceeds of the Loan/Grant Amount made available for disbursement from the Water Project Fund to the Governmental Unit at its request, and as needed by it to acquire and complete the Project, as provided in Section 7.2.

Section 5.3 Final Requisition. The Final Requisition shall be submitted by the Governmental Unit within the Interim Period. The Interim Period may be extended only as approved in writing by an Authorized Officer of the NMFA, based on the Governmental Unit's demonstration, to the reasonable satisfaction of the Authorized Officer of the NMFA, that unanticipated circumstances beyond the control of the Governmental Unit resulted in delaying the acquisition and completion of the Project, and submission of the Governmental Unit's Final Requisition.

Section 5.4 Investment of Monies. Money in the Water Project Fund, representing proceeds of this Loan Agreement, held and administered by the NMFA, may be invested by the NMFA for the credit of the Water Project Fund.

ARTICLE VI
LOAN PAYMENTS BY THE GOVERNMENTAL UNIT

Section 6.1 Loan 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 not to exceed the Loan Amount. The Governmental Unit promises to pay, but solely from the sources pledged in this Loan Agreement, the Loan Payments and the Administrative Fees and other amounts owed by the Governmental Unit in this Loan Agreement. Subject to any outstanding Parity Obligations, Senior Obligations, Subordinate Obligations, and Super Subordinate Obligations, the Governmental Unit does grant a lien on and a security interest in and 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 Payments, and to pay the Administrative Fees and other amounts owed by the Governmental Unit in this Loan Agreement, subject to and subordinate to all other pledges of the Pledged Revenues existing on the Closing Date and, further, that may exist in the future (except only that the pledge of the Pledged Revenues shall be on a parity with any other pledge of the Pledged Revenues by the Governmental Unit to repay any obligations issued by the NMFA pursuant to the Act or the Colonias Infrastructure Act); (ii) the Loan/Grant Amount including the Project Account; and (iii) 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 Payments, Administrative Fees and other amounts owed by the Governmental Unit in this Loan Agreement, however, that if the Governmental Unit, its successors or assigns, shall pay, or cause to be paid, all Loan Payments and Administrative Fees at the time and in the manner contemplated by this Loan Agreement, or shall provide as permitted by Section 6.5, 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, 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 schedule of Loan Payments, assuming the disbursal of the entire Loan/Grant Amount within twenty-four (24) months after the Closing Date, identified as the Interim Debt Service Schedule, is attached to this Loan Agreement as Exhibit "B". Within thirty (30) days after the Final Requisition is made, the NMFA shall provide a Final Debt Service Schedule, reflecting the amount of the Loan/Grant Amount actually disbursed to the Governmental Unit pursuant to this Loan Agreement. Such Final Debt Service Schedule shall supersede the schedule attached as Exhibit "B". The NMFA shall additionally calculate the amount of the Administrative Fee that has accumulated during that twenty-four (24) month period from the Closing Date, and shall include such amount in the first Loan Payment due from the Governmental Unit on the Final Debt Service Schedule.

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 obligations of the Governmental Unit are limited to the Pledged Revenues; and that this Loan Agreement with respect to the Loan Amount, the Administrative Fee and other amounts owed by the Governmental Unit in this Loan Agreement, and that the 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 or the State 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 6.2 Deposit of Payments of Loan Amount to Water Project Fund. All Loan Payments made by the Governmental Unit to the NMFA to repay the Loan Amount and interest thereon, if any, shall be deposited into the Water Project Fund.

Section 6.3 Manner of Payment. The Loan Amount and Administrative Fee shall be payable by the Governmental Unit to the NMFA in annual installments on June 1 beginning after expiration of the Interim Period and continuing through the expiration of the last Loan Payment due as outlined in the Final Debt Service Schedule. All payments of the Governmental Unit under this Loan Agreement shall be paid in lawful money of the United States of America to the NMFA at the address designated in Section 11.1 or by electronic debit of the account identified in the ACH Authorization. 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. Notwithstanding any dispute between the Governmental Unit and the NMFA, 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 6.4 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 make the Loan Payments and other amounts owed by the Governmental Unit under this Loan Agreement; 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.

Section 6.5 No Penalty for Prepayment of the Loan Amount. The Loan Amount shall be pre-payable by the Governmental Unit at the conclusion of the Interim Period without penalty.

Section 6.6 NMFA's Release of Lien and Further Assurances. Upon payment in full of the Loan Amount, Administrative Fee and other amounts owed by the Governmental Unit in this Loan Agreement and upon written request from the Governmental Unit the NMFA agrees to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the NMFA no longer holds or maintains any lien or claim against the Pledged Revenues.

ARTICLE VII
THE PROJECT

Section 7.1 Agreement to Acquire, Complete and Maintain the Project.

(a) The Governmental Unit agrees that in order to effectuate the purposes of this Loan Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire and complete, (and operate and maintain if the Project includes construction as shown as the Project Phase as shown on the Term Sheet) the Project lawfully and efficiently.

(i) If the Project is design-only as shown as Project Phase on the Term Sheet, the plans and specifications or project plan (if the Project is a Watershed Restoration Project as shown on the Term Sheet) for the Project shall incorporate available technologies and operational design for water use efficiency. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(ii) If the Project is construction-only as shown as Project Phase on the Term Sheet, the Project shall be constructed and completed substantially in accordance with the approved plans and specifications or project plan (if the Project is a Watershed Restoration Project as shown on the Term Sheet), and shall fully incorporate the available technologies and operational design for water use efficiency described in the approved plans and specifications or project plan (if the Project is a Watershed Restoration Project as shown on the Term Sheet). No Loan/Grant funds shall be used for items not constituting Eligible Items.

(iii) If the Project includes both design and construction as shown as Project Phase on the Term Sheet, the Project shall be designed so as to incorporate the available technologies and operational design for water use efficiency. The plans and specifications or project plan (if the Project is a Watershed Restoration Project as shown on the Term Sheet) shall be approved by the NMFA or on behalf of the NMFA by the New Mexico Environment Department, the Office of the State Engineer (if applicable), or another appropriate agency designated by the NMFA, prior to the disbursement of any part of the Loan/Grant Amount for construction of the Project, and the Project shall be constructed and completed substantially in accordance with the approved plans and specifications or project plan(if the Project is a Watershed Restoration Project as shown on the Term Sheet). No Loan/Grant funds shall be used for items not constituting Eligible Items.

(b) Use of Loan/Grant Proceeds; Other Qualifying Entities.

(i) As provided by NMSA 1978, Section 72-4A-7(A)(1), as amended, of the Act, if the Project is design-only, land acquisition-only as shown as Project Phase on the Term Sheet, the Project shall be designed to have a structural and material design life of the Useful Life of the Project; provided, that if any portion of the Project will be constructed, located, completed, installed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Governmental Unit, the Governmental Unit may, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other Qualifying Entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall be subject to approval by the NMFA and shall include an express statement by such other Qualifying Entity that the NMFA is a third party beneficiary of such written agreement.

(ii) As provided by NMSA 1978, Section 72-4A-7(A)(1), as amended, of the Act, if the Project is construction-only or includes both design and construction as shown as Project Phase on the Term Sheet, the Governmental Unit shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, located, completed, installed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Governmental Unit, the Governmental Unit may, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other Qualifying Entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall be subject to approval by the NMFA and shall include an express statement by such other Qualifying Entity that the NMFA is a third party beneficiary of such written agreement.

Section 7.2 Accounting for Amounts Credited to the Project Account. So long as no Event of Default shall occur and provided that all Conditions to the disbursement of the Loan/Grant Amount have been satisfied (including approval of the plans and specifications or project plan, if the Project is a Watershed Restoration Project as shown on the Term Sheet), upon receipt by the NMFA of a requisition substantially in the form attached as Exhibit "C" signed by an Authorized Officer of the Governmental Unit, supported by certification by the Governmental Unit's project architect, engineer, or such other authorized representative of the Governmental Unit that the amount of the disbursement request represents the progress of design, construction, acquisition or other Project-related activities accomplished as of the date of the disbursement request, the NMFA shall, in its sole and absolute discretion: (1) submit a request for payment to the State Board of Finance for payment; and/or (2) disburse from the Water Project Fund, amounts which together are sufficient to pay the requisition in full. The NMFA shall make the appropriate entry in the Project Account reflecting the amount of the payment. The certification provided pursuant to this Section 7.2 in support of the requisition must be acceptable in form and substance to the NMFA and, at its request, the Water Trust Board. The Governmental Unit shall provide such records or access to the Project as the NMFA, and, at its request, the Water Trust Board, in the discretion of each, may request in connection with the approval of the Governmental Unit's requisition requests made under this Loan Agreement.

Section 7.3 No Disbursement for Prior Expenditures Except upon Approval. No disbursement shall be made from the Water Project Fund of the Loan/Grant Amount, or any portion, without the written approval of the NMFA and, at its request, the Water Trust Board, to reimburse any expenditure made prior to the Closing Date.

Section 7.4 Governmental Unit Reporting to NMFA. During the acquisition and, as applicable, design, implementation, installation and construction, of the Project, the Governmental Unit shall provide the NMFA with a quarterly written report executed by an Authorized Officer of the Governmental Unit, in the form attached as Exhibit "D" or in another form reasonably acceptable to the NMFA, describing the status of the Project as of the report date, uses of Loan/Grant funds during the quarterly period ending on the report date, and requests for distributions of Loan/Grant funds anticipated to occur during the quarterly period immediately following the report date. The first quarterly report shall be due on the date shown on the Term Sheet and subsequent reports shall be due on each March 31, June 30, September 30, and December 31 until the report date next following final distribution of the Loan/Grant funds. No reports shall be required after the report date next following final distribution of the Loan/Grant Funds, unless specifically required by the NMFA or the Water Trust Board. The description of the status of the Project in each quarterly report shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, (c) a description of the percentage of completion of the Project; and (d) a timeline of projected milestones.

Section 7.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of the Project an Authorized Officer of the Governmental Unit shall deliver a certificate to the NMFA substantially in the form attached as Exhibit “E”, stating that, to his or her knowledge, either (1) the Project has been completed, or (2) that the portion of the Loan/Grant Amount needed to complete the Project has been disbursed in accordance with the terms of this Loan Agreement. No portion of the Loan/Grant Amount shall be disbursed after expiration of the Interim Period.

Section 7.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds; Termination of Pledge.

(a) Upon the completion of the Project as signified by delivery of the completion certificate required by Section 7.5 hereof, the NMFA shall determine, by reference to the Project Account, whether any portion of the authorized Loan/Grant Amount remains unexpended and shall dispose of such unexpended proceeds in accordance with law;

(b) In the event that a portion of the Loan/Grant Amount remains unexpended after the expiration of the Interim Period, the NMFA shall dispose of such funds in accordance with law.

Upon the occurrence of either event described in (a) or (b) above, the NMFA shall make the appropriate entry in the Project Account and, upon such entry, the pledge of the Loan/Grant Amount established in this Loan Agreement shall terminate.

ARTICLE VIII
COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 8.1 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 and for carrying out the intention of this Loan Agreement.

Section 8.2 Representatives of NMFA or of Governmental Unit. Whenever under the provisions of this Loan Agreement 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 either of them, 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 to this Loan Agreement shall be authorized to act on any such approval or request.

Section 8.3 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as amended, or, if the Governmental Unit is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Governmental Unit.

Section 8.4 Non-Discrimination in Employment. Except as otherwise specifically provided in the laws, statutes, ordinances or regulations of the Governmental Unit, the Governmental Unit shall require in any contract or subcontract executed in connection with the Project to which the Governmental Unit is a party that there shall be no discrimination against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious medical condition or military status, or, if the employer has fifty or more employees, spousal affiliation.

Section 8.5 Little Miller Act. To the extent NMSA 1978, Section 13-4-1 et seq., (the "Little Miller Act") is applicable to the Project, the Governmental Unit shall comply with the requirements of the "Little Miller Act". If bonding requirements of the Little Miller Act are not applicable to the Project, the Governmental Unit will require that the contractor to whom is given any contract for construction appertaining to the Project supply a performance bond or bonds satisfactory to the Governmental Unit. Any sum or sums derived from said performance 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 8.6 Required Contract Provisions. The Governmental Unit shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Governmental Unit is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious medical condition or military status, or, if the employer has fifty or more employees, spousal affiliation; and

(b) Any contractor or subcontractor providing construction services in connection with the Project shall post a performance and payment bond in accordance with the requirements of NMSA 1978, Section 13-4-18, as amended.

(c) Any contractor or subcontractor providing construction services in connection with the Project shall comply with the prevailing wage laws in accordance with the requirements of NMSA 1978, Section 13-4-11, as amended.

Section 8.7 Application of Act and Board Rules. While this Loan Agreement is outstanding, the NMFA and the Governmental Unit expressly acknowledge that this Loan Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and Board Rules are incorporated into this Loan Agreement by reference.

Section 8.8 Continuing Disclosure. The Governmental Unit shall provide continuing disclosure to the NMFA, as the NMFA may require, that shall include, but not be limited to: annual audits and notification of any event deemed material by the NMFA, including but not limited to, any event which may or does affect the Pledged Revenues, the ability of the Governmental Unit to repay the loan, and the default of the Governmental Unit in performance or observance of any covenant, term, or condition contained in any other loan agreement.

ARTICLE IX
INSURANCE; NON-LIABILITY OF NMFA

Section 9.1 Insurance. The Governmental Unit shall carry general liability insurance or participate in the State's risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, as amended, shall and agrees to name the NMFA as an additional insured with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Loan Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a Qualifying Entity other than the Governmental Unit, the Governmental Unit may obtain the written agreement of such other Qualifying Entity to perform these insurance/risk-management program requirements for Governmental Unit with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other Qualifying Entity that the NMFA is a third party beneficiary of such written agreement.

Section 9.2 Non-Liability of NMFA.

(a) NMFA shall not be liable in any manner for the Project, Governmental Unit's use of the Loan/Grant, the acquisition, implementation, construction, installation, ownership, operation or maintenance of the Project, or any failure to act properly by the Governmental Unit or any other owner or operator of the Project.

(b) NMFA shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the NMFA for disbursement to the Governmental Unit, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

(c) 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 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 under this Loan Agreement; 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. The Governmental Unit shall indemnify and save the NMFA harmless, from and to the extent of the available Pledged Revenues, and to the extent permitted by applicable law, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the NMFA, shall defend the NMFA 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 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 unless the NMFA 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 but cannot be cured within the applicable thirty (30) day period, the NMFA 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 Section 10.1(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 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;

(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 shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests; or

(g) Default by the Governmental Unit in performance or observance of any covenant contained in any other loan agreement, document or instrument of any type whatsoever evidencing or securing obligations of the Governmental Unit to the NMFA.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3, the NMFA 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 obligations of the Governmental Unit in this Loan Agreement:

(a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to 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) Terminate this Loan Agreement;

(c) Cease disbursing any further amounts from the Project Account;

(d) Demand that the Governmental Unit immediately repay the Loan/Grant Amount or any portion if such funds were not utilized in accordance with this Loan Agreement;

(e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the NMFA;

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

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

(h) 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 under this Loan Agreement; or

(i) Apply any amounts in the Project Account toward satisfaction of any and all fees and costs incurred in enforcing the terms of this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring payment of money entered against the Governmental Unit shall be paid from only available Pledged Revenues unless the Governmental Unit in its sole discretion pays the judgment from other available funds.

Section 10.4 No Remedy Exclusive. No remedy conferred upon or reserved to the NMFA 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 Governmental Unit or the NMFA 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 may, in its sole discretion, waive any Event of Default and the consequences of any such Event of Default; provided, however, all expenses of the NMFA in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the NMFA. In case of any such waiver or rescission, or in case any proceeding taken by the NMFA, 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 shall be restored to its 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 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, pay to the NMFA the fees of such attorneys and such other expenses so incurred, to the extent 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 of the Governmental Unit.

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 or the NMFA 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 and 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 Loan/Grant and the funding of the Project through the Loan/Grant 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/Grant, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Loan Agreement.

Section 11.4 Amendments. This Loan Agreement may be amended only with the written consent of both of the parties. The consent of the NMFA for amendments not affecting the terms of payment of the loan component of this Loan Agreement may be given by an Authorized Officer of the NMFA. The execution of any such consent by an Authorized Officer of the NMFA shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Loan Agreement.

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 or member of the Governmental Unit, 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 or by constitution or otherwise, of any such officer, employee, director or member of the Governmental Unit 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 obligation of the Governmental Unit to make the Loan Payments and the Administrative Fee under this Loan Agreement, 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 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. Pursuant to NMSA 1978, Section 6-21-26, as amended, the venue for any proceedings or any other action or procedure against the NMFA shall be in Santa Fe County.

Section 11.9 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 11.10 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.

Section 11.11 CONSENT TO JURISDICTION. THE GOVERNMENTAL UNIT IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS LOAN AGREEMENT OR THE DOCUMENTS SIGNED IN CONNECTION WITH THIS TRANSACTION WILL BE LITIGATED IN THE FIRST JUDICIAL DISTRICT COURT, SANTA FE COUNTY, NEW MEXICO, PURSUANT TO NMSA 1978, SECTION 6-21-26.

[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 NMFA Board Approval Date, and approved by the Water Trust Board on the WTB 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/Grant Counsel

By____
Suzanne Wood Bruckner

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

By____
Mark Chaiken, General Counsel

GOVERNMENTAL UNIT:

[NAME OF ENTITY], [COUNTY], NEW MEXICO

By____
[**Name of Entity's Chief Officer**], [**Title**]

[SEAL]

ATTEST:

By____
[**Name of Entity's Clerk or Other Record-Keeping Officer**], [**Title**]

<u>**EXHIBIT “A”**</u>

TERM SHEET

[**Insert Governmental Unit**]]

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

First Interest Payment Date:	[insert]
First Principal Payment Date:	[insert]
Final Payment Date:	[insert]

<u>**Article I, Definitions**</u>

ACH Authorization:	**[insert ACH authorization, if applicable]**
Act:	Water Project Finance Act, NMSA 1978, Sections 72-4A-1 through 72-4A-11; [**if municipality**: Sections 3-31-1 through 3-31-12] [**if county**: Sections 4-62-1 through 4-62-10] **OR** [**insert other entity formation statutes as applicable**], NMSA 1978, as amended; and [**if municipal or county GRT: if municipality**: Section [7-19D-9, 14 or 16,] **if county**: Section [7-20E-9, 13, 18, 20, 22, 23 or 26,] OR [**if state shared GRT**: Sections 7-1-6.4 and 7-1-6.15,] OR [**if supplemental GRT**: Sections 7-19-10 through 7-19-18,] NMSA 1978, as amended
Additional Funding Amount:	[Insert as applicable: $[**insert Additional Funding Amount**] **OR** [**insert Additional Loan in Lieu of Match**: $[insert] Additional Loan in Lieu of Match]]
Administrative Fee:	[**insert % of Administrative Fee from Interim DSS**]
Application Dates:	[**insert**: Project Application Date: [insert] and Readiness Application Date: [insert]]
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**]
Authorized Officers:	[**insert Borrower’s authorized officers**]
Closing Date:	[**insert closing date**]

Distributing State Agency:	State of New Mexico Taxation and Revenue Department
Governing Body:	[**insert name of Governing Body**]
Governmental Unit:	[**insert Borrower's Name**], New Mexico
Grant Amount:	[**insert Grant Amount from Interim DSS**]
Lien Status:	This Loan Agreement is a [Senior Obligation, Subordinate Obligation, or Super Subordinate Obligation.]
Loan Amount:	[**insert Loan Amount from Interim DSS**]
Loan/Grant Amount:	[**insert loan/grant amount**]
New Mexico Legislative Session:	Chapter [insert], Laws (20 [insert]), House Bill [insert], [Year] [Regular or Special] New Mexico Legislative Session
NMFA Board Approval Date:	[**insert the board approval date – check minutes**]
Pledged Revenues:	[**If municipal, county or supplemental GRT use**: The revenues of the [insert] of one percent ([insert]%) of [**County**] [**Municipal**] [**Supplemental Municipal**] Gross Receipts Tax imposed pursuant to the Act, and enacted by the Tax Ordinance passed and approved by the Governmental Unit, and pledged to the payment of the Loan Payments pursuant to the Authorizing Legislation and this Loan Agreement.] **OR** [**If State Shared GRT use**: The State Shared Gross Receipts Tax]
Project:	The Project is for **[Insert applicable description: storage, conveyance or delivery of water to end users; implementation of federal Endangered Species Act of 1973 collaborative programs; wastewater conveyance and treatment; restoration and management of watersheds; flood prevention; or water conservation or recycling, treatment or reuse of water as provided by law;]**. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. In particular, the Project will consist of [**Insert description of the Project from Application and Staff Report**], and shall include such other related work and revisions necessary to complete the Project. The Project may be further described in the Application and in the final [**Insert applicable**: [**plans**

	and specifications] **OR** [**project plan**] if a Watershed Restoration Project] for the Project approved by the Water Trust Board and the NMFA as provided by this Loan Agreement. However, in the event of any inconsistency, the description of the Project as stated in this Term Sheet shall control.
Project Account:	[**Amount of Project Account Deposit**]
Project Phase:	[**E.g., Design, Construction, Design and Construction, Planning, etc**.]
Currently Outstanding Senior Obligations:	[**Describe Senior Obligations**]
Currently Outstanding Subordinate Obligations:	[**Describe Subordinate Obligations**]
Currently Outstanding Super Subordinate Obligations:	[**Describe Super Subordinate Obligations**]
System:	[**insert System description from NMFA Staff Report, e.g., water system, wastewater system, etc.**]
Tax Ordinance:	[**insert if applicable**: Ordinance No. [insert] passed and approved by the Governmental Unit pursuant to the Act on [**insert adoption date**], with an effective date of [**insert effective date**], which imposes [insert] of one percent ([insert]%) increment of [**Short Title of Tax Imposed**] Gross Receipts Tax of the gross receipts of all persons engaging in business within the Governmental Unit. [**insert de-earmarking if applicable**: Pursuant to Laws 2019, Chapter 274, Section 16, the [**Short Title of Tax Imposed**] Gross Receipts Tax is no longer identifiable as the [**first, second, etc**.] increment of [**Short Title of Tax Imposed**] Gross Receipts Tax and instead comprises [insert] of one percent ([insert]%) of the maximum rate of [**County**] [**Municipal**] Gross Receipts Tax that may be imposed under Section [**insert statute**], NMSA 1978, as amended, of [**if County**: one and three-quarters percent (1.75%)] OR [**if municipality**: two and one-half percent (2.50%)], which is pledged to the Loan Payments.]
WTB Approval Date:	[**insert the board approval date – check minutes**]

<u>Article II, Representations, Covenants and Warranties</u>

Scope of Project
Section 2.1(e): The Project is for [**insert applicable description**: [storage, conveyance or delivery of water to end users] **OR** [implementation of federal Endangered Species Act of 1973 collaborative programs] **OR** [wastewater conveyance and treatment] **OR** [restoration and management of watersheds] **OR** [flood prevention] **OR** [water conservation or recycling, treatment or reuse of water as provided by law].

Expected Coverage Ratio
Section 2.1(o): [**insert from NMFA Staff Report**]

Pledged Revenue Covenants
Section 2.1(r) [**insert if municipal, county or supplemental GRT is applicable**: Section 2.1(r)(i) is applicable to this Loan Agreement.] OR [**insert if State Shared GRT is applicable**: Section 2.1(r)(ii) is applicable to this Loan Agreement.]

<u>Article VII, The Project</u>

First Quarterly Report
Section 7.4: [**next March 31, June 30, September 30, or December 31 falling 1 month or more after Closing Date**]

<u>Article X, Miscellaneous</u>

Notices
Section 11.1: Governmental Unit, **[obtain address from Governmental Unit]**, Attention: **[obtain title from Governmental Unit]**

New Mexico Finance Authority, 810 W. San Mateo Road, Santa Fe, New Mexico 87505, Attention: Chief Executive Officer

<u>Conditions to be satisfied prior to first disbursement of Loan/Grant funds:</u>

Delivery to NMFA of (i) a copy of the agenda of the meeting of the Governing Body at which the Authorizing Legislation was adopted and at which this Loan Agreement, the Authorizing Legislation and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the [**Entity's Clerk or Other Record-Keeping**

Officer] of the Governmental Unit, (ii) a copy of the minutes or record of proceedings of the Meeting, approved and signed by the [**Entity's Chief Officer**] and attested to by the [**Entity's Clerk or Other Record-Keeping Officer**] of the Governmental Unit, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Governmental Unit's Open Meetings standards in effect on the date of the Meeting.

<u>Other Conditions applicable to the Loan/Grant:</u>

All Conditions defined in the Agreement. **[Insert any Project-specific conditions set out in the Staff Report or minutes of Board Meeting.] [IF APPROVAL OF PLANS AND SPECS IS PENDING INSERT: Approval of plans and specification by the NMFA or on behalf of the NMFA by the New Mexico Environment Department prior to submission by Governmental Unit of a requisition for disbursement of construction funds and all Conditions defined in the Agreement.]**

<u>EXHIBIT “B”</u>

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount and Administrative Fee shall be payable by the Governmental Unit to the NMFA in [**insert term**] (#) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, [**Year of First Payment**] and ending June 1, [**Year of Last Payment**]. The Loan Amount shall be pre-payable upon expiration of the Interim Period without penalty. The Administrative Fee shall be due and payable annually on June 1 of each year while the Loan, or any portion of the Loan/Grant Amount, remains outstanding.

[INTERIM DEBT SERVICE SCHEDULE ATTACHED]

EXHIBIT "C"
FORM OF REQUISITION
(Water Project Fund)

RE: [**$ Total Amount of Loan/Grant**] Loan Agreement by and between the New Mexico Finance Authority, and the [**Name of Entity**], New Mexico (the "Loan Agreement")

Loan/Grant No. WPF-[**Loan/Grant Number**] Closing Date: [**Date of Closing**]

TO: NEW MEXICO FINANCE AUTHORITY

You are authorized to disburse from the Project Account with regard to the above-referenced Loan Agreement, the following:

I. PAYMENT INFORMATION

REQUISITION NO. ____________ PAYMENT AMOUNT: $_______________

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

II. REQUISITION INFORMATION (complete for all payments)

- *Attach proof of expenditures (cancelled check, wire transfer receipt, bank ledger, etc.).*
- *List all Vendors, Payment Purposes, or Eligible Item Categories below or attach separate page or spreadsheet if needed.*

Vendor Name ______________________________
Total Amount $______________________ Invoice No.(s) ______________________
Purpose of Payment ______________________________
Eligible Item Category ______________________________

Vendor Name ______________________________
Total Amount $______________________ Invoice No.(s) ______________________
Purpose of Payment ______________________________
Eligible Item Category ______________________________

Vendor Name ______________________________
Total Amount $______________________ Invoice No.(s) ______________________
Purpose of Payment ______________________________
Eligible Item Category ______________________________

III. WIRING INFORMATION:

BANK NAME:	
ABA ROUTING NUMBER:	
ACCOUNT NUMBER:	

IV. MATCH INFORMATION

AMOUNT OF LOCAL MATCH EXPENDED SINCE LAST REQUISITION: $____________
Attach proof of expenditures for hard match (detailed invoices, cancelled checks, wire transfer receipt, bank statement, etc.) and written certification of type and value of any soft match.

AMOUNT OF LOCAL MATCH EXPENDED TO DATE: $________________
TOTAL REQUIRED MATCH: $_________________

V. VERIFICATION AND AUTHORIZATION

Each obligation, item of cost or expense mentioned is for a Loan/Grant made by the NMFA pursuant to the Water Project Finance Act to the Governmental Unit within the State of New Mexico, is due and payable, has not been the subject of any previous requisition, and is a proper charge against the Project Account. All representations contained in the Loan Agreement and the related closing documents remain true and correct, and the Governmental Unit is not in breach of any of the covenants contained in the Loan Agreement or the related closing documents.

The proceeds of the Loan/Grant are to be used to pay the costs of Eligible Items, as defined in the Agreement. Eligible Items include (1) planning, designing, construction, improving or expanding a qualified project; (2) developing engineering feasibility reports for qualified projects; (3) inspecting construction of qualified projects; (4) providing professional services; (5) completing environmental assessments or archeological clearances and other surveys for qualified projects; (6) acquiring land, easements or rights of way; (7) eligible legal costs associated with development of qualified projects, within limits set forth in the Loan Agreement.

All construction and all installation of equipment with proceeds of the Loan/Grant has or will be used in accordance with plans and/or specifications approved on behalf of the New Mexico Finance Authority by the New Mexico Environment Department and/or the Office of the State Engineer, has or will be acquired in compliance with applicable procurement laws and regulations, and has or will be inspected and approved in accordance with applicable laws and regulations.

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

DATE: _________________

____
AUTHORIZED OFFICER
(As Provided in the Loan Agreement)
Print Name:________________________________
Print Title: ________________________________

EXHIBIT "D"

WATER PROJECT FUND STATUS REPORT
PREPARED FOR THE
NEW MEXICO FINANCE AUTHORITY

Fund Recipient: **Contact Name:** **Title:** **Email Address:**	**Project Number**: **Project Name**: **Project Type**:

Reporting Period: From ______________________ **To**______________________

☐ Quarterly Project Report: ☐1st ☐2nd ☐3rd ☐4th

☐ Final Project Report ☐ Other ______________________________

WPF Funding Expiration: ______________________

Total WPF Award: $_____________ **Current Balance**: $_____________

Loan _____% Grant ______% Match $_______________

Expected WPF Award Expenditure Next Quarter: $____________________________

Local Match Expenditure: To Date $____________ **Next Quarter** $______________

Project Phase: ☐Planning ☐ Design ☐ Construction

PROJECT COMPLETION: Original Date ______________ **Current Date**______________

______**% Complete Days Remaining to Complete** _____ **On Schedule?** ☐**Yes** ☐**No**

Briefly Describe Project Progress During This Reporting Period:

Issues Addressed During This Reporting Period, including any current or anticipated issues that remain unresolved:

Goals/Milestones, With Timeline or Dates, For The Next Reporting Period:

Authorized Officer **PRINT NAME:**__________________________________

PRINT TITLE:__________________________________

SIGNATURE: **Date:**

****All fields must be completed.***

EXHIBIT "E"

FORM OF CERTIFICATE OF COMPLETION

RE: [**$ Total Amount of Loan/Grant**] Loan Agreement by and between the NMFA, and the [**Name of Entity**], New Mexico ("Loan Agreement")

Loan/Grant No. WPF-[**Loan/Grant Number**]

Closing Date: [**Date of Closing**]

TO: NEW MEXICO FINANCE AUTHORITY

I, _______________________________, the _______________________________ of the
[Name] [Title or position]

Governmental Unit, certify as follows:

1. The project described in the Loan Agreement (the "Project"), or the applicable phase of the project if funding was for a phased Project, was completed and placed in service on ________________________, 20___.

2. The total cost of the Project was $ ___________.

3. Cost of the Project paid from the Loan/Grant Amount was $ _____________.

4. Cost of the Project paid from the Additional Funding Amount was $ _________.

5. The portion of the Loan/Grant Amount unexpended for the Project is $ ________.

6. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Loan Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

[**NAME OF ENTITY**], [**COUNTY**], NEW MEXICO

By____

Its____

EXHIBIT “F”

DOCUMENTS

1. Open Meetings Act Resolution No. [**add Resolution number**] adopted by the Governmental Unit on [**add date of adoption**]

2. [**Ordinance or Resolution**] No. [**add number**] adopted on [**add date of adoption**], Notice of Meeting, Meeting Agenda, Minutes and Affidavit(s) of Publication of [**Notice of Intent to Adopt Ordinance and**] Notice of Adoption of [**Ordinance or Resolution**] in the ***[add name of paper]***

3. Loan/Grant Agreement

4. General and No Litigation Certificate of the Governmental Unit

5. Delivery, Deposit and Cross-Receipt Certificate

6. Right of Way Certificate of the Governmental Unit [(to be executed prior to construction funding)]

7. Final Opinion of Counsel for the Governmental Unit

8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan/Grant Counsel to the NMFA

9. NMFA Application and Project Approval (informational only)

10. [**ACH Authorization**]