

**RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF
ORDINANCE NO. 2011-24 OF THE CITY COUNCIL
OF THE CITY OF SANTA FE, JUNE 29, 2011**

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The City Council (the “Governing Body”) of the City of Santa Fe (the “Borrower/Grantee”) met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at the City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico, being the meeting place of the Governing Body for the meeting held on the 29th day of June, 2011 at the hour of 7:00 p.m. Upon roll call, the following members were found to be present:

Present:

Mayor: David Coss

Councilors: Rebecca Wurzbarger, Mayor Pro Tem

Patti Bushee

Chris Calvert

Miguel Chavez

Carmichael Dominguez

Matthew E. Ortiz

Rosemary Romero

Ronald S. Trujillo

Absent: None

Also Present: Robert Romero, Manager

Yolanda Y. Vigil, Clerk

Geno Zamora, Attorney

Thereupon, there were officially filed with the City Clerk copies of a proposed Ordinance and Water Project Fund Loan/Grant Agreement in final form, the proposed Ordinance being as hereinafter set forth.

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**CITY OF SANTA FE
ORDINANCE NO. 2011-24**

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND THE CITY OF SANTA FE (THE "BORROWER/GRANTEE"), IN THE AGGREGATE AMOUNT OF ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000), BEING A LOAN IN THE AMOUNT OF THREE HUNDRED THOUSAND DOLLARS (\$300,000) AND A GRANT IN THE AMOUNT OF ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE PLANNING, DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO THE BORROWER/GRANTEE'S MCCLURE AND NICHOLS RESERVOIRS THAT FEED THE CANYON ROAD WATER TREATMENT PLANT, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in this Authorizing Ordinance or, if not defined in Section 1 of this Authorizing Ordinance, the same meaning as defined in Article I of Ordinance No 2006-47 (the "Master Ordinance") adopted by the Governing Body on August 9, 2006 unless the context requires otherwise.

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing home-rule municipality under the Constitution and general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to the Loan/Grant Agreement, that the Loan/Grant Amount, together with other moneys available to the Borrower/Grantee, is sufficient to complete the Project, and that it is in the best interest of the Borrower/Grantee and the public it represents that the Loan/Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Loan/Grant Agreement; and

WHEREAS, the Master Ordinance provides for the adoption of subsequent ordinances and resolutions to authorize the issuance of additional debt payable from the Pledged Revenues, as well as for the approval of specific terms and documents relating to the issuance of the additional debt; and

WHEREAS, this Authorizing Ordinance is adopted pursuant to the Master Ordinance in order to authorize the Borrower/Grantee to enter into the Loan/Grant Agreement with the Water Trust Board and the NMFA and pledge the Pledged Revenues to repay the Loan Amount as a subordinate obligation payable from the Pledged Revenues as provided in the Loan/Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the Water Trust Board or the NMFA or a debt or pledge of the faith and credit of the Borrower/Grantee, the Water Trust Board, the NMFA or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Authorizing Ordinance and the form of the Loan/Grant Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that (i) the Additional Funding Amount is now available to the Borrower/Grantee to complete the Project; or (ii) that the Governing Body will take such steps as are necessary to obtain the Additional Funding Amount within six (6) months after the Closing Date; and

WHEREAS, the Borrower/Grantee acknowledges that, in the event that it is unable to provide the Additional Funding Amount within six (6) months after the Closing Date, the Loan/Grant Agreement shall, at the option of the Water Trust Board and the NMFA, terminate and be of no further force or effect; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Loan/Grant Amount for the purposes described, and according to the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other moneys necessary and sufficient, together with the Loan/Grant Amount, to complete the Project; and (iii) the authorization, execution and delivery of the Loan/Grant Agreement which are required to have been obtained by the Closing Date, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO:

Section 1. Definitions. As used in this Authorizing Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires

otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined). Capitalized terms not defined in this Section 1 shall have the same meanings as defined in the Master Ordinance.

“Act” means the Water Project Finance Act, Sections 72-4A-1 through 72-4A-10, NMSA 1978, as amended and supplemented.

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount, is sufficient to complete the Project or to provide matching funds needed to complete the Project. The Additional Funding Amount is three hundred thousand dollars (\$300,000).

“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 Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

“Authorized Officers” means the Mayor, City Manager, Finance Director and City Clerk of the Borrower/Grantee.

“Authorizing Ordinance” means this Ordinance No. 2011-24 as supplemented or amended from time to time.

“Board Rules” means Section 19.25.10 NMAC, as supplemented and amended.

“Borrower/Grantee” or “City” means the City of Santa Fe in Santa Fe County, New Mexico.

“Closing Date” means the date of execution, delivery and funding of the Loan/Grant Agreement.

“Completion Date” means the date of final payment of the cost of the Project.

“Expense Account” means the account established pursuant to this Authorizing Ordinance and held by the NMFA to pay the Expenses incurred by the Lenders/Grantors in connection with the Loan/Grant Agreement and the Loan/Grant.

“Expenses” means the costs of originating and administering the Loan/Grant, including legal fees to the extent allowed by the Act, the Board Rules and applicable policies of the Water Trust Board.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee 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 Lenders/Grantors establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the City Council of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is one million two hundred thousand dollars (\$1,200,000).

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Authorizing Ordinance and not solely to the particular section or paragraph of this Authorizing Ordinance in which such word is used.

“Lenders/Grantors” means the Water Trust Board and the NMFA.

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is three hundred thousand dollars (\$300,000).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project.

“Loan/Grant Agreement” means the Water Project Fund Loan/Grant Agreement entered into by and between the Borrower/Grantee, the Water Trust Board and the NMFA as authorized by this Authorizing Ordinance.

“Master Ordinance” means the Borrower/Grantee’s Ordinance No. 2006-47, adopted August 9, 2006, as supplemented and amended from time to time.

“NMAC” means the New Mexico Administrative Code.

“NMFA” means the New Mexico Finance Authority.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Pledged Revenues” means the designated revenue stream which is revenues of the Borrower/Grantee pledged to be utilized in funding the repayment of the Loan Amount and Administrative Fees pursuant to this Authorizing Ordinance and the Loan/Grant Agreement and described in the Term Sheet.

“Project” means the project described in the Term Sheet.

“Project Account” means the auditable book account in the name of the Borrower/Grantee established pursuant to this Authorizing Ordinance and held by the NMFA for deposit of the Loan/Grant Amount, as shown in the Term Sheet, for disbursal to the Borrower/Grantee for payment of the costs of the Project.

“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) restoration and management of watersheds; (iv) flood prevention or (v) conservation, recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to Section 72-4A-9(B), NMSA 1978, as amended and supplemented.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” attached to the Loan/Grant Agreement.

“Useful Life” means the structural and material design life of the Project.

“Water Project Fund” means the fund of the same name created pursuant to Section 72-4A-9, NMSA 1978, and held and administered by the NMFA.

“Water Trust Board” or “WTB” means the water trust board created and established pursuant to the Act.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Authorizing Ordinance) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition, construction and completion of the Project and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition, construction and completion of the Project and the method of funding the Project through the execution and delivery of the Loan/Grant Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee and the public whom it serves.

Section 4. Findings. The Governing Body hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Borrower/Grantee and the public whom it serves.

B. Moneys available and on hand, or reasonably expected to become available for the Project from all sources other than the Loan/Grant Amount (including the Additional Funding Amount) are not sufficient to defray the cost of the Project but, together with the Loan/Grant Amount, will be sufficient to complete the Project.

C. The Project and the execution and delivery of the Loan/Grant Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire, construct and complete the Project with the proceeds of the Loan/Grant Agreement, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life, which is not less than twenty (20) years, as required by Section 72-4A-7(A)(1), NMSA 1978.

E. Together with the Loan/Grant Amount, the Additional Funding Amount is now available to the Borrower/Grantee, or is expected to become available to the Borrower/Grantee within six (6) months after the Closing Date, and, in combination with the Loan/Grant Amount and other moneys reasonably expected to be available to the Borrower/Grantee, will be sufficient to complete the Project and pay Expenses.

F. The Lenders/Grantors shall maintain the Project Account and related financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

G. The Borrower/Grantee has, or will acquire by the Closing Date as required by the Loan/Grant Agreement, title to or easements or rights of way on the real property upon which the Project is being constructed or located.

Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Authorizing Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the constituent public served by the Borrower/Grantee and acquiring, constructing and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of one million two hundred thousand dollars (\$1,200,000) and borrowing the Loan Amount of three hundred thousand dollars (\$300,000) to be utilized solely for the purpose of completing the Project and paying Expenses, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which are hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the Project and to pay Expenses.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Authorizing Ordinance was adopted. The Grant shall be in the amount of one million two hundred thousand dollars (\$1,200,000) and the Loan shall be in the amount of three hundred thousand dollars (\$300,000). Interest on the Loan Amount shall bear interest at a rate of zero percent (0%) per annum of the unpaid principal balance of the Loan Amount, and the

Administrative Fee shall be 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 Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body at which this Authorizing Ordinance was adopted, is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account and Expense Account. The Borrower/Grantee hereby consents to creation of the Project Account and the Expense Account by the NMFA and approves of the deposit of the Loan/Grant Amount in those accounts as shown in the Term Sheet. Until the Completion Date, the money in the Project Account shall be used and paid out solely for the purpose of acquiring, constructing and completing the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement.

B. Completion of the Project. The Borrower/Grantee shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that the Project and payment therefor have been completed. Following the Completion Date, any balance remaining in the Project Account shall be transferred and deposited into the Water Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

C. WTB and NMFA Not Responsible. Neither the Water Trust Board nor the NMFA shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds herein designated.

Section 9. Payment of Loan Amount. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount and Administrative Fees directly to the NMFA as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and Administrative Fees and to cure any deficiencies in the payment of the Loan Amount, Administrative Fees or other amounts due under the Loan/Grant Agreement.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, which lien shall be subordinate to any lien on the Pledged Revenues existing on the Closing Date or that may arise thereafter except the

lien thereon of other loans made by the Lenders/Grantors pursuant to the Act, including but not limited to, all indebtedness described in the Master Ordinance, including any amendments or supplements thereto.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Authorizing Ordinance, the Loan/Grant Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Authorizing Ordinance, the Master Ordinance and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Authorizing Ordinance, the Master Ordinance and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

Section 12. Amendment of Ordinance. This Authorizing Ordinance may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the Water Trust Board and the NMFA.

Section 13. Ordinance Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Authorizing Ordinance shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Authorizing Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Authorizing Ordinance.

Section 15. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Authorizing Ordinance, it shall be recorded in the book of the Borrower/Grantee kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Borrower/Grantee, and this Authorizing Ordinance shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Authorizing Ordinance, this Authorizing Ordinance shall be effective upon adoption hereof by the Governing Body.

Section 17. Master Ordinance. The Governing Body finds that the terms of the Loan/Grant Agreement and of this Authorizing Ordinance are consistent with the terms and parameters established for the issuance of subordinate debt by the Master Ordinance. This Authorizing Ordinance, duly adopted as an ordinance of the Borrower/Grantee, supplements the Master Ordinance in accordance with the provisions hereof and thereof. In the event of any

inconsistency between the Loan/Grant Agreement and the Master Ordinance, as supplemented and amended by this Authorizing Ordinance, the provisions of the Master Ordinance shall control.

Section 18. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Authorizing Ordinance shall be published in substantially the following form:

[Remainder of page intentionally left blank.]

[Form of Summary of Ordinance for Publication]

**CITY OF SANTA FE
Notice of Adoption of Ordinance**

Notice is hereby given of the title and of a general summary of the subject matter contained in an Ordinance, duly adopted and approved by the City Council of the City of Santa Fe on June 29, 2011. A complete copy of the Ordinance is available for public inspection during normal and regular business hours in the office of the City Clerk, at 200 Lincoln Avenue, Santa Fe, New Mexico 87501.

The title of the Ordinance is:

**CITY OF SANTA FE
ORDINANCE**

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND THE CITY OF SANTA FE (THE "BORROWER/GRANTEE"), IN THE AGGREGATE AMOUNT OF ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000), BEING A LOAN IN THE AMOUNT OF THREE HUNDRED THOUSAND DOLLARS (\$300,000) AND A GRANT IN THE AMOUNT OF ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE PLANNING, DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO THE BORROWER/GRANTEE'S MCCLURE AND NICHOLS RESERVOIRS THAT FEED THE CANYON ROAD WATER TREATMENT PLANT, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

A general summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

[End of Form of Summary for Publication]

PASSED, APPROVED AND ADOPTED THIS 29TH DAY OF JUNE, 2011.

CITY OF SANTA FE

By David Coss
David Coss,
Mayor

ATTEST:

By Yolanda Y. Vigil
Yolanda Y. Vigil,
City Clerk

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Governing Body Member Wurzburger then moved adoption of the foregoing Authorizing Ordinance, duly seconded by Governing Body Member Chavez.

The motion to adopt the Authorizing Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: Rebecca Wurzburger
Miguel Chavez
Patti Bushee
Chris Calvert
Carmichael Dominguez
Matthew E. Ortiz
Rosemary Romero
Ronald S. Trujillo

Those Voting Nay: None

Those Absent: None

Eight (8) Members of the Governing Body having voted in favor of the motion, the Mayor declared the motion carried and the Authorizing Ordinance adopted, whereupon the Mayor and City Clerk signed the Authorizing Ordinance upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Authorizing Ordinance, the meeting upon motion duly made, seconded and carried, was adjourned.

CITY OF SANTA FE

By David Coss
David Coss,
Mayor

ATTEST:

By Yolanda Y. Vigil
Yolanda Y. Vigil,
City Clerk

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STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Yolanda Y. Vigil, the duly qualified and acting City Clerk of the City of Santa Fe (the "Borrower/Grantee"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council of the Borrower/Grantee (the "Governing Body"), had and taken at a duly called regular meeting held at the City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico, on June 29, 2011 at the hour of 7:00 p.m., insofar as the same relate to the adoption of Ordinance No. 2011-24 and the execution and delivery of the proposed Loan/Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the Borrower/Grantee's open meetings standards presently in effect on the date of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of August, 2011.

CITY OF SANTA FE

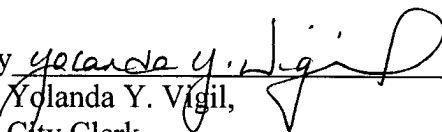
By  _____
Yolanda Y. Vigil,
City Clerk

EXHIBIT "A"

Notice of Meeting

\$1,500,000

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT
[No. 203-WTB]**

Dated

August 5, 2011

By and between the

**NEW MEXICO WATER TRUST BOARD
and the
NEW MEXICO FINANCE AUTHORITY,
as Lenders/Grantors,**

and the

**CITY OF SANTA FE,
New Mexico,
as Borrower/Grantee.**

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

THIS LOAN/GRANT AGREEMENT (the "Agreement") dated August 5, 2011, is entered into by and between the **NEW MEXICO WATER TRUST BOARD** (the "Water Trust Board") and **THE NEW MEXICO FINANCE AUTHORITY** (the "NMFA") (collectively, the "Lenders/Grantors"), and the **CITY OF SANTA FE**, Santa Fe County, New Mexico (the "Borrower/Grantee").

WITNESSETH:

Capitalized terms used in the following preambles of this Agreement have the same meaning as defined in Article I of this Agreement unless the context requires otherwise.

WHEREAS, the Water Trust Board is a public body duly organized and created under and pursuant to the laws of the State of New Mexico, particularly Sections 72-4A-1 through 72-4A-10 NMSA 1978, as amended and supplemented; and

WHEREAS, the NMFA is a public body politic and corporate, separate and apart from the State of New Mexico constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly Sections 6-21-1 et seq., NMSA 1978, as amended and supplemented; and

WHEREAS, the Act provides that the Water Trust Board and the NMFA may make loans and grants from the Water Project Fund to qualifying entities for projects approved by the Legislature; and

WHEREAS, pursuant to the Act, the Water Trust Board has established rules governing the terms and conditions of loans and grants made from the Water Project Fund as provided by Section 19.25.10 NMAC, as amended and supplemented, for the purpose of making loans and grants available to qualifying entities pursuant to the Board Rules for Qualifying Water Projects; and

WHEREAS, pursuant to the Board Rules, 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, pursuant to the Board Rules, the Water Trust Board and the NMFA are authorized to make combination loan/grants to qualifying entities from the Water Project Fund for Qualifying Water Projects; and

WHEREAS, the Borrower/Grantee is a home-rule municipality, a political subdivision of the State, duly organized and existing under and pursuant to the laws of the State and is a

qualifying entity under the Act and is qualified for financial assistance as defined by the Board Rules; and

WHEREAS, the Borrower/Grantee is permitted and authorized by the Act to enter into this Agreement; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the constituent public it serves that the Borrower/Grantee enter into this Agreement with the Lenders/Grantors to borrow three hundred thousand dollars (\$300,000) from the Lenders/Grantors and to accept a grant in the amount of one million two hundred thousand dollars (\$1,200,000) from the Lenders/Grantors to finance the costs of the planning, design and construction for improvements to the Borrower/Grantee's McClure and Nichols reservoirs that feed the Canyon Road Water Treatment Plant, this project being more particularly described in the Term Sheet; and

WHEREAS, based upon the NMFA's evaluation of the New Mexico Water Trust Board Application for Financial Assistance dated October 27, 2009 of the Borrower/Grantee and dealing with the Project, the NMFA's Board of Directors has recommended to the Water Trust Board that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant, and has authorized the NMFA to enter into and administer this Agreement; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan, with a lien on the Pledged Revenues subordinate to all other liens thereon, present and future, except only the lien of other loans provided by the Lenders/Grantors pursuant to the Act; and

WHEREAS, the obligation of the Borrower/Grantee under this Agreement shall constitute a special, limited obligation of the Borrower/Grantee, payable from the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Borrower/Grantee or a charge upon the general credit or ad valorem taxing power of the Borrower/Grantee; and

WHEREAS, 2010 N.M. Laws ch. 47, being House Bill 56 of the 2010 Regular New Mexico Legislative Session authorized the funding of the Project from the Water Project Fund; and

WHEREAS, the Borrower/Grantee will use the proceeds of the Loan/Grant to finance the cost of the Project; and

WHEREAS, the Water Trust Board has authorized the NMFA to enter into and administer this Agreement governing the Project; and

WHEREAS, the NMFA on behalf of the Water Trust Board has determined that the Borrower/Grantee has met the readiness to proceed requirements established for the Loan/Grant by the NMFA and the Water Trust Board; and

WHEREAS, the Water Trust Board has determined that the Project is a Qualifying Water Project, is important to the overall needs of the citizens of the State and will directly enhance the health, safety and general welfare of the constituent public served by the Borrower/Grantee; and

WHEREAS, as planned and designed, the structural and material design life of the Project is not less than twenty (20) years; and

WHEREAS, for purposes of providing funding for the Project, the Governing Body of the Borrower/Grantee and the Water Trust Board have determined that it is in the best interests of the Borrower/Grantee and the public it serves that the Borrower/Grantee borrow the Loan Amount from the Lenders/Grantors and that the Water Trust Board provide the Grant Amount to the Borrower/Grantee; and

WHEREAS, the execution, performance and delivery of this Agreement have been authorized, approved and directed by the Governing Body pursuant to the Authorizing Ordinance; and

WHEREAS, the execution and performance of this 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.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

The capitalized terms defined in this Article I shall have the meanings assigned therein, unless the context clearly requires otherwise. Other capitalized terms used in this Loan Agreement shall have the same meanings as defined in the Master Ordinance or the Authorizing Ordinance (both as defined below).

“Act” means the Water Project Finance Act, Sections 72-4A-1 through 72-4A-10, NMSA 1978, as amended and supplemented.

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount, is sufficient to complete the Project or to provide matching funds needed to complete the Project. For this Project, the Additional Funding Amount is three hundred thousand dollars (\$300,000).

“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 Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

“Agreement” or “Loan/Grant Agreement” means this Water Project Fund Loan/Grant Agreement and any amendments or supplements hereto, including the Exhibits attached hereto.

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

“Application” means the New Mexico Water Trust Board Application for Financial Assistance dated October 27, 2009 of the Borrower/Grantee and dealing with the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, the Mayor, City Manager, Finance Director and City Clerk thereof; with respect to the NMFA, the Chairman, Vice-Chairman, Secretary and Chief Executive Officer of the NMFA; and with respect to the Water Trust Board, the Chairman or a Co-Chairman and the Secretary thereof, and any other officer or employee of the NMFA or of the WTB designated in writing by an Authorized Officer thereof.

“Authorizing Ordinance” means the Borrower/Grantee’s Ordinance No. 2011-24, adopted June 29, 2011, authorizing the execution of this Agreement.

“Board Rules” means Section 19.25.10 NMAC, as supplemented and amended.

“Borrower/Grantee” means the City of Santa Fe in Santa Fe County, New Mexico.

“Conditions” means the conditions to be satisfied prior to the disbursement of the Loan/Grant Amount or which otherwise apply to the performance of this Agreement and which are set forth in the Term Sheet.

“Department of Finance and Administration” or “DFA” means the department of finance and administration of the State

“Effective Date” or “Closing Date” means the date of execution of this Agreement by the Borrower/Grantee, the Water Trust Board and the NMFA.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by this Agreement, in an amount not exceeding five (5) percent of the Loan/Grant Amount.

“Eligible Items” means eligible Project costs for which grants and loans may be made pursuant to Section 72-4A-7(C) of the Act, as amended and supplemented, the Board Rules and applicable Water Trust Board policies, and includes Expenses. Eligible items include (1) matching requirements for federal and local cost shares, (2) engineering feasibility reports, (3)

contracted engineering design, (4) inspection of construction, (5) special engineering services, (6) environmental or archaeological surveys, (7) construction, (8) land acquisition, (9) easements and rights of way, (10) Eligible Legal Costs, and (11) Eligible Fiscal Agent Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee 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 of this Agreement.

“Expense Account” means the account established pursuant to the Authorizing Ordinance and held by the NMFA to pay the Expenses incurred by the Lenders/Grantors in connection with the Loan/Grant Agreement and the Loan/Grant.

“Expenses” means the costs of originating and administering the Loan/Grant, and includes legal fees to the extent allowed under the Act, the Board Rules and applicable policies of the Water Trust Board.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee 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 Lenders/Grantors establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the City Council of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and equals one million two hundred thousand dollars (\$1,200,000).

“Lenders/Grantors” means the Water Trust Board and the NMFA.

“Loan” or “Loan Amount” means the amount borrowed by the Borrower/Grantee as a loan pursuant to this Agreement for the purpose of funding the Project and equals three hundred thousand dollars (\$300,000).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project.

“Master Ordinance” means the Borrower/Grantee’s Ordinance No. 2006-47, adopted August 9, 2006, as supplemented and amended from time to time.

“NMAC” means the New Mexico Administrative Code.

“NMFA” means the New Mexico Finance Authority.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Pledged Revenues” means the revenues of the Borrower/Grantee pledged to the payment of the Loan pursuant to the Authorizing Ordinance and this Loan/Grant Agreement and described in the Term Sheet.

“Project” means the project described in the Term Sheet.

“Project Account” means the auditable book account in the name of the Borrower/Grantee established pursuant to the Authorizing Ordinance and held by the NMFA for deposit of the Loan/Grant Amount, as shown in the Term Sheet, for disbursement to the Borrower/Grantee to pay the costs of the Project.

“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) restoration and management of watersheds; (iv) flood prevention or (v) conservation, recycling, treatment or reuse of water as provided by law; and which has been approved by the State legislature pursuant to Section 72-4A-9(B), NMSA 1978, as amended and supplemented.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” attached to this Agreement.

“Useful Life” means the structural and material design life of the Project, which shall not be less than twenty (20) years 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” or “WTB” means the water trust board created and established pursuant to the Act.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Borrower/Grantee: The Borrower/Grantee represents, covenants and warrants as follows:

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

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

(c) Authorization of Agreement. The Borrower/Grantee is a qualifying entity pursuant to the Act. Pursuant to the laws of the State or laws governing its creation and existence, as amended and supplemented from time to time, the Borrower/Grantee is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Borrower/Grantee has duly authorized and approved the execution and delivery of this Agreement and the other documents related to the transaction described in this Agreement.

(d) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the distribution of the proceeds of the Loan/Grant Amount shall be deemed to be a distribution to the Borrower/Grantee first of the Loan Amount and then, once an amount equal to the Loan Amount has been distributed, of the Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to the completion of the Project and the payment of the Expenses, 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 presently available or reasonably anticipated to become available to the Borrower/Grantee, is sufficient to complete the Project and to pay the Expenses.

(e) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Amount as provided in this Agreement. The Loan shall be payable, as a third lien, solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to pay the Loan from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting

the Borrower/Grantee in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Completion of Project; Compliance with Laws. The Project will consist of the planning, design and construction for improvements to the Borrower/Grantee's McClure and Nichols reservoirs that feed the Canyon Road Water Treatment Plant. The Project is more particularly described in the Term Sheet. The Project will be completed, operated and maintained so as to comply with all applicable laws, ordinances, resolutions and regulations relating to the completion, operation and maintenance of the Project and to the use of the Loan/Grant proceeds.

(g) Necessity of Project. The completion and operation of the Project under the terms and conditions provided in this Agreement are necessary, convenient and in furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee and the public it serves.

(h) Legal, Valid and Binding Obligation. The Borrower/Grantee has taken all required action necessary to authorize the execution and delivery of this Agreement and this Agreement constitutes a legal agreement of the Borrower/Grantee enforceable in accordance with its terms.

(i) Agreement Term Not Less than Useful Life. The Agreement Term is not less than the Useful Life of the Project, which shall not be less than twenty (20) years as required by Section 72-4A-7 of the Act, as amended and supplemented.

(j) Benefit to Borrower/Grantee. During the Loan/Grant Agreement Term, the Project will at all times be used for the purpose of benefiting the Borrower/Grantee and the public it serves. The Borrower/Grantee intends to utilize the Project on a continuing basis and shall not sell or transfer the Project during the Useful Life of the Project, and the Project will be used solely in a manner consistent with the purposes of the Loan/Grant Agreement; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall, 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 abide by these requirements 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 Lenders/Grantors are third party beneficiaries of such written agreement.

(k) Amount of Agreement. The sum of the Grant Amount and the Loan Amount (as set forth on the Term Sheet) does not exceed the cost of the Project and the Expenses.

(l) No Breach or Default Caused by Agreement. Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions in

the Agreement nor the consummation of the transactions contemplated herein conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Borrower/Grantee is a party or by which the Borrower/Grantee is bound or any laws, ordinances, resolutions, governmental rules or regulations or court or other governmental orders to which the Borrower/Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(m) Irrevocability of Enactments. While this Agreement remains outstanding, any ordinance, resolution or other enactment of the Governing Body accepting the terms hereof, including the Authorizing Ordinance, shall be irrevocable until the Project has been completed, and shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Agreement in a manner not permitted or contemplated by the terms hereof.

(n) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute this Agreement or to comply with its obligations hereunder. Neither the execution of this Agreement by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations hereunder 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.

(o) Occurrence of Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Agreement, would constitute an Event of Default on the part of the Borrower/Grantee hereunder.

(p) Budgeting of Pledged Revenues; Approval by Department of Finance and Administration. The Borrower/Grantee anticipates that the Pledged Revenues will be sufficient to pay for the Loan, as and when due. The Borrower/Grantee will adequately budget for the periodic payments of the Loan Amount and other amounts payable by the Borrower/Grantee under this Agreement and will submit such budget on an annual basis to the Department of Finance and Administration for review and verification of compliance with this requirement.

(q) Borrower/Grantee's Existence. The Borrower/Grantee will maintain its legal identity and existence so long as this Agreement remains outstanding unless another political subdivision or State agency by operation of law succeeds to the liabilities and rights of the Borrower/Grantee without adversely affecting to any substantial degree the privileges and rights of the Lenders/Grantors. However, the Borrower/Grantee may annex or deannex land if the Borrower/Grantee complies with other applicable covenants contained in the Master Ordinance.

(r) Use of Project; Continuing Covenant. The Borrower/Grantee shall not sell, lease, mortgage, pledge, relocate or otherwise dispose of or transfer the Project or any part of the Project during its Useful Life; provided, however, that if the Project is a joint project of the Borrower/Grantee and other qualifying entities (as defined by the Act), the Borrower/Grantee

and the other qualifying entities may, with the express written approval of the Lenders/Grantors and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during its Useful Life. Such agreement shall provide that the Lenders/Grantors, or either of them, shall have the power to enforce the terms of this Agreement, without qualification, as to each and every qualifying entity owning or operating any portion of the Project during its Useful Life. If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity other than the Borrower/Grantee, the Borrower/Grantee shall, 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 abide by these restrictions 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 Lenders/Grantors are third party beneficiaries of such written agreement. The provisions of this Section shall remain effective and enforceable by the Lenders/Grantors during the Agreement Term. No part of this Loan/Grant Agreement shall be construed or interpreted as imposing upon the United States Forest Service or the United States Department of Agriculture any duty or obligation regarding the Project, except only that continuing access for operation and maintenance of the Project shall be provided during the Agreement Term.

(s) Maintenance of Separate Project Accounts. The Lenders/Grantors on behalf of the Borrower/Grantee shall maintain a separate Project Account in accordance with Generally Accepted Accounting Principles. The Borrower/Grantee shall maintain financial records relating to the use of the Loan/Grant Amount in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

(t) Title and Rights of Way. The Borrower/Grantee has title to, easements, rights of way or use permits on the real property upon which the Project is being constructed, located, completed or extended, and if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, such other qualifying entity has title to such real property. As required by Section 72-4A-7(A)(3) of the Act, as amended and supplemented, as a condition to any disbursement of the Loan/Grant Amount for Project construction, the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that the Borrower/Grantee has proper title to, easements, rights of way or use permits on the real property upon or through which the Project is to be constructed, located, completed or extended. If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee 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. No certification of title shall be required for lands owned by the United States Forest Service or the United States Department of Agriculture.

Section 2.2 Representations, Covenants, Warranties and Findings of the Water Trust Board and the NMFA. The Water Trust Board and the NMFA represent, covenant and warrant for the benefit of the Borrower/Grantee as follows:

(a) Authority of Water Trust Board. The Water Trust Board is a public body duly organized and existing pursuant to the Act, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Agreement and, by proper action, has duly authorized the execution and delivery of this Agreement.

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

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

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

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

(f) Sufficiency of Funds. Based solely upon information provided by the Borrower/Grantee (which information the Borrower/Grantee expressly acknowledges has not been independently verified by the Water Trust Board or the NMFA), it appears that the Loan/Grant Amount, together with the Additional Funding Amount and other moneys reasonably expected to be available for the Project, is sufficient to complete the Project and pay the Expenses, and is cost-effective.

(g) Importance of Project. The Project is important to the overall needs of the State and its citizens.

(h) Compliance with Policies. As related to this Agreement, the Water Trust Board and the NMFA have complied with all applicable policies and procedures as adopted and approved by the Water Trust Board and the NMFA Board of Directors, as applicable, or such policies and procedures have been waived by the Water Trust Board and the NMFA Board of Directors, as applicable.

ARTICLE III AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate at the end of the Useful Life of the Project, which in no event shall be less than twenty (20) years, as required by Section 72-4A-7 of the Act, as amended and supplemented.

ARTICLE IV LOAN/GRANT AMOUNT DISBURSEMENT CONDITIONS

Section 4.1 Conditions Precedent to Disbursement of Loan/Grant. Prior to the disbursement of the Loan/Grant Amount or any portion thereof, the following conditions shall be satisfied:

(a) The NMFA, on behalf of the Water Trust Board, shall have determined that the Borrower/Grantee has met the readiness to proceed requirements established for the Loan/Grant by the NMFA and the Water Trust Board; and

(b) The Borrower/Grantee shall have provided written assurance addressed to the Water Trust Board and the NMFA and signed by an attorney (or shall have provided a title insurance policy) that the Borrower/Grantee has proper title to or easements, rights of way, or permits on the real property upon or through which the Project is to be constructed, located, completed or extended; and

(c) If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall have provided written assurance addressed to the Water Trust Board and 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; provided, however, that no certification of title shall be required for lands of the United States Forest Service or the United States Department of Agriculture; and

(d) Except as otherwise expressly provided in the Conditions, the Borrower/Grantee shall have certified to the Lenders/Grantors that the Additional Funding Amount is available for the Project, and, in addition, shall have provided additional evidence reasonably acceptable to the Lenders/Grantors of the availability of the Additional Funding Amount; and

(e) The Borrower/Grantee shall be in compliance with the provisions of this Agreement; and

(f) The NMFA and/or the Water Trust Board, as applicable, shall have determined that the Conditions set forth in the Term Sheet, if any, have been satisfied.

Section 4.2 Determination of Eligibility Is Condition Precedent to Disbursement. No disbursement shall be made from the Project Account except upon a determination by the NMFA that such disbursement is for payment of Eligible Items, and that the disbursement does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and Water Trust Board policies governing the Water Project Fund. The NMFA, as a condition precedent to making any requested disbursement, 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 applicable Water Trust Board policies.

ARTICLE V LOAN TO THE BORROWER/GRANTEE; GRANT TO THE BORROWER/GRANTEE; APPLICATION OF MONEYS

Section 5.1 Loan and Grant to the Borrower/Grantee.

(a) Loan to the Borrower/Grantee. The Lenders/Grantors hereby lend to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the Lenders/Grantors, without interest, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Exhibit "C" of this Agreement. The Loan Amount shall be pre-payable by the Borrower/Grantee at any time without penalty.

(i) Subordinate Nature of Loan Amount Obligation. The obligation of the Borrower/Grantee to repay the Loan shall be subordinate to all other indebtedness now outstanding or hereafter issued which is secured by the Pledged Revenues of the Borrower/Grantee, including but not limited to all indebtedness described in the Master Ordinance, as amended and supplemented from time to time; except, however, that the obligation of the Borrower/Grantee to repay the Loan shall be on parity with any other obligation of the Borrower/Grantee now outstanding or hereafter issued which is secured by the Pledged Revenues and provided by the Lenders/Grantors pursuant to the Act.

(ii) Administrative Fee. The Borrower/Grantee shall, on an annual basis beginning June 1, 2012, pay to the Lenders/Grantors an Administrative Fee 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 Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee as provided by this Agreement. The Administrative Fee payment shall be due irrespective of whether or not a hardship waiver of payment is granted to the Borrower/Grantee 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 Borrower/Grantee 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 Borrower/Grantee. Although such determination shall be made by DFA, the Borrower/Grantee shall submit such application to DFA through the NMFA for determination by DFA and shall submit with such application sufficient documentation of the existence of such undue hardship as is reasonably required by DFA (as determined by the NMFA and DFA) to make such determination, and the Borrower/Grantee shall promptly respond to additional requests for information from DFA or the NMFA. Such application shall be executed by the Authorized Officers of the Borrower/Grantee. For purposes of this Agreement and that determination, an "undue hardship" shall be deemed to exist if DFA determines that the Borrower/Grantee demonstrates economic need and the inability to pay on a timely basis such annual payment on the Loan Amount. DFA shall make such determination no later than May 15 of the applicable year, and the NMFA shall promptly communicate to the Borrower/Grantee in writing the results of such determination. Upon receipt of written notice of such 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 such principal payment shall remain outstanding and due and payable on such date (in the event no undue hardship is determined to exist).

(b) Grant to the Borrower/Grantee. The Lenders/Grantors hereby grant to the Borrower/Grantee and the Borrower/Grantee hereby accepts from the Lenders/Grantors an amount equal to the Grant Amount.

(c) Project Account. The NMFA shall establish and maintain, on behalf of the Borrower/Grantee, a Project Account, which account shall be kept separate and apart from all other accounts of the NMFA. The Borrower/Grantee hereby pledges to the Lenders/Grantors all its rights, title and interest in the funds held in the Project Account for the purpose of securing the Borrower/Grantee's obligations under this Agreement. Funds in the Project Account shall be disbursed as provided in Section 7.2 hereof.

(d) Constitutional and Statutory Debt Limitations. No provision of this 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 Borrower/Grantee within the meaning of any constitutional or statutory debt limitation.

Section 5.2 Application of Loan/Grant Amount. Following the determination by the Water Trust Board and/or the NMFA, as applicable, that the conditions precedent to the disbursement of the Loan/Grant Amount have been satisfied, the NMFA shall transfer the Loan/Grant Amount shown on the Term Sheet for deposit as follows:

(a) to the Expense Account in the amount necessary to pay the Expenses of the Lenders/Grantors, as shown on the Term Sheet; and

(b) to the Project Account in the amount shown on the Term Sheet, to be disbursed by the NMFA at the request of the Borrower/Grantee as needed by it to acquire, implement and complete the Project, as provided in Section 7.2 of this Agreement.

Section 5.3 Investment of Borrower/Grantee's Accounts. Money on deposit in the Borrower/Grantee's accounts created hereunder may be invested by the NMFA for the credit of the Water Project Fund.

ARTICLE VI LOAN PAYMENTS BY THE BORROWER/GRANTEE

Section 6.1 Payment Obligations Limited to Pledged Revenues; Pledge of the Pledged Revenues. The Borrower/Grantee promises to pay the Loan Amount and Administrative Fees as herein provided. The Borrower/Grantee does hereby convey, assign and pledge unto the NMFA and unto its successors in trust forever all right, title and interest of the Borrower/Grantee in and to (i) the Pledged Revenues to the extent required to pay the Loan Amount and Administrative Fees as herein provided subject to and subordinate to all other obligations secured by the Pledged Revenues now outstanding or hereafter issued (except only that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligation provided by the Lenders/Grantors pursuant to the Act), and (ii) all other rights hereinafter granted, for securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Amount and Administrative Fees as herein provided, provided, however that if the Borrower/Grantee, its successors or assigns, shall well and truly pay, or cause to be paid the Loan Amount at the time and in the manner contemplated by this Agreement, according to the true intent and meaning hereof, and Administrative Fees due under this Agreement in accordance with its terms and provisions then, upon such final payment or provision for payment by the Borrower/Grantee, the provisions of this Agreement and the rights created thereby with respect to the Loan Amount shall terminate and the Lenders/Grantors shall give a written release or such other confirmation as may be necessary to remove any encumbrances upon the Pledged Revenues; otherwise, such provisions of this Agreement shall remain in full force and effect.

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Effective Date. The Borrower/Grantee, the NMFA and the Water Trust Board acknowledge and agree that obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues;

and that this Agreement with respect to the Loan Amount and the Administrative Fees as herein provided shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Borrower/Grantee's moneys other than the Pledged Revenues, nor shall any provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee's moneys including the Pledged Revenues. In addition, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

Section 6.2 Deposit of Payments of Loan Amount to Water Project Fund. All payments made by the Borrower/Grantee to the NMFA to pay the Loan Amount shall be deposited into the Water Project Fund.

Section 6.3 Manner of Payment. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the NMFA at the address designated in Section 11.1 of this Agreement. The obligation of the Borrower/Grantee to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Borrower/Grantee and the NMFA, any vendor or any other person, the Borrower/Grantee shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 6.4 Borrower/Grantee May Budget for Payments. The Borrower/Grantee 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 pay the Loan Amount and other amounts owed by the Borrower/Grantee hereunder; provided, however, the Borrower/Grantee 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 Lenders/Grantors' Release of Lien and Further Assurances. Upon payment in full of the Loan Amount the Lenders/Grantors agree to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the Lenders/Grantors no longer hold or maintain any lien or claim against the Pledged Revenues.

ARTICLE VII THE PROJECT

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

(a) The Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire, implement and complete the Project it shall take such steps as are necessary and appropriate to implement, complete and maintain the Project lawfully and efficiently. No Loan/Grant funds shall be used for items not constituting Eligible Items as defined in Section 72-4A-7(C) of the Act, as amended and supplemented, and the Board Rules.

(b) As provided by Section 72-4A-7(A)(1) of the Act, as amended and supplemented, the Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, which shall in no event be less than twenty (20) years, 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 or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall, 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 include an express statement by such other qualifying entity that the Lenders/Grantors are third party beneficiaries of such written agreement.

Section 7.2 Disbursements from the Project Account. So long as no Event of Default shall occur and provided that all conditions precedent to the disbursement of the Loan/Grant Amount have been satisfied, the NMFA shall disburse moneys from the Project Account upon receipt by the NMFA of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Borrower/Grantee, supported by certification by the Borrower/Grantee's project architect, engineer, or such other authorized representative of the Borrower/Grantee that the amount of the disbursement request represents the progress of construction, acquisition or other Project-related activities accomplished as of the date of the disbursement request. Such certification must be acceptable in form and substance to the NMFA and, at its request, the Water Trust Board. The Borrower/Grantee shall provide such records or access to the Project as the NMFA or the Water Trust Board, in the discretion of each, may request in connection with the approval of the Borrower/Grantee's disbursement requests made hereunder.

Section 7.3 No Disbursement for Prior Expenditures Except upon Approval. No disbursement shall be made from the Project Account without the approval of the NMFA and, at its request, the Water Trust Board, to reimburse any expenditures made more than one (1) year prior to the Effective Date.

Section 7.4 Completion of Disbursement of Loan/Grant Funds. Upon completion of disbursement of Loan/Grant funds, an Authorized Officer of the Borrower/Grantee shall deliver

a certificate to the NMFA and the Water Trust Board, substantially in the form of Exhibit "D" attached hereto, stating that, to his or her knowledge, the Project has been completed and Loan/Grant funds needed for the Project have been disbursed in accordance with the terms of this Agreement. No Loan/Grant funds shall be disbursed after the date which is three (3) years from the Effective Date or, if the funds from the Water Project Fund utilized to make the Loan/Grant are the proceeds of Severance Tax Bonds issued pursuant to Section 7-27-10.1, NMSA 1978, and received into the Water Project Fund as provided by Section 7-27-10.1, NMSA 1978, the earlier of such date or the date which is three (3) years from the date of issuance of such Severance Tax Bonds.

Section 7.5 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds. Upon the first to occur of either (a) completion of the disbursement of Loan/Grant funds as signified by delivery of the completion certificate contemplated in Section 7.4 hereof; or (b) the earlier of the date which is three (3) years from the Effective Date, the NMFA shall transfer the amounts remaining on deposit in the Project Account to the Water Project Fund or to such other fund permitted by law as may be established by the Water Trust Board, and the NMFA.

ARTICLE VIII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 8.1 Further Assurances and Corrective Instruments. The Lenders/Grantors and the Borrower/Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention hereof.

Section 8.2 Representatives of Lenders/Grantors or of Borrower/Grantee. Whenever under the provisions hereof the approval of the Lenders/Grantors, collectively or individually, or the Borrower/Grantee is required, or the Borrower/Grantee, or the Lenders/Grantors, collectively or individually, are required to take some action at the request of any of them, such approval or such request shall be given for the Lenders/Grantors, collectively or individually, or for the Borrower/Grantee, by an Authorized Officer or Authorized Officers of the Lenders/Grantors, collectively or individually, or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 8.3 Requirements of Law. The Borrower/Grantee shall observe and comply promptly with all applicable federal, State and local laws and regulations affecting the Project, and all current and future orders relating to the Project of all courts having jurisdiction over the Borrower/Grantee.

Section 8.4 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, Sections 13-1-28 through 13-1-199, NMSA 1978, as amended and supplemented, or, if the Borrower/Grantee 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 Borrower/Grantee.

Section 8.5 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin; 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 Section 13-4-18, NMSA 1978, as amended and supplemented.

Section 8.6 Expeditious Completion of the Project. The Borrower/Grantee shall complete the Project with all practical dispatch.

ARTICLE IX INSURANCE; NON-LIABILITY OF LENDERS/GRANTORS

Section 9.1 Insurance. The Borrower/Grantee 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, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended and supplemented, shall and hereby agrees to name the Lenders/Grantors as additional insureds with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, implementation or completion of the Project or otherwise during the 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 (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other qualifying entity to perform these insurance/risk-management program requirements for Borrower/Grantee 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 Lenders/Grantors are third party beneficiaries of such written agreement.

Section 9.2 Non-Liability of Lenders/Grantors. Lenders/Grantors shall not be liable in any manner for the Project, Borrower/Grantee's use of the Loan/Grant, the ownership, operation or maintenance of the Project, or any failure to act properly by the owner or operator of the Project.

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 Agreement:

(a) Failure by the Borrower/Grantee to pay any amount required to be paid under this Agreement on the date on which it is due and payable; or

(b) Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower/Grantee by the Lenders/Grantors, collectively or individually, unless the Lenders/Grantors, collectively or individually, 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 Lenders/Grantors but cannot be cured within the applicable thirty (30) day period, the Lenders/Grantors, collectively or individually, will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower/Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Borrower/Grantee is unable to carry out the agreements on its part herein contained, the Borrower/Grantee shall not be deemed in default under this paragraph 10.1(b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Borrower/Grantee contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is determined to be false or misleading in any material respect.

Section 10.2 Limitations on Remedies. A judgment requiring payment of money entered against the Borrower/Grantee may reach only available Pledged Revenues.

Section 10.3 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.2 hereof, the Lenders/Grantors, collectively or individually, may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Borrower/Grantee in this Agreement:

(a) by mandamus or other action or proceeding or suit at law or in equity compel the Borrower/Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) by suit in equity enjoin any acts or things which are unlawful or violate the rights of the Lenders/Grantors, collectively or individually; or

(c) by whatever other action at law or in equity may appear necessary or desirable to collect amounts then due under this Agreement or enforce any other of its rights thereunder; or

(d) by causing the Borrower/Grantee to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) by applying any amounts in the Project Account toward satisfaction of any of the obligations of the Borrower/Grantee under this Agreement other than repayment of the Loan or payment of any Administrative Fee due under this Agreement.

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lenders/Grantors, collectively or individually, is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter 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 thereof, 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 Borrower/Grantee or the Lenders/Grantors 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 Lenders/Grantors, collectively or individually, may, in the respective discretion of each, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Lenders/Grantors, collectively or individually, 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 and the WTB. In case of any such waiver or rescission, or in case any proceeding taken by the Lenders/Grantors, collectively or individually, on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Lenders/Grantors shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter 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 hereunder.

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Borrower/Grantee, to:

City of Santa Fe
Attn.: City Clerk
200 Lincoln Avenue
Santa Fe, New Mexico 87501

If to the Water Trust Board or to the NMFA, then to:

New Mexico Finance Authority
Attn.: Chief Executive Officer
207 Shelby Street
Santa Fe, New Mexico 87501

The Borrower/Grantee or the Lenders/Grantors may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lenders/Grantors and the Borrower/Grantee and their respective successors and assigns, if any.

Section 11.3 Integration. This Agreement and any other agreements, certifications and commitments entered into between the Water Trust Board, the NMFA and the Borrower/Grantee on the Closing Date constitute an entire agreement of the parties regarding the subject matter hereof as of the Closing Date. The Loan and Grant provided herein, which were approved by the Water Trust Board on June 16, 2010, approved by the NMFA Board of Directors on August 26, 2010 and the terms hereof supersede all prior understandings and agreements between the parties in connection with the Loan and Grant, to the extent inconsistent herewith.

Section 11.4 Amendments. This Agreement may be amended only with the written consent of all of the parties hereto.

Section 11.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Lenders/Grantors, either directly or through the NMFA or the Water Trust Board, or against any officer, employee, director or member of the Borrower/Grantee, 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 Borrower/Grantee, the Water Trust Board or of the NMFA is hereby expressly waived and released by the Borrower/Grantee, the Water Trust Board and the NMFA as a condition of and in consideration for the execution of this Agreement.

Section 11.6 Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.7 Execution in Counterparts. This 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 Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 11.9 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 11.10 Application of Act and Board Rules. The Lenders/Grantors and the Borrower/Grantee expressly acknowledge that this 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 the Board Rules are incorporated into this Agreement by reference. For ease of reference, the Board Rules as of the Effective Date are attached hereto as Exhibit "E".

Section 11.11 Borrower/Grantee Reporting to Lenders/Grantors. The Borrower/Grantee shall provide the Lenders/Grantors with a written report in a form reasonably acceptable to the Lenders/Grantors and executed by the Authorized Officers of the Borrower/Grantee describing the status of the Project as of the report date, uses of Loan/Grant funds during the six (6) month period preceding the report date and anticipated requests for distributions of Loan/Grant funds to occur during the six (6) month period following the report date. The first report date shall be the date which is six (6) months after the Effective Date, the second report date shall be the first anniversary of the Effective date, and subsequent report dates shall be the dates upon which end each succeeding six (6) month period prior to complete 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 WTB. The description of the status of the Project in such reports 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 from those anticipated as of the Closing Date, and (c) a description of the percentage of completion of Project.

[Remainder of page intentionally left blank.]

[Signature pages follow.]

IN WITNESS WHEREOF, the NMFA, on behalf of itself, and the Water Trust Board, on behalf of itself, each have executed this Agreement, which was approved by the Water Trust Board on June 16, 2010 and by the NMFA's Board of Directors on August 26, 2010, in their respective corporate names with their corporate seals affixed hereto and attested by their duly authorized officers; and the Borrower/Grantee has caused this Agreement to be executed and attested by duly authorized officers thereof. All of the above are effective as of the date first above written.

LENDERS/GRANTORS:



By Margaret Valencia

NEW MEXICO FINANCE AUTHORITY

By [Signature]
Chief Executive Officer or Designee

NEW MEXICO WATER TRUST BOARD

By [Signature]
Chairman or Co-Chairman

Prepared for Execution by Officers of the
New Mexico Finance Authority and the
New Mexico Water Trust Board:

COPPLER LAW FIRM, P.C.
As Loan/Grant Counsel


By: [Signature]
John L. Appel

Approved for Execution by Officers of the
New Mexico Finance Authority and the
New Mexico Water Trust Board:

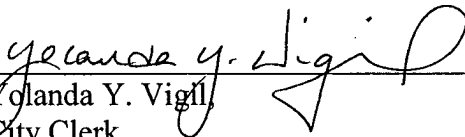
By: [Signature]
Reynold E. Romero
NMFA General Counsel

BORROWER/GRANTEE:

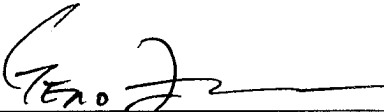
CITY OF SANTA FE

By 
David Coss,
Mayor

ATTEST:

By 
Yolanda Y. Vigil,
City Clerk

APPROVED AS TO FORM:

By 
Geno Zamora,
City Attorney

APPROVED:

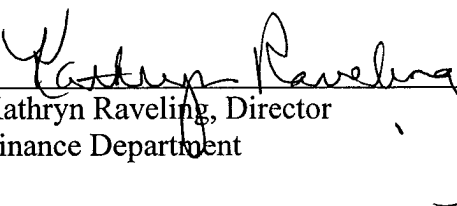
By 
Kathryn Raveling, Director
Finance Department

EXHIBIT "A"

TERM SHEET

**\$1,500,000 WATER PROJECT LOAN/GRANT TO THE
CITY OF SANTA FE**

Project Description: The Project consists of the planning, design and construction for improvements to the Borrower/Grantee's McClure and Nichols reservoirs that feed the Canyon Road Water Treatment Plant, including safety and operational improvements for intakes, rehabilitation of piping, improvements to instrumentation and controls, and modifications to weir structures, all as more specifically described in the Application and in the final plans and specifications for the Project approved by the Water Trust Board and the NMFA as provided by this Agreement.

Grant Amount: \$1,200,000

Loan Amount: \$300,000

Interest Rate: 0.00% per annum

Administrative Fee: 0.25% per annum

Pledged Revenues: Pledged Revenues as defined in City of Santa Fe Ordinance No. 2006-47 adopted August 9, 2006, as amended and supplemented.

Currently Outstanding Parity (Third Lien) Obligations for Pledged Revenues: 2007 Water Project Fund Loan/Grant No. 68-WTB, 2009 Water Project Fund Loan/Grants No. 93-WTB and No. 134-WTB, 2010 Water Project Fund Loan/Grant No. 170-WTB and No. 171-WTB, and 2011 Water Project Fund Loan/Grant No. 202-WTB

Authorizing Legislation: Borrower/Grantee Ordinance No. 2011-24, adopted June 29, 2011

Additional Funding Amount: \$300,000

Effective Date: August 5, 2011

Project Account Deposit: \$1,500,000

Expense Account Deposit: \$0

Conditions to be satisfied prior to first disbursement of Loan/Grant funds: Delivery to NMFA of (i) a copy of the agenda of the meeting of the Governing Body at which the Authorizing Ordinance was adopted and at which this Agreement, the Authorizing Ordinance and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the City Clerk of the Borrower/Grantee, (ii) a copy of the minutes of the Meeting, approved by the Governing Body and signed by the Mayor and attested to by the City Clerk of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's open meetings standards presently in effect.

Other Conditions applicable to the Loan/Grant: (1) Conditions set forth in the Loan/Grant Agreement. (2) Prior to disbursement of any portion of the Loan/Grant Amount for costs of construction, final plans and specifications shall be approved on behalf of the Lenders/Grantors by the New Mexico Environment Department or such other agency as may be designated by the Lenders/Grantors.

EXHIBIT "B"

FORM OF REQUISITION

RE: \$1,500,000 Loan/Grant Agreement by and between the City of Santa Fe, as Borrower/Grantee, and the Water Trust Board and the NMFA, as Lenders/Grantors (the "Loan/Grant Agreement")

Loan/Grant No. 203-WTB

Closing Date: August 5, 2011

TO: NEW MEXICO FINANCE AUTHORITY

You are hereby authorized to disburse from the Project Account – City of Santa Fe with regard to the above-referenced Loan/Grant Agreement the following:

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

WIRING INFORMATION

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT:

ELIGIBLE ITEM CATEGORY (See below): _____

APPROVAL OF PLANS AND SPECIFICATIONS IS REQUIRED PRIOR TO DISBURSEMENT OF FUNDS FOR CONSTRUCTION PURPOSES.

DATED: _____

By: _____
Authorized Officer

Title: _____

Each obligation, item of cost or expense mentioned herein is for a loan/grant made by the Lenders/Grantors pursuant to the Water Project Finance Act to the Borrower/Grantee 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 – City of Santa Fe. All representations contained in the Loan/Grant Agreement and the related closing documents remain true and correct and the Borrower/Grantee is not in breach of any of the covenants contained therein.

The proceeds of the Loan/Grant are to be used only to pay the costs of Eligible Items, as defined in the Loan/Grant Agreement. Eligible Items are (1) matching requirements for federal and local cost shares, (2) engineering feasibility reports, (3) contracted engineering design, (4) inspection of construction, (5) special engineering services, (6) environmental or archeological surveys, (7) construction, (8) land acquisition, (9) easements and rights of way, (10) Eligible Legal Costs and (11) Eligible Fiscal Agent Fees, subject to limitations as set forth in the Loan/Grant Agreement.

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

EXHIBIT "C"

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount shall be payable by the Borrower/Grantee to the Lenders/Grantors in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2012 and ending June 1, 2031. The Loan Amount shall be prepayable at any time without penalty. The Administrative Fee shall be due and payable annually on the same dates as the annual installments of principal.

New Mexico Finance Authority **Loan Amount = 300,000** **= Project** **300,000** **= Loan Funding Date** **08/05/11**
City of Santa Fe **Average Loan Life = 10.41** **= DSR** **-** **= First Interest Calculation Date** **12/01/11**
Blended Interest Rate = 0.2500% **= Misc Exp** **-** **= First Principal & Interest Calc Date** **06/01/12**
Arbitrage Yield = 0.2500% **= NMFA Fee** **-** **= Maturity Date** **06/01/31**
Loan Life = 20 **= Cap Int** **-** **= # of Days to 1st Principal Calc Date** **296**

Net System Revenue	Principal Amount	Interest Amount	Total New FY Debt Service	Total Calendar Year Debt Serv	Principal Outstanding	Exempt Rate	Arb Yield @ 0.2500%	Coverage @ 1.30	Revenue @ 0.00%	Projected Coverage
2011				241.68						
2012	14,647	616.70	15,263.70	15,378.73	285,353	0.250%	15,233	19,843	-	-
2013	14,683	713.42	15,396.42	15,378.07	270,670	0.250%	15,327	20,015	-	-
2014	14,720	676.72	15,396.72	15,378.32	255,950	0.250%	15,289	20,016	-	-
2015	14,757	639.92	15,396.92	15,378.47	241,193	0.250%	15,251	20,016	-	-
2016	14,794	603.02	15,397.02	15,378.53	226,399	0.250%	15,213	20,016	-	-
2017	14,831	566.04	15,397.04	15,378.50	211,568	0.250%	15,175	20,016	-	-
2018	14,868	528.96	15,396.96	15,378.37	196,700	0.250%	15,137	20,016	-	-
2019	14,905	491.78	15,396.78	15,378.15	181,795	0.250%	15,099	20,016	-	-
2020	14,942	454.52	15,396.52	15,377.84	166,853	0.250%	15,061	20,015	-	-
2021	14,980	417.16	15,397.16	15,378.43	151,873	0.250%	15,024	20,016	-	-
2022	15,017	379.70	15,396.70	15,377.93	136,856	0.250%	14,986	20,016	-	-
2023	15,055	342.16	15,397.16	15,378.34	121,801	0.250%	14,949	20,016	-	-
2024	15,092	304.52	15,396.52	15,377.65	106,709	0.250%	14,911	20,015	-	-
2025	15,130	266.78	15,396.78	15,377.87	91,579	0.250%	14,874	20,016	-	-
2026	15,168	228.96	15,396.96	15,378.00	76,411	0.250%	14,837	20,016	-	-
2027	15,206	191.04	15,397.04	15,378.03	61,205	0.250%	14,800	20,016	-	-
2028	15,244	153.02	15,397.02	15,377.96	45,961	0.250%	14,763	20,016	-	-
2029	15,282	114.90	15,396.90	15,377.80	30,679	0.250%	14,726	20,016	-	-
2030	15,320	76.70	15,396.70	15,377.55	15,359	0.250%	14,689	20,016	-	-
2031	15,359	38.40	15,397.40	15,378.20	-	0.250%	14,653	20,017	-	-
Total	300,000	7,804.42	307,804.42	307,804.42	300,000		300,000			

New Mexico Finance Authority
City of Santa Fe
Revenue: Net System Revenue

08/01/11

Sources	Amounts
NMFA WTB Loan - Primary Loan	300,000
Total Sources	300,000

Uses	Amounts
Deposit to Project Fund	300,000
Annual % Processing Fee Total = \$7,804	-
Total Uses	300,000

Assumptions	As Agreed
Loan Funding Date	08/05/11
First Interest Calculation Date	12/01/11
First Principal & Interest Calculation Date	06/01/12
Final Maturity Date	06/01/31
First Principal Calculation Period (days)	296
Loan Term	20
Average Life of Loan	10.41
Maximum Fiscal Year Debt Service	15,397
Required Coverage Ratio	1.30
Annual Interest Rate	0.000%
NMFA Admin Fee	0.250%
Arbitrage Yield	0.2500%

EXHIBIT "D"

FORM OF CERTIFICATE OF COMPLETION

RE: \$1,500,000 Loan/Grant Agreement by and between the Water Trust Board and the NMFA, as Lenders/Grantors, and the City of Santa Fe, as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. 203-WTB

Closing Date: August 5, 2011

TO: NEW MEXICO FINANCE AUTHORITY

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

Borrower/Grantee, hereby certify as follows:

1. The project described in the Loan/Grant 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. The portion of the Loan/Grant Amount unexpended for the Project is \$ _____.

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

CITY OF SANTA FE

By: _____

Its: _____

EXHIBIT "E"

**RULES OF THE NEW MEXICO WATER TRUST BOARD
(TITLE 19, CHAPTER 25, PART 10 OF THE NEW MEXICO
ADMINISTRATIVE CODE) IN EFFECT AS OF THE
EFFECTIVE DATE**

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 25 ADMINISTRATION AND USE OF WATER-GENERAL PROVISIONS
PART 10 REVIEW AND ELIGIBILITY OF PROPOSED WATER PROJECTS

19.25.10.1 ISSUING AGENCY: New Mexico Water Trust Board.
[19.25.10.1 NMAC - Rp, 19.25.10.1 NMAC, 7/31/08]

19.25.10.2 SCOPE: All persons applying for financial assistance under the water project fund from the New Mexico finance authority, NMSA 1978, 72-4A-5 and NMSA 1978, 72-4A-9.
[19.25.10.2 NMAC - Rp, 19.25.10.2 NMAC, 7/31/08]

19.25.10.3 STATUTORY AUTHORITY: NMSA 1978, 72-4A-5 and NMSA 1978, 72-4A-9.
[19.25.10.3 NMAC - Rp, 19.25.10.3 NMAC, 7/31/08]

19.25.10.4 DURATION: Permanent.
[19.25.10.4 NMAC - Rp, 19.25.10.4 NMAC, 7/31/08]

19.25.10.5 EFFECTIVE DATE: July 31, 2008, unless a later date is cited at the end of a section.
[19.25.10.5 NMAC - Rp, 19.25.10.5 NMAC, 7/31/08]

19.25.10.6 OBJECTIVES:

A. Section 72-4A-5, NMSA 1978 provides that the New Mexico water trust board is required to adopt rules governing terms and conditions of grants and loans recommended by the board for appropriation by the state legislature from the water project fund giving priority to projects that have urgent needs, that have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission and that have matching contributions from federal or local funding sources; and authorizes qualifying water projects to the authority that are for: (1) storage, conveyance or delivery of water to end users; (2) implementation of federal Endangered Species Act of 1973; (3) restoration and management of watersheds; (4) flood prevention; and (5) conservation, recycling, treatment or reuse of water as provided by law. Additionally, the board shall create a drought strike team to coordinate responses to emergency water shortages caused by drought conditions. Section 72-4A-9, NMSA 1978, creates the "water project fund" within the New Mexico Finance Authority.

B. Section 72-4A-5, NMSA 1978, provides that the board shall give priority to qualifying water projects that (i) have been identified as being urgent to meet the needs of a regional water planning area that has had a completed regional water plan accepted by the interstate stream commission; (ii) have matching contributions from federal or local funding sources available and (iii) have obtained all requisite state and federal permits and authorizations necessary to initiate the qualifying water project. The purpose of these rules is to set forth the intent of the board and to outline, in general terms, the criteria and procedures to be used in evaluating and funding qualifying water projects.

C. Section 72-4A-6, NMSA 1978, provides that the authority shall provide support for the water trust board, develop application procedures and forms for qualifying entities to apply for grants and loans from the water project fund; and make loans or grants to qualifying entities for qualifying water projects authorized by the state legislature, provided that the service area for the project is wholly within the boundaries of the state or the project is an interstate project that directly benefits New Mexico.

D. Section 72-4A-9, NMSA 1978, provides that the authority may adopt separate procedures and rules for administration of the water project fund and recover from the water project fund costs of administering the water project fund and originating grants and loans.

[19.25.10.6 NMAC - Rp, 19.25.10.6 NMAC, 7/31/08]

19.25.10.7 DEFINITIONS:

- A. “Act” means the Water Project Finance Act, Sections 72-4A-1 through 72-4A-10, NMSA 1978, as the same may be amended and supplemented.
- B. “Agreement” means the document or documents signed by the board and a qualifying entity which specify the terms and conditions of obtaining financial assistance from the water project fund.
- C. “Applicant” means a qualifying entity which has filed a water project proposal with the authority for initial review and referral to the board’s project review committee.
- D. “Authority” means the New Mexico finance authority.
- E. “Authorized representative” means one or more individuals duly authorized to act on behalf of the qualifying entity in connection with its financial application, water project proposal or agreement.
- F. “Board” means the New Mexico water trust board created by the act.
- G. “Bylaws” means the bylaws of the board adopted on September 25, 2001, and amended on June 27, 2007, and as may be further amended and supplemented.
- H. “Financial application” means a written document filed with the authority by an applicant for the purpose of evaluating the applicant’s qualifications for types of financial assistance which may be provided by the board.
- I. “Financial assistance” means loans, grants and any other type of assistance authorized by the act, or a combination thereof, provided from the water project fund to a qualified entity for the financing of a qualifying water project.
- J. “Political subdivision” means a municipality, county, irrigation district, conservancy district, special district, acequia or soil and water conservation district, water and sanitation district, or an association organized and existing pursuant to the Sanitary Projects Act, Chapter 3, Article 29 NMSA 1978.
- K. “Project review committee” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review water projects to be recommended for funding from the water project fund.
- L. “Qualifying entity” means a state agency, a political subdivision of the state or a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico.
- M. “Qualifying water project” means a project recommended by the board for funding by the legislature which includes a water project serving an area wholly within the boundaries of the state for (i) storage, conveyance or delivery of water to end users; (ii) implementation of federal Endangered Species Act of 1973 collaborative programs; (iii) restoration and management of watersheds; (iv) flood prevention; or (v) conservation, recycling, treatment or reuse of water as provided by law and which has been approved by the state legislature pursuant to Section 72-4A-9(B), NMSA 1978.
- N. “State” means the state of New Mexico.
- O. “State agency” means any agency or institution of the state.
- P. “Water project account” means a fund designated by a qualifying entity exclusively for receipt of financial assistance.
- Q. “Water project fund” means the fund of that name created in the authority by Section 72-4A-9, NMSA 1978.
- R. “Water project proposal” means a written proposal submitted by a qualifying entity for review by the project review committee.
- S. “Water trust fund” means the fund of that name created in the state treasury by Section 72-4A-8, NMSA 1978.
- [19.25.10.7 NMAC - Rp, 19.25.10.7 NMAC, 7/31/08]

19.25.10.8 ELIGIBILITY: PRIORITIZATION OF WATER PROJECTS: The board will develop and consider a variety of factors in reviewing and evaluating water project proposals to determine which water projects

to recommend as qualifying water projects for appropriation by the state legislature. The board shall give priority to projects that have urgent needs, that have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission and that have matching contributions from federal or local sources as provided for in Section 72-4A-5, NMSA 1978. Pursuant to Section 72-4A-5.1, NMSA 1978, the board, in conformance with the state water plan and pursuant to the provisions of the Water Project Finance Act, shall prioritize the planning and financing of water projects required to implement the plan. The board shall identify opportunities to leverage federal and other funding. The board shall establish policies for prioritization of water projects.

[19.25.10.8 NMAC - Rp, 19.25.10.8 NMAC, 7/31/08]

19.25.10.9 WATER PROJECT PROPOSAL, PROCEDURES AND APPROVAL PROCESS:

A. The board and the authority will administer an outreach program to notify qualifying entities that water project proposals are being accepted to identify water projects for review by the project review committee and the board for recommendation for funding to the state legislature as qualifying water projects.

B. The authority will provide forms and/or guidelines for water project proposals and financial applications.

C. The authority staff will forward all completed water project proposals and the initial evaluation of financial applications and water project proposals to the project review committee. The project review committee will consider the water project and may confer with outside parties, including any local interdisciplinary teams familiar with the water project, as necessary to obtain more information on the feasibility, merit, and cost of the water project. The project review committee will make a recommendation to the board on each water project proposal.

D. Upon the recommendation of the project review committee, the board will prioritize the qualifying water projects for recommendation to the legislature.

E. After completion of the review process by the project review committee and the board and receipt of a favorable recommendation on the water project proposal, the water project will be recommended by the board for approval by the state legislature, which recommendation and approval are required by Sections 72-4A-5 and 72-4A-9, NMSA 1978.

F. No later than January of each year, the board will recommend to the legislature a final list of projects recommended for funding. After the legislature authorizes qualifying water projects, the project review committee will recommend to the board a list of projects to be authorized by the board for funding by the authority. The authority will provide financial assistance for qualifying projects as authorized by the legislature under policies jointly established by the board and authority.

[19.25.10.9 NMAC - Rp, 19.25.10.9 NMAC, 7/31/08]

19.25.10.10 EVALUATION OF FINANCIAL APPLICATION AND WATER PROJECT PROPOSAL:

The authority staff will complete an initial evaluation of the financial application and water project proposal upon receipt. Such evaluation will include, to the extent applicable, an evaluation of water project feasibility, administrative capacity, financial position, debt management and economic and demographic factors. The authority may rely upon the advice of an interdisciplinary team in evaluating water project proposals and financial applications.

[19.25.10.10 NMAC - Rp, 19.25.10.10 NMAC, 7/31/08]

19.25.10.11 QUALIFYING WATER PROJECTS AND ELIGIBLE COSTS:

A. The board may authorize the authority to provide financial assistance from the water project fund to qualifying entities only for qualifying water projects as provided by Section 72-4A-6 and Section 72-4A-7, NMSA 1978.

B. Financial assistance shall be made only to qualify entities that:

- (1) agree to provide for the operation and maintenance of the water project so that it will function properly over the structural and material design life, which shall not be less than twenty years;
 - (2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18, NMSA 1978;
 - (3) provide written assurance signed by an attorney or provide a title insurance policy that the political subdivision has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;
 - (4) meet the requirements of the financial capability set by the board to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;
 - (5) agree to properly maintain financial records and to do an audit of the project's financial records;
- and
- (6) agree to pay costs of originating grants and loans as determined by rules adopted by the board.
- C. Plans and specifications for a water project shall be approved by the New Mexico environment department or by another appropriate agency designated by the authority before grant or loan disbursement to pay for construction costs is made to a qualifying entity. Plans and specifications for a water project shall incorporate available technologies and operations design for water efficiency.
- D. Financial assistance shall be made for eligible items, which include:
- (1) matching requirements for federal and local cost shares;
 - (2) engineering feasibility reports;
 - (3) contracted engineering design;
 - (4) inspection of construction;
 - (5) special engineering services;
 - (6) environmental or archeological surveys;
 - (7) construction;
 - (8) land acquisition;
 - (9) easements and rights of way; and
 - (10) legal costs and fiscal agent fees within limits set by the board.
- E. A qualified entity which has had financial assistance approved by the state legislature for financing a qualifying water project may apply to the board to redirect the financial assistance to a different water project made necessary by unanticipated events. The decision to redirect the financial assistance to a different qualifying water project will be at the sole discretion of the board and subject to approval of the state legislature as required by Section 72-4A-9(B), NMSA 1978.
- [19.25.10.11 NMAC - Rp, 19.25.10.11 NMAC, 7/31/08; A, 5/28/10]

19.25.10.12 QUALIFYING WATER PROJECT FINANCING: The authority may recommend structured financial assistance packages that include loans, grants and any other type of assistance authorized by the authority. The structure, terms and conditions of the financial assistance will be determined by the authority and approved by the board. Financial assistance for qualifying water projects may be pooled, at the sole discretion of the authority, under policies jointly established by the board and authority.

[19.25.10.12 NMAC - Rp, 19.25.10.12 NMAC, 7/31/08]

19.25.10.13 FINANCING APPROVAL REQUIREMENTS: Based on the priority and evaluation factors set forth in Sections 19.25.10.8, 19.25.10.10, and 19.25.10.11, the board may recommend to the authority approval of the qualifying water project for financial assistance.

[19.25.10.13 NMAC - Rp, 19.25.10.13 NMAC, 7/31/08]

19.25.10.14 RECONSIDERATION OF BOARD DECISIONS: Any applicant or qualifying entity may request reconsideration of a decision of the board by notifying the board in writing within 15 days following the

meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant or qualifying entity believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chairman of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant or qualifying entity of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.

[19.25.10.14 NMAC - Rp, 19.25.10.14 NMAC, 7/31/08; A, 5/28/10]

19.25.10.15 FINANCIAL ASSISTANCE AGREEMENT:

A. The board and the qualified entity will enter into an agreement to establish the terms and conditions of financial assistance from the board. The agreement will include the terms of repayment and remedies available to the board in the event of a default. The board, or the authority, on behalf of the board, will monitor terms of the agreement and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection.

B. The interest on any financial assistance extended shall be determined by the authority based on the cost of funds and ability of a qualified entity to repay a loan. The interest rate shall not change during the term of the financial assistance unless refinanced or unless the financial assistance is structured as a variable rate obligation.

C. The agreement will contain provisions which require financial assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. In the event of default under a financial assistance agreement by a qualified entity, the board, or the authority, on behalf of the board, may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

[19.25.10.15 NMAC - Rp, 19.25.10.15 NMAC, 7/31/08]

19.25.10.16 ADMINISTRATIVE COSTS:

A. The board may impose and collect reasonable fees and costs in connection with the filing of a water project proposal or a financial application for approval of a water project and for financial assistance with the board and the authority. The board also may impose and collect an administrative fee from each qualifying entity that receives financial assistance from the water project fund. If an administrative fee is assessed, the administrative fee will be a percentage of the principal amount of the financial assistance provided to a qualifying entity. The administrative fee may be withheld from the principal amount of the financial assistance and will be retained in the water project fund. Alternatively, the board may levy an annual fee equal to a percentage of the outstanding principal amount of a loan. Specific percentages will be based on, among other things, the volume of financial assistance being provided to qualifying entities, the administrative costs of the board and the authority, and the availability of other revenue sources to cover the board's and the authority's administrative costs. The filing and administrative fee or fees may be used for, among other purposes, reimbursing the board or the authority for all or part of the costs of issuing bonds and other administrative costs, including any audits of the water project fund and the water trust fund.

B. The board and the authority may establish such other charges, premiums, fees and penalties deemed necessary for the administration of the water project fund and the water trust fund.

[19.25.10.16 NMAC - Rp, 19.25.10.16 NMAC, 7/31/08]

19.25.10.17 ADMINISTRATION OF THE WATER TRUST FUND:

A. The water trust fund shall be administered by the state treasurer's office and shall be invested by the state investment officer in the same manner as land grant permanent funds are invested under state law. All investment earnings on the water trust fund shall be credited to the water trust fund. The water trust fund shall not be expended for any purpose.

B. Annual distributions to the water project fund from the water trust fund shall be made as required by the authority.

[19.25.10.17 NMAC - Rp, 19.25.10.17 NMAC, 7/31/08]

19.25.10.18 ADMINISTRATION OF THE WATER PROJECT FUND:

A. The water project fund shall be administered by the authority as a separate account, but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money from repayments of loans made by the board for qualifying water projects shall be deposited in the water project fund. The water project fund shall also consist of any other money appropriated, distributed or otherwise allocated to the water project fund for the purpose of financing qualifying water projects.

C. The authority shall adopt a uniform accounting system for the water project fund and each account and subaccount established by the authority, based on generally accepted accounting principles.

D. The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund and originating grants and loans.

[19.25.10.18 NMAC - Rp, 19.25.10.18 NMAC, 7/31/08]

19.25.10.19 BOND ISSUANCE:

A. The authority may issue and sell revenue bonds as required to provide funds to:

- (1) replenish the principal balance of the water project fund;
- (2) pay, fund or refund the principal of or interest or redemption premiums, if any, on bonds issued by the authority whether the bonds or interest to be paid, funded or refunded have or have not become due;
- (3) establish or increase reserve funds to secure bonds; and
- (4) pay the costs and expenses incident to the issuance of bonds.

B. The authority will consider market and other economic conditions in determining the type of sale and the timing of the issuance of bonds.

C. The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act, Chapter 6, Article 21, NMSA 1978.

[19.25.10.19 NMAC - Rp, 19.25.10.19 NMAC, 7/31/08]

19.25.10.20 AMENDMENT OF RULES: This rule may be amended or repealed at any time by a majority vote of a quorum of the board.

[19.25.10.20 NMAC - Rp, 19.25.10.20 NMAC, 7/31/08]

HISTORY OF 19.25.10 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

19.25.10 NMAC, Review and Eligibility of Proposed Water Projects (filed 9/3/2002) repealed 7/31/08.

NMAC History:

19.25.10 NMAC, Review and Eligibility of Proposed Water Projects (filed 9/3/2002) was replaced by 19.25.10 NMAC, Review and Eligibility of Proposed Water Projects, effective 7/31/08.