



# Albuquerque Bernalillo County Water Utility Authority

Albuquerque/Bernalillo  
County  
Government Center  
One Civic Plaza  
Albuquerque, NM 87102

## Agenda

*Commissioner Debbie O'Malley, Chair*  
*Councilor Klarissa J. Peña, Vice-Chair*  
*Commissioner Maggie Hart Stebbins*  
*Councilor Trudy E. Jones*  
*Mayor Timothy M. Keller*  
*Commissioner Steven Michael Quezada*  
*Councilor Ken Sanchez*  
*Trustee Pablo Rael*

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Wednesday, March 20, 2019

5:00 PM

Vincent E. Griego Chambers

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1. **CALL TO ORDER**
2. **INVOCATION/PLEDGE OF ALLEGIANCE**
3. **APPROVAL OF MINUTES - February 27, 2019**
4. **PROCLAMATIONS AND AWARDS**
5. **PUBLIC COMMENT**
6. **ANNOUNCEMENTS/COMMUNICATIONS**
- A. **Next Scheduled Meeting – April 17, 2019 at 5:00 PM**
7. **INTRODUCTION (FIRST READING) OF LEGISLATION**
  - A. [R-19-7](#) Establishing One-Year Objectives for the Albuquerque Bernalillo County Water Utility Authority in Fiscal Year 2020 to Meet Five-Year Goals
8. **CONSENT AGENDA**

*(Any Board Member may request that a Consent Agenda item be placed under Approvals)*

  - A. [C-19-11](#) Approval of Agreement with GandyDancer LLC as a result of B2019000013 Carnuel Phase 2B Water System Improvements
  - B. [C-19-12](#) Approval of Contract Increase with Modrall Sperling Roehl Harris & Sisk, P.A. for Legal Services
  - C. [C-19-13](#) Approve Change Order # 4 for the Albuquerque Bernalillo County Water Utility Authority Billing System (CC&B) Upgrade Specifically related to Documentation, Knowledge Transfer and Training for Albuquerque

Bernalillo County Water Utility Authority Staff

- D. [C-19-3](#) Approving Service Connection Agreement for Water and Sewer Service with Coronado Park, LTD. at 8401 Pan American FWY NE

9. **APPROVALS**

- A. [O-19-1](#) Authorizing the Execution and Delivery of a Loan and Subsidy Agreement (“Loan Agreement”) by and Between the Albuquerque Bernalillo County Water Utility Authority (“The Water Authority”) and the New Mexico Finance Authority, Evidencing a Special Limited Obligation for the Water Authority to Pay a Principal Amount of No More than Two Million Seven Hundred Twenty-Four Thousand Two Hundred Eighty-Two Dollars (\$2,724,282), Together with Interest, Costs of Issuance and Administrative Fees Thereon, and To Accept A Loan Subsidy of No More Than Seven Hundred Five Thousand Seven Hundred Ninety-Nine Dollars (\$705,799), For the Purpose of Financing the Costs of Extending and Improving the Water Infrastructure System To The Los Padillas Community As Part of The South Valley Water Project, Including, Acquisition and Installation of Water Distribution Lines; Providing For The Pledge and Payment of The Principal, Interest and Administrative Fees Due Under The Loan Agreement Solely From Net Revenues; Setting a Maximum Interest Rate For The Loan; Approving The Form of And Other Details Concerning The Loan 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 Agreement

- B. [R-19-4](#) Confirming Approval of the Execution and Delivery of a Loan and Subsidy Agreement (the “Loan Agreement”) By And Between The Albuquerque Bernalillo County Water Utility Authority (the “Water Authority”) And the New Mexico Finance Authority Evidencing a Special Limited Obligation of the Water Authority to Pay a Principal Amount of No More Than Two Million Seven Hundred Twenty-Four Thousand Two Hundred Eight-Two Dollars (\$2,724,282), Together With Interest, Costs of Issuance and Administrative Fees Thereon, and to Accept a Loan Subsidy of No More Than Seven Hundred Five Thousand Seven Hundred Ninety-Nine Dollars (\$705,799); and Ratifying Action Previously Taken in Connection Therewith

- C. [R-19-5](#) Authorizing the Removal of Certain Uncollectable Accounts from the Albuquerque Bernalillo County Water Utility Authority Accounts Receivable Records FY2014 and Prior

- D. [R-19-6](#) Entering into a Memorandum of Agreement with Explora Science Center & Children’s Museum of Albuquerque

10. **OTHER BUSINESS**

A. [OB-19-7](#) Southside Water Reclamation Plant Renewal Program

11. **ADJOURNMENT**

*Visit Our Website at [www.abcwua.org](http://www.abcwua.org)*

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the Authority Office as soon as possible before the meeting date at 289-3100 or by the TTY at 1-800-659-8331.

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Meeting Date: March 20, 2019  
Staff Contact: Frank Roth, Senior Policy Manager

**TITLE: R-19-7 - Establishing One-Year Objectives for the Albuquerque Bernalillo County Water Utility Authority in Fiscal Year 2020 to Meet Five-Year Goals**

**ACTION: Introduction March 20, 2019; Final Action April 17, 2019**

**SUMMARY:**

**Overview of Goal Development**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) established Five-Year Goals and One-Year Objectives in 2005 to help guide the Water Authority's budget process and address priority issues. In addition, the Water Authority's Budget Ordinance specifies that the Water Authority shall annually review and adopt one-year objectives related to the five-year goals for the Water Authority. The Ordinance also states that the Water Authority's operating budget shall be formulated by the Water Authority's Executive Director and be consistent with the goals and objectives, and that they be major factors in determining funding for Water Authority programs and improvements in both the operating and capital improvements budgets.

The Five-Year Goals adopted by the Water Authority are based on American Water Works Association's (AWWA) business model using fifteen successful quality achievement programs, including the Malcolm Baldrige National Quality Award Program, the Deming Award, and the International Standards Organization series of quality standards. The model characterizes the work of the typical water and wastewater utility around five business systems:

1. Water Supply and Operations
2. Wastewater Collection and Operations
3. Customer Relations
4. Business Planning and Management
5. Organization Development

The Water Authority has participated in several continuous performance programs through AWWA including Benchmarking, Self-Assessment, and Peer Review. Since 2012, the Water Authority has incorporated the EPA's *Effective Utility Management* (EUM) into its strategic planning process which is designed to help utilities to make practical, systematic changes to achieve excellence in performance. The Water Authority has been using the EUM's Ten Attributes framework to identify areas for improvement.

### **Overview of One-Year Objectives**

The One-Year Objectives in this resolution are categorized by the Water Authority's Five-Year Goal areas. The Water Authority has developed guiding goal statements for each goal area which explains the long-term desired result for that goal. The continuous performance programs mentioned above help the Water Authority to identify gaps in service delivery or performance. The Water Authority's performance measures are used to help monitor the Water Authority's performance and to develop performance targets. With the performance measures being used to identify gaps, the One-Year Objectives which are used to address performance or service delivery gaps and improve performance levels. In addition to identifying areas of improvement, some of the Objectives are related to completing projects or improving programs. A few of the objectives are carried over from FY19 either because they require more time to complete, or are ongoing issues.

### **FISCAL IMPACT:**

Objectives are linked to the budget.



1 Objective 3. Submit annual distribution and treatment data to the Partnership  
2 for Safe Water program for inclusion in the program's annual report of aggregated  
3 system water quality data; Continue work on items identified from the Phase 3 Self-  
4 Assessment that are not yet considered optimized and submit a progress report to  
5 AWWA by the end of the 4th Quarter of FY20.

6 Objective 4. To improve energy efficiency and reduce operation and  
7 maintenance costs, continue the Automated Meter Infrastructure Pressure Monitoring  
8 project and assess opportunities for operational efficiency within pressure zone 4ER  
9 and the Paseo Del Norte/Eagle Ranch interconnection by the end of the 4th Quarter of  
10 FY20.

11 Objective 5. To ensure the accessibility of valves and reduce interrupted  
12 service, create a systemic approach to preventative and corrective valve maintenance  
13 by the end of the 4th Quarter of FY20.

14 Objective 6. To improve the validated water audit inputs for apparent water  
15 loss, conduct a statistically significant number of small meter tests to support the water  
16 audit and strategic water loss plan by the end of the 4th Quarter of FY20.

17 Objective 7. Implement water loss control strategies by targeting real and  
18 apparent water losses by conducting an apparent loss forensic analysis and evaluating  
19 leak detection survey reports; By the end of the 2nd Quarter of FY20, identify areas of  
20 improvement and provide recommendations for reducing water loss.

21 Objective 8. Continue distribution water loss program by locating water leaks  
22 from surveying 650 miles of small diameter water lines through conventional leak  
23 detection methods and 2,200 miles of small diameter water lines through acoustic leak  
24 detection by the end of the 4th Quarter of FY20; Track, evaluate, and report on pilot-  
25 scale Echologics acoustic leak detection system on a quarterly basis in FY20.

26 Objective 9. Maintain water use at or below 127 gallons per capita per day  
27 through the end of the 4th Quarter of FY20.

28 Objective 10. Introduce rebates for organic mulch and flow and moisture  
29 sensors by the end of the 2nd Quarter of FY20.

30 Objective 11. Develop a program to assist low-income customers with water  
31 efficiency efforts by the end of the 2nd Quarter of FY20.

1 Objective 12. Utilizing the NM Bureau of Geology and Minerals study, select  
2 the next Aquifer Storage and Recovery project and begin permitting studies by the 4th  
3 Quarter of FY20.

4 Objective 13. Create a new puppet show and coloring book for use in the  
5 elementary school education program by the end of the 3rd Quarter of FY20.

6 Objective 14. Track and report conservation education outreach to service  
7 area customers and meet the following targets: 1) 100 Irrigation Audits; 2) 45 Meetings  
8 with Landscapers; 3) 30 Meetings with Property Managers; and 4) 2 Water  
9 Conservation Open House Meetings by the end of the 4th Quarter of FY20.

10 Objective 15. To better educate children on the importance of water and  
11 resource planning, collaborate with ¡Explora! to design interactive water exhibits for the  
12 new STEM center which is planned to open in FY21.

13 Objective 16. Continue work with the Water Protection Advisory Board  
14 through administrative, policy, and technical support through the end of the 4th Quarter  
15 of FY20.

16 Objective 17. Complete a capture zone analysis for Water Authority wells to  
17 identify the area most in need of protection surrounding well heads by the end of the 4th  
18 Quarter of FY20.

19 GOAL 2. WASTEWATER COLLECTION AND OPERATIONS: Provide  
20 reliable, safe and affordable wastewater collection, treatment and reuse systems to  
21 protect the health of the Middle Rio Grande Valley by safeguarding the regional  
22 watershed, minimizing environmental impacts, and returning quality water to the Rio  
23 Grande for downstream users.

24 Objective 1. Limit overall permit excursions to no more than 5 operating  
25 discharge permit violations through the end of the 4th Quarter of FY20.

26 Objective 2. Beneficially reuse biosolids by diverting 30% of the biosolids to  
27 compost through the end of the 4th Quarter of FY20.

28 Objective 3. Complete Waste Water Plant Preventive Maintenance to  
29 Corrective Maintenance ratio to at least 45% of all completed maintenance labor hours  
30 by the end of the 4th Quarter of FY20.

31 Objective 4. Continue work on the Partnership for Clean Water program for  
32 the water reclamation treatment to optimize system operations and performance;  
33 Continue work on outstanding items identified from the Phase 3 Self-Assessment that

1 are not yet considered optimized and submit a progress report to AWWA by the end of  
2 the 4th Quarter of FY20.

3 Objective 5. Televisе and assess the condition of approximately five percent  
4 of the small diameter sanitary sewer system by the end of the 4th Quarter of FY20.

5 Objective 6. Complete the Capacity Management Operations Maintenance  
6 (CMOM) Program Self-Assessment by end of 2nd Quarter of FY20.

7 Objective 7. Develop and implement a process to capture new construction  
8 closed circuit television for inclusion in Maximo and ITpipes Repository after GIS unique  
9 identifiers are established; Complete process by end of 4th Quarter of FY20.

10 Objective 8. Monitor compliance with the Water Authority's Cross Connection  
11 Prevention and Control Ordinance. Obtain a compliance rate goal of 75%.

12 Objective 9. Monitor compliance with the Water Authority's Sewer Use and  
13 Wastewater Control Ordinance by continuing to inspect, monitor, and take enforcement  
14 action for permitted industrial users, septage waste haulers, food service  
15 establishments, and dental offices. Compliance rate goal is 87% for each category.

16 Objective 10. Implement the Fats, Oils, and Grease (FOG) Policy to reduce  
17 impacts on the sewer system by inspecting each Food Service Establishment (FSE)  
18 once every three years, working with the Collections section with Sanitary Sewer  
19 Overflow (SSOs) investigations, and convene FOG Task Force of other governmental  
20 entities to coordinate efforts to reduce FOG discharges. Track and report the number of  
21 SSOs due to FOG compared with previous years.

22 GOAL 3. CUSTOMER SERVICES: Provide quality customer services by  
23 communicating effectively, billing accurately, and delivering water and wastewater  
24 services efficiently based on understanding the needs and perceptions of our customers  
25 and the community at large.

26 Objective 1. Improve customer satisfaction and operational efficiency in  
27 achieving the four call-center targets through the 4th Quarter of FY20: 1) Average Wait  
28 Time of less than 1:00 minute; 2) Average Contact Time of less than 4:00 minutes; 3)  
29 Abandoned Call Ratio of less than 3; 4) First Call Resolution of greater than 95%.

30 Objective 2. Improve customer satisfaction by achieving a billing accuracy  
31 ratio of less than 8 through the 4th Quarter of FY20.

32 Objective 3. Continue implementation of the Automated Meter Infrastructure  
33 (AMI) project by modernizing aging meter infrastructure with smart meters to increase

1 revenue, support conservation efforts, and provide better customer service by the end  
2 of the 4th Quarter of FY20.

3 Objective 4. Provide communications support for high-priority Water Authority  
4 programs and initiatives and conduct public outreach regarding Water Authority  
5 services, policies and projects through the end of the 4th Quarter of FY20.

6 Objective 5. Complete Customer Conversation meetings to engage  
7 customers and obtain input from customers on the Water Authority's activities through  
8 the end of the 4th Quarter of FY20.

9 Objective 6. Conduct a customer opinion survey in order to assess the Water  
10 Authority's performance from the customer's viewpoint from previous surveys by the  
11 end of the 4th Quarter of FY20.

12 GOAL 4. BUSINESS PLANNING AND MANAGEMENT: Maintain a well-  
13 planned, managed, coordinated, and financially stable utility by continuously evaluating  
14 and improving the means, methods, and models used to deliver services.

15 Objective 1. Expend \$58 million in water and wastewater capital rehabilitation  
16 and replacement programs to replace aging, high risk assets that are past their useful  
17 life by the end of the 4th Quarter of FY20. \$1 million shall be dedicated and used for  
18 identifying and replacing steel water pipes in critical or poor condition by the end of the  
19 4th Quarter of FY20.

20 Objective 2. Continue implementation of the Reclamation Rehabilitation  
21 Asset Management Plan by planning, designing and constructing reclamation facility  
22 improvements through the end of the 4th Quarter of FY20.

23 Objective 3. Implement one planned Interceptor Rehabilitation project in  
24 FY20, and complete three interceptor design packages by the 4th Quarter of FY20;  
25 Implement one planned Small Diameter Sanitary Sewer Rehabilitation project in FY20;  
26 Complete design of Grit Collection Station near 12th Street/Interstate 40 by end of the  
27 2nd Quarter of FY20.

28 Objective 4. Complete an update to the 2011 Comprehensive/Utility Wide  
29 Asset Management Plan to provide a detailed gap analysis of the Water Authority's  
30 asset registry by the end of the 4th Quarter of FY20.

31 Objective 5. In order to provide a central location for processes and  
32 procedures, finalize a complete draft of the Utility Development Guide by the end of the

1 2nd Quarter of FY20; Update System Expansion Ordinance to align to the Guide;  
2 Review fee structure for Utility Development deliverables.

3 Objective 6. Continue construction of the Los Padillas water system through  
4 the end of the 4th Quarter of FY20.

5 Objective 7. Begin implementing Phase 1 of the Water Authority's Final  
6 Security Plan based on vulnerability assessments that were performed to reduce  
7 physical security and cyber security risks with a goal of completing hardware  
8 countermeasures selected for adoption by the end of the 4th Quarter of FY20. Update  
9 the Water Authority's Emergency Response Plan by the end of the 4th Quarter of FY20.  
10 Complete the AWWA risk and resilience certificate program to demonstrate compliance  
11 with America's Water Infrastructure Act of 2018.

12 Objective 8. Update the Comprehensive Information Technology Security  
13 Plan and related policies that are aligned with the standards, guidelines, and best  
14 practices of the National Institute of Standards and Technology Cybersecurity  
15 Framework to protect the utility's critical infrastructure from cyber-attacks by the end of  
16 the 2nd Quarter of FY20.

17 Objective 9. Complete a needs assessment of the Supervisory Control and  
18 Data Acquisition (SCADA) system; Implement recommendations of the assessment for  
19 the updated platform to align with the asset management program by the end of the 1st  
20 Quarter of FY20.

21 Objective 10. Complete the Maximo upgrade to provide better service, better  
22 decision making, and stewardship of its resources by the end of the 4th Quarter of  
23 FY20; Upgrade utility Enterprise Applications and expand usage of Splunk data  
24 analytics tool to implement functions for cyber-security, water quality and  
25 telemetry/vehicle location solutions; and replace all 800 MHz radio system with push to  
26 talk technology.

27 Objective 11. Apply artificial intelligence and machine learning to assess  
28 current water quality management strategies using predictive early warning intelligence  
29 to see occurrences in real-time; Develop and implement a pilot program that combines  
30 live data from water delivery operations with a hydraulic model to provide real-time  
31 water quality indicators by the end of the 4th Quarter of FY20.

32 Objective 12. Maintain the Compliance Division Regulatory Compliance  
33 Permit Matrix and the Regulatory Matrix Status Report to respectively maintain

1 schedules for permit submittals and monitor and report emerging Safe Drinking Water  
2 Act (SDWA) and Clean Water Act (CWA) regulations, New Mexico Water Quality  
3 Control Commission and Environmental Improvement Board regulations, and local laws  
4 ordinances, etc. to identify and assess potential impacts on the Water Authority.  
5 Provide quarterly reports through the end of the 4th Quarter of FY20.

6 Objective 13. Collect, monitor, and report weekly, monthly and quarterly key  
7 laboratory performance metrics to include: Water Quality Laboratory results approved  
8 and reported for each laboratory section (chemistry, microbiology, metals, and external  
9 labs), laboratory productivity (results reported per productive hour), and the percentage  
10 of results reported late (turnaround time). Compare to industry benchmarks.

11 Objective 14. Continue to develop LabVantage application system  
12 throughout FY20 to increase the automation of data entry to reduce data entry errors  
13 and reduce the amount paper used at the laboratory. Develop dashboards to help  
14 analysts and management manage samples and reagents. Expand the collection of  
15 electronic data to field analytics, balances, probes, and spectrophotometry instruments  
16 stored in the Database of Compliance.

17 Objective 15. Continue to develop the Environmental Monitoring Program to  
18 improve the reliability of results from field instrumentation and sample collection  
19 techniques. Develop a program plan based on designated International Organization  
20 for Standardization (ISO) standard to address accreditation requirements to include  
21 standard operating procedures, document control and records management plans, and  
22 a process for demonstration of staff capability. Develop a program-wide audit plan to  
23 monitor compliance with standard operating procedures in the field and the laboratories.  
24 Implement program plan by the end of the 4th Quarter of FY20.

25 Objective 16. Transition to International Organization for Standardization  
26 (ISO) and the International Electrotechnical Commission (IEC) ISO/IEC 17025:2017.  
27 Prepare for the American Association for Laboratory Accreditation (A2LA) biennial on-  
28 site assessment of the Water Quality Laboratory including completing required internal  
29 audits and annual review and revision of Standard Operating Procedures.

30 Objective 17. Track external subcontract laboratory costs that are processed  
31 by the Water Quality Laboratory. Improve how the Laboratory manages sample  
32 submissions to external laboratories and make available the cost of external  
33 subcontract laboratory analysis for reporting.

1 Objective 18. Monitor for Pharmaceuticals and Personal Care Products  
2 (PPCPs) in the source water, drinking water and wastewater. Report the findings of  
3 voluntary monitoring by the end of the 2nd Quarter of FY20. Compare the results to  
4 historical monitoring performed in 2009-2010.

5 GOAL 5. ORGANIZATION DEVELOPMENT: Sustain a well-informed,  
6 trained, motivated, safe, organized, and competitive work force to effectively meet the  
7 expectations of the customers, community, and Board in accordance with adopted  
8 policies and mandates.

9 Objective 1. Continue to emphasize Employee Recognition through several  
10 initiatives including supervisor training, employee incentive awards, on-the-spot awards,  
11 and years of service awards.

12 Objective 2. Conduct Employee Engagement and Satisfaction Survey by the  
13 end of the 2nd Quarter of FY20; assess and communicate the survey results to  
14 employees by the end of the 4th Quarter of FY20.

15 Objective 3. Consistent with the EPA's Utility of the Future (UOTF), develop  
16 a program that focuses on employee and leadership development to achieve  
17 sustainability, including actions such as hiring and retaining motivated, participative  
18 employees, creating a collaborative organization and positive workplace environment,  
19 and providing a positive environmental and community impact; the program may  
20 examine potential sources of purpose and meaning for employees and encourage  
21 projects and communication efforts that enhance a sense of meaning and purpose.

22 Objective 4. Complete two employee wellness challenges per fiscal quarter  
23 focusing on nutrition, physical activity and weight loss, and disease and injury  
24 prevention to employees by the end of the 4th Quarter of FY20.

25 Objective 5. Maintain an average utility-wide vacancy rate of no greater than  
26 5% through the end of FY20.

27 Objective 6. Reduce injury hours to 2,625 hours or less to improve  
28 productivity and reliability of services provided by employees by the end of the 4th  
29 Quarter of FY20.

30 Section 2. That the Executive Director of the Water Utility Authority shall ensure  
31 that these goals and objectives are carried out and integrated with the performance plan  
32 and submit a report by Goal to the Water Authority Board at least semi-annually on the  
33 progress made toward implementation of the one-year objectives.

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Meeting Date: March 20, 2019

Staff Contact: Jane Rael, Principle Engineer and Frank Roth, Senior Policy Manager

**TITLE: C-19-11 – Approval of Agreement with GandyDancer LLC as a result of B2019000013 Carnuel Phase 2B Water System Improvements**

**ACTION: Recommend Approval**

**Summary:**

The Water Authority issued a Request for Bids (RFB) for Construction to solicit bids from vendors qualified to provide construction services for the Carnuel Water Systems Improvement Project Phase 2b. This approval would allow GandyDancer LLC to construct waterlines in the Phase 2b project area which is in the defined High Priority area.

The RFB was posted to the BHITracker and advertised in the local newspaper. Bids were opened for the above-referenced project on December 18, 2018, at 1:30 p.m. The bids were reviewed and evaluated by the Water Authority.

After the evaluation, the apparent low responsive and responsible bidder for the project is GandyDancer LLC. Staff recommends an Agreement for this work be awarded to GandyDancer LLC to construct the Base Bid, which includes almost 2,500 feet of 12 inch waterline along NM 333, a two inch Combination Air Release valve and vault, four water services, a flush hydrant, connection to the existing waterline, and appurtenances. If there are remaining NMED Grant funds, they will be used to construct the Additive Alternates. Preferably, remaining funds will be used to construct Additive Alternate #1, which includes 130 feet of six inch waterline, 120 foot jack & bore under NM 333, and connection to an existing waterline at Knight Lane and south side of NM 333. Alternate #1 will connect the northside and southside systems to help improve consistency of water quality by minimizing disinfectant residuals within the distribution lines.

This approval is intended to delegate signature authority to the Executive Director to enter into an Agreement with GandyDancer LLC to provide construction services for this project based on the results of the RFB, B2019000013. This Agreement provides that the Executive Director to approve any change orders or amendments to this agreement.

**FISCAL IMPACT:**

An agreement is recommended to be awarded for the Base Bid total of \$561,329.02 which amount includes New Mexico gross receipts tax. Project cost will be funded through the loan/subsidy agreement DW-4202 approved in April 2018 (O-18-5).

## AGREEMENT

**RFB NAME AND NUMBER: B2019000013 PHASE 2B WATER SYSTEM  
IMPROVEMENTS CARNUEL WATER LINE  
PROJECT NUMBER: 2051.00**

**THIS AGREEMENT** is made and entered into on the date last entered below, by and between the Albuquerque Bernalillo County Water Utility Authority, hereinafter called OWNER, and **GandyDancer, LLC**, hereinafter called CONTRACTOR.

That Owner and Contractor for the consideration stated herein mutually agree as follows:

**1. STATEMENT OF WORK:** CONTRACTOR shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services, and perform and complete the Work for the construction of the above-referenced Project and any authorized supplemental work, all in strict accordance with the Contract Documents.

**2. CONTRACT TIME:** The Contract Time will commence on **April 1, 2019**, and continue for a period of **One Hundred and Twenty (120)** consecutive calendar days. Changes to the Contract Time are allowed only as provided in the General Terms and Conditions.

Liquidated damages, in the amount per day of **One Thousand Five Hundred Dollars (\$1,500.00)** will be assessed against the Contractor for each calendar day, or portion thereof, the Work has not achieved Substantial Completion after expiration of that portion of the Contract Time allotted for construction, including any approved extension of time granted. Further, liquidated damages, in the amount per day of **One Thousand Five Hundred Dollars (\$1,500.00)** will be assessed against the Contractor for each calendar day, or portion thereof, the punch list items listed as incomplete and attached to the Certificate of Substantial Completion are not completed or corrected after expiration of the time allotted for completion and correction, including any approved extension of time granted. These liquidated damages are cumulative.

Contractor also agrees to pay as liquidated damages the amount of **One Thousand Five Hundred Dollars (\$1,500.00)** for each consecutive calendar day that the Contractor fails to comply with the approved traffic control plan. All liquidated damages shall be cumulative.

Contractor also agrees to pay as liquidated damages the amount of **One Hundred Dollars (\$100.00)** per hour for each consecutive hour that water is shut off for time exceeding the maximum allowable shut off period of 8 hours for shoe-fly installation and removal. When an 8-hour duration is not sufficient time, a shoe-fly shall be installed until the outage is complete.

Contractor also agrees to pay as liquidated damages the amount of **One Thousand Five Hundred Dollars (\$1,500.00)** per day for failure to close any excavation at the end of the working day and an additional **One Thousand Five Hundred Dollars (\$1,500.00)** per occurrence per day for failure to replace the pavement and complete all cleanup at any site within seven days of transitioning between typical traffic control types

See the General Terms and Conditions, referenced in Part IV of this RFB, for additional information terms relating to liquidated damages.

**3. CONTRACT PRICE:** OWNER will pay CONTRACTOR for the performance of the Contract in current funds, as provided in the Contract Documents, the amount of **Five Hundred Sixty-One Thousand Three Hundred Twenty-Nine Dollars and Two Cents (\$561,329.02)**, which amount includes any applicable New Mexico Gross Receipts Taxes.

**4. NON-APPROPRIATION OF FUNDS:** Notwithstanding any provision in this Contract to the contrary, payments hereunder are contingent upon the Water Authority Board making the necessary appropriations. If sufficient appropriations are not made, this Contract may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by OWNER to CONTRACTOR. Such event shall not constitute an event of default and all payment obligations of OWNER and all of its interest in this Contract will cease upon the date of termination. OWNER'S determination regarding appropriations shall be accepted by CONTRACTOR and shall be final.

**5. CONTRACT DOCUMENTS:** The Contract Documents consist of the following, which are as fully a part of the Contract as if attached to this Agreement or repeated herein, and have precedence in the following order:

- Modifications to the Contract Documents
- the Agreement, insurance certificates and surety bonds
- Contractor's Bid Proposal, except as provided below
- the Addenda to the Bid Documents.
- the Special Instructions (Part II of the RFB)
- the Project Technical Specifications attached as Appendix A to the Bid Documents
- the Drawings attached as Appendix B to the Bid Documents
- the General Terms and Conditions, as supplemented in Part II of the RFB
- the Referenced Standard Specifications (as updated and amended).
- the Instructions to Bidders (Part I of the RFB)
- additional forms and instructions in the RFB
- the Advertisement for Bids

5.1 Construction detail drawings shall govern over scaled dimensions and over other drawings. Dimensions given on plans or which can be calculated will govern over scaled dimensions.

5.2 Anything in the CONTRACTOR'S Bid Proposal which alters or provides a condition to the Bid Documents will not take precedence over any part of the Bid Documents unless it is specifically so provided in the Agreement, or a Modification to the Contract Documents, signed by the parties.

5.3 All definitions and terms set forth in the General Terms and Conditions and the Procurement Ordinance are applicable to the Bid and Contract Documents.

**IN WITNESS WHEREOF**, OWNER and CONTRACTOR have executed this Agreement the day and year last entered below.

**ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY**

**CONTRACTOR:**

Approved By:

\_\_\_\_\_  
GandyDancer, LLC

\_\_\_\_\_  
Mark S. Sanchez, Executive Director

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
John M. Stomp III, P.E.  
Chief Operating Officer

Date: \_\_\_\_\_

Reviewed by:

\_\_\_\_\_  
Peter Auh, General Counsel

Date: \_\_\_\_\_



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Meeting Date: March 20, 2019  
Staff Contact: Peter Auh, General Counsel

**TITLE: C-19-12 – Approval of Contract Increase with Modrall Sperling Roehl Harris & Sisk, P.A. for Legal Services**

**ACTION: Recommend Approval**

**Summary:**

Requesting approval to delegate signature authority to the Executive Director to increase the purchase order amount with the Modrall Law Firm to provide legal representation to the Water Authority.

If approved by the Board, an amendment will be executed between the Water Authority and Modrall to continue to provide these services. Modrall is currently representing the Water Authority in an ongoing administrative procedure with the City of Albuquerque's Environmental Health Department regarding alleged violations of the Clean Air Act.

By continuing this agreement, the Water Authority can defend its legal interests against charges that it is subject to certain provisions of the Clean Air Act which would subject it to additional reporting requirements at considerable effort and expense.

**FISCAL IMPACT:**

The fiscal impact is expected to be \$75,000, excluding taxes, for the current fiscal year. Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to this purchase order, if any.

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Meeting Date: March 20, 2019  
Staff Contact: Cody Stinson, Chief Information Officer

**TITLE: C-19-13 – Approve Change Order # 4 for the ABCWUA Billing System (CC&B) Upgrade specifically related to documentation, knowledge transfer and training for Albuquerque Bernalillo County Water Utility Authority Staff**

**ACTION: Recommend Approval**

**SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) issued a Request for Proposals (RFP) to solicit responses from qualified vendors to assist with the upgrade of Oracle's Customer Care & Billing (CC&B) version 2.2 to 2.6. The Water Authority successfully upgraded the new version of CC&B in February of 2019. CC&B is the Customer Information System that supports the billing functions and accounts receivable processes for all water, sewer, and solid waste accounts. Over \$241 million in annual revenue is managed through this system.

This change order is requested to specifically address knowledge transfer and training issues for Water Authority staff, and post go-live support for CC&B version 2.6.

The Water Authority's objectives for this scope of work are:

- Knowledge Transfer for technical and functional staff to support and utilize Config Tools and Java programming methods.
- A two-week development training workshop conducted to present new framework, technical architecture and programming topics with hands on experience.
- Post Go-Live support for the new technology, features and functionality of CC&B v. 2.6.

The Water Authority will execute the change order as part of CC&B upgrade statement of work.

Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to this contract, if any.

**FISCAL IMPACT:**

Funding in the amount of \$140,000 has been approved and appropriated by the Water Authority for this CC&B change order.

## Statement of Work

This Statement of Work, dated 4/15/19 (this “SOW”) is made by Ernst & Young LLP (“we” or “EY”) and Albuquerque Bernalillo County Water Utility Authority (“Water Authority”, “you” or “Client”), pursuant to the Agreement, dated 12/8/17 (the “Agreement”), between EY and Water Authority. The effective date will be the date of last signature.

Except as otherwise specifically set forth in this SOW, this SOW incorporates by reference, and is deemed to be a part of, the Agreement. The additional terms and conditions of this SOW shall apply only to the Services covered by this SOW and not to Services covered under any other SOW pursuant to the Agreement.

### **Scope of services**

Unless otherwise agreed, and subject to the General Terms and Conditions of the Agreement, EY expects to perform the Services during the period from 04/20/19 to 6/30/19. EY will provide onshore and offshore resources for to support Customer Care and Billing. The onsite resource will be onsite every other week.

A two-week development training workshop will be conducted to cover the topics listed below:

#### **DAY 1**

**Afternoon**

**Overview: Oracle Utilities Application Framework (OUAF) Development Concepts**

- Framework
- Technical Architecture
- Eclipse
- Hibernate

#### **DAY 2**

**Morning**

**Maintenance Objects**

**Business Entities**

**Table and Field Metadata**

**Afternoon**

**Change Handler**

- Validation Rules
- Exercise
- Conditional Validation
- Conditions
- Exercise

#### **DAY 3**

**Morning**

**Change Handler**

- Custom Rules

**Afternoon**

- Custom Rules

## Messages (Custom)

- Exercise
- Cascading Changes
- Exercise

## DAY 4

### Morning

#### Algorithm

### Afternoon

- Exercises

## DAY 5

### Morning

#### Algorithm Case Study

### Afternoon

#### Algorithm Case Study Solution

## DAY 6

### Morning

#### Packaging

#### Batch Control

### Afternoon

- Exercise

## DAY 7

### Morning

#### Java module development

#### Functional Design

#### Technical design

### Afternoon

- Exercise

## DAY 8

### Morning

#### Coding Standards and Code Review

#### Packaging Review

#### Inbound Web Services (IWS)

- Advantages of IWS against XAI Inbound Services
- Deployment
- Demo

The suggested resources and roles are listed below.

Role	Proposed Resource	FTE	Start Date	End Date
Engagement Manager	Neelima Raghu	.1	04/20/19	6/30/19
Development Lead / Trainer Onsite	Bryan Ramirez	1.0	04/20/19	6/30/19
Senior Designer / Developer (GDS)	Mynard Apostle	1.0	04/20/19	6/30/19
Technical Architect (GDS)	Raymond Carreon	.25	04/20/19	6/30/19

### Fees

The General Terms and Conditions of the Agreement address our fees and expenses. All software costs (licensing and maintenance) for the components that comprise CC&B will be the Water Authority's responsibility.

Our fees for the Services will be based on Fixed Price. Changes in scope, duration, or resources of the project may result in a change order that affects the total Fee.

The total Fee for the engagement is \$140,000.00. These Fees do not include any applicable taxes that may be billed by EY to be remitted to the New Mexico Tax and Revenue Department.

The Planned completion dates below are estimated dates and are subject to change upon the approval of both EY and Water Authority Project managers. This may result in change order which could affect the total cost of the project

Fees will be invoiced each month as follows:

Date	Amount
4/30/19	\$ 20,000.00
5/31/19	\$ 60,000.00
6/30/19	\$ 60,000.00
	<b>\$140,000.00</b>

Meeting Date: March 20, 2019

Staff Contact: Kristopher Cadena, Principal Engineer, Utility Development

**TITLE: C-19-3 – Service Connection Agreement for Water and Sewer Service with Coronado Park, LTD. at 8401 Pan American FWY NE**

**ACTION: Recommend Approval**

**SUMMARY:**

Coronado Park, LTD. desires an emergency water connection to existing public water infrastructure located at 8401 Pan American Fwy NE. The property is located at the northwest corner of I-25 and Paseo Del Norte. The proposed property is an existing mobile home park with plans to expand the private water system. The request is for a metered connection to the public water system to serve as an emergency backup source in the event that the onsite private water system fails. The property has existing sanitary sewer service from the Water Authority.

No additional infrastructure requirements are needed to provide emergency water service to this property other than an emergency service connection agreement approved by the Water Authority Board.

As a condition of service, the owner will be required to:

- Comply with the ordinances, resolutions, plans, and regulations of the Water Authority
- Pay the Utility Expansion Charge (UEC) at the rates that are imposed at the time of a service connection based on the size of the emergency service connection water meter.

**FISCAL IMPACT:**

None

**EMERGENCY SERVICE CONNECTION AGREEMENT**  
**(with Coronado Park, LTD., for Coronado Park Mobile Home Park,  
8401 Pan American Freeway, N.E., Albuquerque, NM 87113)**

**Albuquerque Bernalillo County Water Utility Authority**, a New Mexico political subdivision (the “Water Authority”) and **Coronado Park, LTD.** (“Owner”), whose address is 11100 Santa Monica Blvd. Suite 1150, Los Angeles, CA 90025, agree as follows:

**1. Recitals.**

A. Owner is the owner of 8401 Pan American FWY NE, Albuquerque, NM 87113 (Legal Description: A Tract of Land, situate within the Elena Gallegos Grant, Projected Sections 13 and 14, Township 11 North, Range 03 East, of the New Mexico Principal Meridian, Bernalillo County, State of New Mexico, being Tract A-1 of the Plat entitled Coronado Village) (herein “Property”), more particularly described and as shown in the Serviceability Statement for the Property, attached hereto as Exhibit A and incorporated herein by reference.

B. The Property is located within the Water Authority’s Adopted Service Area. The Property currently is served by a private well and water distribution system. The Property’s current use is as a mobile home park. The mobile home park has 327 mobile home spaces.

C. Owner desires a 2-inch connection to the public water system to provide emergency back-up water service to the existing mobile home park via the internal private water distribution network. The emergency back-up connection will only deliver water to Owner’s existing tanks for delivery to Owner’s existing customers. The emergency back-up system is solely for the Owner’s existing mobile home park on the Property and is not for expansion of the existing use or any other use. “Emergency” back-up use in this Agreement means any failure of a critical element of Owner’s private water system which requires a closing of Owner’s current private well system, to be determined by Owner in Owner’s discretion.

D. Emergency water service to the Property will be taken from an existing Water Authority 8-inch waterline stub located near the southeast corner of the Property. A private valve to be operated by Owner shall be installed downstream of the water meter to provide for the emergency service. Installation of service shall be performed under the standard tapping permit process, as shown on attached Exhibit B.

E. Sanitary sewer service to the site is currently being provided by an on-site private sanitary sewer system which discharges into the Water Authority sanitary sewer system.

**2. Service.**

A. Owner shall comply with the Water Authority’s Water and Sewer System Expansion Ordinance, as amended from time to time.

B. Owner will be responsible for paying the monthly bills associated with the emergency connection, regardless if water is not used. The monthly bill will be determined by the Rate Ordinance in effect, and as amended from time to time.

C. For any emergency to Owner's water system during the term of this Agreement, the Water Authority shall be obligated to provide back-up emergency water ("Emergency Use") to Owner for one hundred twenty (120) days following Owner's turning on emergency water due to an emergency under this Agreement. For good cause, Owner by notice to the Water Authority may extend the one hundred twenty (120) day period for an additional thirty (30) days to cure the emergency. If Owner desires continued water service, after the Emergency Use period described above, from the Water Authority under this Agreement, such continued water use following the end of the Emergency Use period shall be considered "Permanent Use", and Owner shall make applicable separate arrangements with the Water Authority, which shall include paying usual UECs based on mobile home park calculations, connection fees and other charges, in accordance with the Water Authority's Water and Sewer Rate Ordinance and other standards and regulations in effect at that time.

D. For the connection for Emergency Use contemplated by this Agreement, before provision of any emergency water service, Owner shall be required to pay a one-time UEC charge based upon the size of the meter, in accordance with the schedule set forth in the Water Authority's Water and Sewer Rate Ordinance, Section 1-1-1, et seq. In the event that Owner's use becomes Permanent Use, as provided in Section 2.C herein, Owner shall be required to pay the applicable UEC, based on the requirements of the Rate Ordinance, as amended from time to time, then in effect. Any intentional use by Owner found to be non-Emergency Use shall be deemed to be Permanent Use and subject Owner to the applicable terms and provisions of the Albuquerque Bernalillo County Water Utility Authority Water and Sewer Rates Ordinance, including but not limited to the UEC amount formula for mobile home parks.

E. This Agreement is voided if the Property takes on a use other than the existing mobile home park.

F. The emergency connection will be activated by Owner's operation of the private valve. Water Authority personnel will not turn on/off the water meter or any valve to provide the emergency water.

G. All containment devices will be required per the Water Authority's Cross Connection Ordinance. The Owner shall be responsible for coordination, review and approval of the appropriate device.

H. Owner may terminate this Agreement upon ninety (90) days advance written notice to the Water Authority, in which case the connection to the Water Authority's system will be closed.

**3. Termination.** If construction of the Connection Point (being defined as the physical connection to the Water Authority system, located as shown on attached Exhibit B,

being an approved point of connection with the appropriate valving and back flow prevention as required by the Water Authority) to the waterline by Owner has not been completed and accepted by the Water Authority within seven (7) years of the effective date of this Agreement, this Agreement shall automatically terminate, and the Water Authority and Owner shall have no further rights, obligations, or liabilities with respect to this Agreement, unless otherwise agreed in writing.

**4. Indemnification.** Owner will indemnify and hold harmless the Water Authority and its officials, agents, and employees from any claims, actions, suits, or other proceedings arising from the acts or omissions of Owner, its agents, representatives, contractors, or subcontractors, or arising from the failure of Owner, its agents, representatives, contractors, or subcontractors to perform any act or duty required of Owner herein. The indemnification by Owner will not extend to the negligent acts of the Water Authority.

**5. Representations and Warranties of Owner.** Owner represents and warrants that:

A. Owner is a foreign limited partnership registered under the laws of the State of New Mexico as Coronado Park, Ltd., Limited Partnership.

B. Owner has all the requisite power and authority to enter into this Agreement and bind Owner under the terms of the Agreement; and

C. The undersigned officer of Owner is fully authorized to execute this Agreement on behalf of Owner.

**6. Notices.** Any notice to be given under this Agreement will be in writing and will be deemed to have been given when deposited in the United States Mail postage prepaid addressed:

If to the Water Authority:

Mark Sanchez  
Executive Director  
Albuquerque Bernalillo County Water Utility Authority  
One Civic Plaza, Room 5012 Albuquerque, New Mexico 87102

If to Owner:

Michael Thesman  
Coronado Park, LTD.  
11100 Santa Monica Blvd. Suite 1150  
Los Angeles, CA 90025

**7. Assignment.** This Agreement may not be assigned without the prior written consent of the Water Authority and Owner.

8. **No Third Party Beneficiary.** This Agreement is not intended to nor shall it create or authorize a third party beneficiary or authorize anyone not a party to the Agreement to maintain any cause of action whatsoever pursuant to the provisions of the Agreement.

9. **Miscellaneous.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New Mexico. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of the Agreement. This Agreement binds and benefits the Water Authority and its successors, assigns, and transferees and Owner and its successors, assigns and transferees. Time is of the essence of each term of this Agreement. If any provision of this Agreement is determined by a court of competent jurisdiction to be void, invalid, illegal, or unenforceable, that portion will be severed from this Agreement and the remaining parts will remain in full force as though the invalid, illegal, or unenforceable portion had never been a part of this Agreement.

10. **Integration; Interpretation.** This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated by this Agreement and supersedes all prior negotiations. This Agreement may only be modified in writing executed by both parties.

11. **Approval.** This Agreement is subject to the approval of the Board of Directors of the Water Authority and will not become effective until approved by the Water Authority.

12. **Effective Date.** The effective date of this Agreement is the date last entered below.

In Witness Whereof, the parties hereto have executed this Agreement on the dates entered below.

**ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY**

**CORONADO PARK, LTD.**

By \_\_\_\_\_  
Inc. \_\_\_\_\_  
Mark S. Sanchez, Executive Director

By \_Fortune Travel,  
Its General Partner

\_\_\_\_\_  
By Michael Thesman  
Its President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2019,  
by Michael Thesman, President of Forture Travel, Inc., General Partner of Coronado Park, Ltd.  
a California limited partnership, on behalf of said partnership.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF NEW MEXICO        )  
  ) ss.  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_,  
by Mark S. Sanchez, Executive Director of the Albuquerque Bernalillo County Water Utility  
Authority, a political subdivision of the State of New Mexico, on behalf of said political  
subdivision.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

January 3, 2019

**Chair**

Trudy E. Jones  
City of Albuquerque  
Councilor, District 8

**Vice Chair**

Debbie O'Malley  
County of Bernalillo  
Commissioner, District 1

Pat Davis  
City of Albuquerque  
Councilor, District 6

Timothy M. Keller  
City of Albuquerque  
Mayor

Klarissa J. Peña  
City of Albuquerque  
Councilor, District 3

Steven Michael Quezada  
County of Bernalillo  
Commissioner, District 2

Lonnie Talbert  
County of Bernalillo  
Commissioner, District 4

*Ex-Officio Member*  
Pablo R. Rael  
Village of Los Ranchos  
Board Trustee

*Executive Director*  
Mark S. Sanchez

*Website*  
[www.abcwua.org](http://www.abcwua.org)

Ron Bohannon  
Tierra West, LLC  
5574 Midway Park Place NE  
Albuquerque, New Mexico 87109

**RE: Water and Sanitary Sewer Serviceability Letter #181113  
Coronado Mobile Home Park:  
8401 Pan American FWY NE 87113**

Dear Mr. Bohannon:

**Project Description:** The subject site is located on the northwest corner of Interstate 25 and Paseo Del Norte, within the City of Albuquerque. The property consists of approximately 57 acres and is currently zoned NR-BP (Business Park). The property lies within the Pressure Zone 2E in the Alameda trunk. The request for information indicates no development plans. The site is the existing Coronado Mobile Home Park, which contains approximately 300 units. The site is currently being served by an onsite private water system, which includes a private well and private tank. There are plans to expand the private water system to include a new 100,000 gallon tank. Sanitary sewer service to the site is currently being provided by an onsite private sanitary sewer system which discharges into the Water Authority sanitary sewer system. The request is for a metered connection to the public water system to serve as an emergency backup source in the event that the onsite private water system fails.

**Emergency Backup Service Connection Agreement:** The Water Authority and developer shall enter into an Emergency Backup Service Connection Agreement that defines financial and other obligations of the developer. The Water Authority Board must approve this agreement to serve this property and establish requirements as a condition of service. The Emergency Backup Service Connection shall only be valid for the emergency connection and will not be applicable if the site redevelops.

**Existing Conditions:** Water infrastructure in the area consists of the following:

- 36 inch ductile iron pipe transmission main (project #26-9030.61-14) along southwest border of the site
- 24 inch ductile iron pipe transmission main (project #26-9030.63-14) along southeast border of the site
- 16 inch CCYL distribution main (project #not present) along east border of the site
- 8 inch PVC distribution main (project #26-9030.63-14) along stub at the southeast border of the site

Sanitary sewer infrastructure in the area consists of the following:

- 18 inch RCP interceptor line (project #07-049-69) along the south border of the site

**Water Service:** New metered water service to the property can be provided via routine connection to the existing eight inch waterline stub located near the south side of the

subject property. The metered connection shall also include a backflow device and a private valve downstream of the water meter. This private valve will be owned and operated by the property owner for use when the emergency connection is needed. When water is desired by the property owner, the property owner will be responsible for turning on the private valve.

Existing metered service and fire lines that will not be utilized are to be removed by shutting the valve near the distribution main and capping the line near the valve. For fire lines, the valve access shall be grouted and collar removed. Service is also contingent upon compliance with the Fire Marshal's instantaneous fire flow requirements. Water service will not be sold without adequate fire protection. Water service will only be sold in conjunction with sanitary sewer service.

**Sanitary Sewer Service:** As mentioned above, sanitary sewer service to the site is currently being provided by an onsite private sanitary sewer system which discharges into the Water Authority sanitary sewer system.

**Fire Protection:** The instantaneous fire flow requirements for the subject property were not submitted in the request for availability; therefore, this letter may not be complete and/or valid at the time of future construction. All new required hydrants as well as their exact locations must be determined through the City of Albuquerque Fire Marshal's Office and verified through the Utility Development Office prior to the sale of service.

**Cross Connection Prevention:** Any residential premises having existing private wells and who desire to connect to the public water system shall have two options as follows: 1) Customers shall permanently abandon the use of private wells by plugging the wells as accepted by the Water Authority prior to connecting to the public water system; or 2) Customers who choose to maintain their private wells shall completely sever the private well from the premises' potable plumbing system and shall install a reduced pressure principle backflow prevention assembly approved by the Water Authority at the terminal end of the water service from the public water system (e.g., service connection). Contact Cross Connection at 289-3439 for more information.

**Easements:** Exclusive public water and sanitary sewer easements are required for all public lines that are to be constructed outside of any dedicated rights-of-way. A minimum width easement of 20 feet is required for a single utility and 25 feet for water and sewer both within the same easement. Easements for standard sized water meters need to be five feet by five feet and include the length of the water service if located on private property. For larger meters that require a meter vault, a 35 feet by 35 feet easement is required. Actual easement widths may vary depending on the depth of the lines to be installed. Acceptable easements must be documented prior to approval of service.

**Pro Rata:** Pro Rata is not owed and the property can utilize the services available upon completion of the requirements of this statement to connect to water and sanitary sewer.

**Design and Construction** of all required improvements will be at the developer / property owner's expense. Improvements must be coordinated through the Water Authority Mini Work Order process. Please coordinate with the City to determine if a mini work order is acceptable based on the street classification. Construction must be performed by a licensed and bonded public utility contractor.

**Costs and Fees:** In addition to installation and construction costs, any new metered water services will be subject to both water and sanitary sewer Utility Expansion Charges (UEC) payable at the time of service application. All charges and rates collected will be based on the ordinances and policies in effect at the time service is actually requested and authorized.

**Water Use:** All new development shall be required to meet the standard water usage of 180 gallons per household per day which is equivalent to 75 gallons per capita per day. Where available, outdoor water usage shall utilize reclaimed water.

**Closure:** This serviceability letter does not provide a commitment from the Water Authority to provide services to the development. It only provides details of infrastructure that is available and potential precursors for the proposed development. For service to be provided, a Board approved Emergency Service Connection Agreement must be supplemented by this serviceability letter. The serviceability letter will remain in effect for a period of one year upon approval of the development agreement. Under no circumstances does this serviceability letter commit to service without the above mentioned conditions. Changes in the proposed development may require reevaluation of availability and should be brought to the attention of the Utility Development Section of the Water Authority as soon as possible.

Please feel free to contact Mr. Kristopher Cadena in our Utility Development Section at (505) 289-3301 or email at [kcadena@abcwua.org](mailto:kcadena@abcwua.org) if you have questions regarding the information presented herein or need additional information.

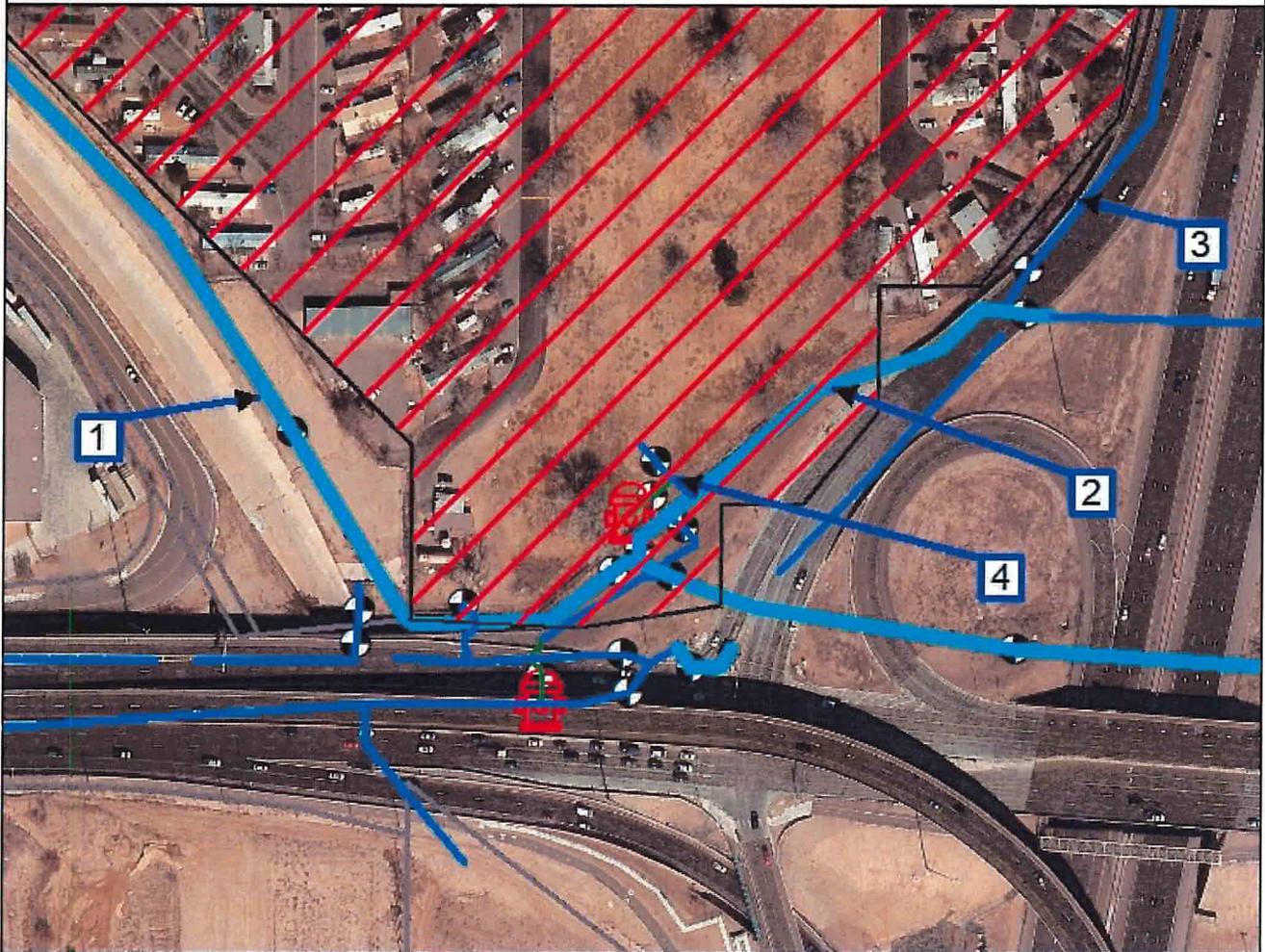
Sincerely,



Mark S. Sanchez  
Executive Director

Enclosures: Infrastructure Maps (2)  
f/ Serviceability Letter 181113

# 181113 - Water



## Legend

 Site Location

### Water Pipe

— <all other values>

### SUBTYPE

-  Distribution Main
-  Drain Line
-  Hydrant Leg
-  In Zone Transmission
-  Out Zone Transmission
-  SJC Transmission
-  Sleeve
-  Well Collector Line
-  Well Wash Line

0 350 700 Feet

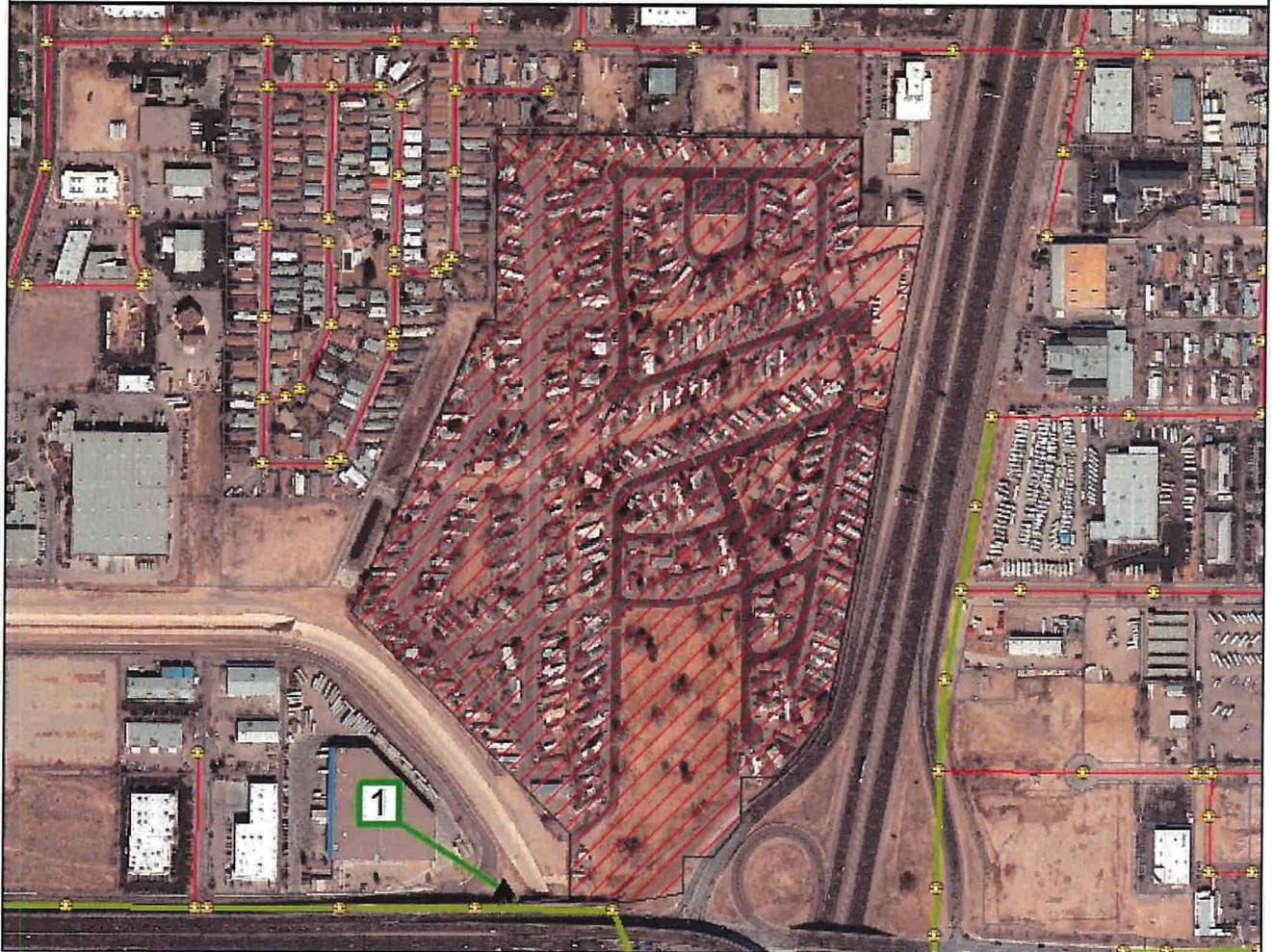


 --- Water Infrastructure Map Keyed Notes:

1. --- 36" DIP Transmission Main
2. --- 24" DIP Transmission Main
3. --- 16" CCYL Transmission Main
4. --- 8" PVC Stub



# 181113 - Sanitary Sewer



## Legend

 Site Location

### Sewer Pipe

— <all other values>

### SUBTYPE

— COLLECTOR

--- FORCE MAIN

— INTERCEPTOR

— VACUUM LINE

0 900 1,800 Feet



 --- Sanitary Sewer Infrastructure Map Keyed Notes:

1. --- 18" RCP Interceptor Main



Water Utility  
Authority



---

Meeting Date: March 20, 2019  
Staff Contact: Stan Allred, Chief Financial Officer

**TITLE: O-19-1 – Authorizing the Execution and Delivery of a Loan and Subsidy Agreement (“Loan Agreement”) by and Between the Albuquerque Bernalillo County Water Utility Authority (“The Water Authority”) and the New Mexico Finance Authority, Evidencing a Special Limited Obligation for the Water Authority to Pay a Principal Amount of No More than Two Million Seven Hundred Twenty-Four Thousand Two Hundred Eighty-Two Dollars (\$2,724,282), Together with Interest, Costs of Issuance and Administrative Fees Thereon, and To Accept A Loan Subsidy of No More Than Seven Hundred Five Thousand Seven Hundred Ninety-Nine Dollars (\$705,799), For the Purpose of Financing the Costs of Extending and Improving the Water Infrastructure System To The Los Padillas Community As Part of The South Valley Water Project, Including, Acquisition and Installation of Water Distribution Lines; Providing For The Pledge and Payment of The Principal, Interest and Administrative Fees Due Under The Loan Agreement Solely From Net Revenues; Setting a Maximum Interest Rate For The Loan; Approving The Form of And Other Details Concerning The Loan 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 Agreement**

**ACTION: Recommend Approval**

**BACKGROUND:**

The Water Authority submitted an application for financial assistance for the Los Padillas South Valley Drinking Water Project Phase 7B and 7C. To date, the Water Authority has completed approximately 98% (10,733' / 10,983') of the total waterline installation for the area located east of Isleta Boulevard. TLC Inc. has concrete work left to complete and Water Authority crews need to install waterline, services, valve, and fire hydrants on Marcelino Rd, east of Indian Lateral.

Phase 1: Waterline: Approximately 95% (10,733' / 10,983') of the waterline in this phase has been installed, including hydrostatic pressure tests and bacteria tests. The remaining section of waterline to be installed is on the east side of Marcelino Rd.

The Water Authority has completed approximately 24% (4240' / 17,705') of the total waterline installation for the area located east of Isleta Boulevard.

Phase 2: Waterline: Approximately 49% (4240' / 8,700') of the waterline in this phase has been installed. Santiago Rd has completed Bac-T and hydrostatic testing (passed)

and paving has been completed. The Water Authority has completed the hydrostatic and Bac-T for the middle and east portions of Black Mesa Lp. Paving will commence the week of February 18, 2019.

**SUMMARY:**

Ordinance O-19-1 authorizes the execution and delivery of a loan and subsidy agreement in the amount of \$3,430,081 between the New Mexico Finance Authority (NMFA) and the Water Authority for the Water Authority submitted an application for financial assistance for the Los Padillas Waterline Project. This is a special limited obligation of the water Authority to pay a principal amount of no more than \$2,724,282 together with interest, costs of issuance and administrative fees and to accept a loan subsidy (Grant) of no more than \$705,799. The purpose of the financing is for the costs of upgrading the Water Authority's water system which includes the acquisition and installation of waterline infrastructure. The loan portion is a Senior Lien obligation and the waterline work has been appropriated by the Water Authority Board

The application for funding has been approved by the Water Authority Board.

**FISCAL IMPACT:**

This loan portion of the agreement is for 20 years and has two separate interest rates. The market rate loan for \$2,124,282 is 2.00%, and the disadvantaged rate loan for \$600,000 is 0.25%. Gross Revenues, all income and revenues directly or indirectly derived by the Water Authority from the operation and use of the System, are pledged as security for these loans. The average annual Debt Service for the loan portion of this agreement is \$157,166.

**COMMENTS:**

This Ordinance gives the Executive Director authorization to enter into the loan agreement with the NMFA to secure a loan for the purpose of financing the costs of the completion of Phase 7 of the Los Padillas South Valley Drinking Water Project.



1 WHEREAS, the Water Authority is a legally and regularly created,  
2 established, organized and existing public body politic and corporate, separate and  
3 apart from the City and the County, under the general laws of the State; and

4 WHEREAS, the Water Authority owns, operates and maintains the System as  
5 a joint public utility water and sanitary sewer system; and

6 WHEREAS, the Water Authority is obligated on the following Senior  
7 Obligations, payable from Net Revenues, Outstanding on the date of the adoption of  
8 this Ordinance in the following principal amounts:

	Amount
<u>Senior Obligations</u>	<u>Outstanding</u>
11 Series 2009A-1 Bonds	\$ 8,395,000
12 Series 2013A&B Bonds	\$ 74,685,000
13 Series 2014A Bonds	\$ 79,995,000
14 Series 2015 Bonds	\$196,710,000
15 Series 2017 Bonds	\$ 84,090,000
16 Series 2018 Bonds	\$ 75,085,000
17 Drinking Water State Revolving Fund Loan Agreement (2009)	\$ 672,397
18 Public Project Revolving Fund Loan Agreement (2011)	\$ 32,120,000
19 Drinking Water State Revolving Fund Loan Agreement (2018-1)	\$ 505,000
20 Drinking Water State Revolving Fund Loan Agreement (2018-2)	\$ 250,000

21 and

22 WHEREAS, the Water Authority is obligated on the following Subordinate  
23 Obligations, payable from Net Revenues with a lien on the Net Revenues  
24 subordinated to the Senior Obligations, and superior to the lien of the Super  
25 Subordinate Obligations, Outstanding on the date of the adoption of this Ordinance  
26 in the following principal amounts:

	Amount
<u>Subordinate Obligations</u>	<u>Outstanding</u>
29 Series 2014B Bonds	\$ 58,865,000
30 Drinking Water State Revolving Fund Loan Agreement (2008)	\$ 6,886,017

31 and

1           WHEREAS, the Water Authority currently has no Super Subordinate  
2 Obligations outstanding payable from Net Revenues with a lien on the Net  
3 Revenues subordinated to the Senior Obligations and Subordinate Obligations; and

4           WHEREAS, except as stated in these preambles, the Net Revenues have not  
5 been pledged or hypothecated to the payment of any Outstanding obligations and no  
6 other obligations are payable from the Net Revenues on the date of this Ordinance;  
7 and

8           WHEREAS, there are no obligations which have a lien on the Net Revenues  
9 superior to the lien thereon of the Senior Obligations;

10          WHEREAS, funds may be provided from the Drinking Water State Revolving  
11 Loan Fund to finance infrastructure projects in the State; and

12          WHEREAS, the Board has determined that the Project may be financed with  
13 amounts borrowed under the Loan Agreement and that it is in the best interest of the  
14 Water Authority and its customers that the Loan Agreement be executed and  
15 delivered and that the financing of the construction of the Project take place by  
16 executing and delivering the Loan Agreement; and

17          WHEREAS, the Board has determined that it may lawfully pledge the Net  
18 Revenues for repayment of the Loan Agreement; and

19          WHEREAS, the Water Authority intends to use a portion of the proceeds of  
20 the Loan Agreement for the purpose of acquiring and installing additional System  
21 assets and improving the System; and

22          WHEREAS, all required authorizations, consents and approvals in  
23 connection with (i) the use and pledge of the Net Revenues to the Finance Authority  
24 (or its assigns) for the payment of amounts due under the Loan Agreement, (ii) the  
25 use of the proceeds of the Loan Agreement to finance the Project, and (iii) the  
26 authorization, execution and delivery of the Loan Agreement, which are required to  
27 have been obtained by the date of the Ordinance have been obtained or are  
28 reasonably expected to be obtained prior to the Closing Date.

29          BE IT ORDAINED BY THE BOARD OF THE WATER AUTHORITY:

30          Section 1.   DEFINITIONS AND RULES OF CONSTRUCTION.

31                 (A)   DEFINITIONS. As used in this Ordinance, the following terms

1 have the meanings specified, unless the context clearly requires otherwise:

2 ACT. The DWSRLF Act, and the general laws of the State, including  
3 Section 72-1-10 NMSA 1978, as amended, and enactments of the Board relating to  
4 the Loan Agreement, including this Ordinance.

5 ADMINISTRATIVE FEE or ADMINISTRATIVE FEE COMPONENT.  
6 The 0.25% annual fee payable to the Finance Authority as 0.125% of the Loan  
7 Agreement Principal Amount then outstanding as a part of each Loan Agreement  
8 Payment for the costs of originating and servicing the Loan.

9 AGGREGATE DISBURSEMENTS. At any time after the Closing Date,  
10 the sum of all Disbursements.

11 AGGREGATE FORGIVEN DISBURSEMENTS. The amount of  
12 Subsidy provided in the form of principal forgiveness, and shall at any time after the  
13 Closing Date be equal to the product of the Subsidy times the Aggregate  
14 Disbursements, up to a maximum of seven hundred five thousand seven hundred  
15 ninety-nine dollars (\$705,799).

16 AGGREGATE REPAYABLE DISBURSEMENTS. At any time after the  
17 Closing Date, the Aggregate Disbursements less the Aggregate Forgiven  
18 Disbursements.

19 APPROVED REQUISITION. A requisition in the form of Exhibit "C" to  
20 the Loan Agreement, together with supporting documentation submitted to and  
21 approved by the Finance Authority pursuant to Section 4.2 of the Loan Agreement.

22 AUTHORIZED OFFICER. The Chair, the Executive Director of the  
23 Water Authority, or other officer or employee of the Water Authority when designated  
24 by a certificate signed by the Chair from time to time.

25 BOARD. The governing body in which is vested the legislative power  
26 of the Water Authority.

27 CHAIR. The duly elected Chair of the Board or the Vice Chair of the  
28 Board acting in the absence of the Chair.

29 CITY. The City of Albuquerque, in the County of Bernalillo and State  
30 of New Mexico.

1 CLOSING DATE. The date of execution, delivery and funding of the  
2 Loan Agreement authorized by this Ordinance.

3 COMPLETION DATE. The date of completion of the Project.

4 COUNTY. Bernalillo County, New Mexico.

5 CREDIT FACILITY. A letter of credit, line of credit, bond insurance  
6 policy or reserve account surety bond, guaranty or similar agreement provided by a  
7 Credit Source to provide support to pay the purchase price of, or the payment when  
8 due of the principal of and interest on, System Obligations.

9 CREDIT SOURCE. Any bank, insurance company or other financial  
10 institution which provides a Credit Facility for a series of System Obligations.

11 DEBT SERVICE ACCOUNT. The debt service account established in  
12 the name of the Water Authority and administered by the Finance Authority to pay  
13 principal and interest on the Loan Agreement as the same become due.

14 DEBT SERVICE FUND. The Debt Service Fund previously established  
15 by the Water Authority and continued in Section 13 of this Ordinance.

16 DEBT SERVICE REQUIREMENTS. With respect to System  
17 Obligations and for any given period, the sum of: (1) the amount required to pay the  
18 interest, or to make reimbursements for payments of interest, becoming due on  
19 System Obligations during that period, plus (2) the amount required to pay the  
20 principal or to make reimbursements for the payment of principal becoming due on  
21 System Obligations during that period, whether at maturity or upon mandatory  
22 sinking fund redemption dates, plus (3) the periodic payments required to be made  
23 by the Water Authority pursuant to a Qualified Exchange Agreement minus (4) the  
24 periodic payments to be received by the Water Authority pursuant to a Qualified  
25 Exchange Agreement. No payments required for any System Obligations which may  
26 be tendered or otherwise presented for payment at the option or demand of the  
27 owners of System Obligations, or which may occur because of the exercise of an  
28 option by the Water Authority, or which may otherwise become due by reason of any  
29 other circumstance or contingency, including acceleration or early termination  
30 payments, which constitute other than regularly scheduled payments of principal,

1 interest or other regularly scheduled payments on System Obligations shall be  
2 included in any computation of Debt Service Requirements for that period.

3 Unless, at the time of computation of Debt Service Requirements, payments  
4 on System Obligations are owed to, or System Obligations are owned or held by, the  
5 provider of a Credit Facility pursuant to the provisions of that Credit Facility, the  
6 computation of interest for the purposes of this definition shall be made without  
7 considering the interest rate payable pursuant to a Credit Facility.

8 In any computation of Debt Service Requirements relating to the issuance of  
9 additional System Obligations, there shall be excluded from the computation of the  
10 Debt Service Requirements amounts and investments which are irrevocably  
11 committed to make designated payments on System Obligations during the  
12 applicable period, including, without limitation, money on deposit in any Debt Service  
13 Account and amounts on deposit in an escrow account irrevocably committed to  
14 make designated payments on System Obligations during the applicable period and  
15 earnings on such investments which are payable and committed to the payment of  
16 such System Obligations during the applicable period.

17 Unless otherwise required by a Water Authority ordinance or resolution  
18 relating to a series of System Obligations, to determine Debt Service Requirements  
19 of Variable Rate Obligations, the Water Authority shall use the procedures set forth  
20 in the following paragraphs to determine the amount of interest or other payments to  
21 be paid by the Water Authority on Variable Rate Obligations.

22 (1) During any historical period for which the actual variable  
23 interest rate or rates are determinable, the actual variable interest rate shall be used.  
24 During any historical period when the actual variable interest rate is not  
25 determinable, the variable interest rate shall, for the purpose of determining Debt  
26 Service Requirements, be deemed to be the higher of:

27 (a) the actual variable interest rate, if any, at the time  
28 of computation; or

29 (b) a fixed annual rate equal to the prevailing rate on  
30 the Variable Rate Obligations on the date of computation (which, for the purpose of  
31 determining the Debt Service Requirements, shall be a date which is no more than

1 60 days prior to the date of issuance of the applicable System Obligations) as  
2 certified by the Water Authority's financial advisor, the underwriters of the System  
3 Obligations, an investment banker designated by the Water Authority from time to  
4 time or a counterparty with respect to a Qualified Exchange Agreement.

5 (2) Prospective computations of interest payable on Variable  
6 Rate Obligations, including those relating to the issuance of additional System  
7 Obligations or required by the Rate Covenant, shall be made on the assumption that  
8 such obligations bear interest at a fixed annual rate equal to:

9 (a) the average of the daily rates of such System  
10 Obligations during the 365 consecutive days (or any lesser period such System  
11 Obligations have been Outstanding) next preceding a date which is no more than 60  
12 days prior to the date of the issuance of the additional System Obligations; or

13 (b) with respect to System Obligations initially issued  
14 or incurred as or being converted to Variable Rate Obligations, the estimated initial  
15 rate of interest of such System Obligations upon the date of issuance, exchange or  
16 conversion as certified by the Water Authority's financial advisor, another investment  
17 banker, as designated by the Water Authority from time to time, or a counterparty  
18 with respect to a Qualified Exchange Agreement.

19 DISBURSEMENT. An amount caused to be paid by the Finance  
20 Authority for an Approved Requisition for costs of the Project.

21 DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT  
22 (2008). The loan agreement dated November 7, 2008 between the Finance  
23 Authority and the Water Authority in the original principal amount of \$9,627,877,  
24 authorized and approved by Water Authority Ordinance Enactment No. F/S O-08-4  
25 and Resolution Enactment No. F/S R-08-13 as amended by Ordinance No. F/S O-  
26 14-2 and the Amendment to the Loan Agreement dated July 24, 2014 constituting a  
27 subordinate lien on the Net Revenues.

28 DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT  
29 (2009). The loan agreement between the Finance Authority and the Water Authority  
30 in the original principal amount of \$1,010,000, authorized and approved by Water

1 Authority Ordinance Enactment No. O-09-9 and Resolution Enactment No. R-09-24  
2 constituting a senior lien on the Net Revenues.

3 DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT  
4 (2018-1). The loan agreement between the Finance Authority and the Water  
5 Authority in the original principal amount of \$1,010,000, authorized and approved by  
6 Water Authority Ordinance Enactment No. O-18-2 and Resolution Enactment No. R-  
7 18-7 constituting a senior lien on the Net Revenues.

8 DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT  
9 (2018-2). The loan agreement between the Finance Authority and the Water  
10 Authority in the original principal amount of \$1,000,000, authorized and approved by  
11 Water Authority Ordinance Enactment No. O-18-5 and Resolution Enactment No. R-  
12 18-11 constituting a senior lien on the Net Revenues.

13 DRINKING WATER STATE REVOLVING LOAN FUND. The drinking  
14 water state revolving loan fund established by the DWSRLF Act.

15 DWSRLF ACT. The general laws of the State, particularly the Drinking  
16 Water State Revolving Loan Fund Act, NMSA 1978 §§ 6-21A-1 through 6-21A-9, as  
17 amended.

18 EXPENSES. The reasonable and necessary fees, costs and  
19 expenses incurred by the Water Authority and the Finance Authority with respect to  
20 the execution and delivery of the Loan Agreement, including, without limitation,  
21 attorneys' fees and costs, financial advisor's fees and costs, costs of advertising and  
22 publication, and all reasonable and necessary fees and administrative costs of the  
23 Water Authority and Finance Authority relating to the foregoing.

24 FINAL LOAN AGREEMENT PAYMENT SCHEDULE. The schedule of  
25 Loan Agreement Payments due on the Loan Agreement following the Final  
26 Requisition, as determined on the basis of the Aggregate Repayable Disbursements.

27 FINAL REQUISITION. The final requisition of moneys to be submitted  
28 by the Water Authority, which shall be submitted by the Water Authority on or before  
29 the date provided for in Section 4.1(b) of the Loan Agreement.

1 FINANCE AUTHORITY. The New Mexico Finance Authority, created  
2 by the New Mexico Finance Authority Act, NMSA 1978, §§ 6-21-1 through 6-21-31,  
3 as amended.

4 GROSS REVENUES. All income and revenues directly or indirectly  
5 derived by the Water Authority from the operation and use of the System, or any part  
6 of the System, and includes, without limitation, all revenues received by the Water  
7 Authority, or any municipal corporation or agency succeeding to the rights of the  
8 Water Authority, from the System and from the sale and use of water, water services  
9 or facilities, sewer service or facilities or any other service, commodity or facility or  
10 any combination thereof furnished to the inhabitants of the geographic area served  
11 by the Water Authority by means of the System as the same may at any time exist to  
12 serve customers outside the Water Authority's geographical limits as well as  
13 customers within the Water Authority's geographical limits. Such term also includes:

14 (1) All income derived from the investment of any money in  
15 the Joint Water and Sewer Fund, Debt Service Account, Program Account and Rate  
16 Stabilization Fund and income derived from surplus Net Revenues;

17 (2) Money released from a rebate fund to the Water  
18 Authority;

19 (3) Money released from the Rate Stabilization Fund to the  
20 Water Authority to the extent that the amount released is used to pay Operation and  
21 Maintenance Expenses or Debt Service Requirements on System Obligations in the  
22 year released; provided that withdrawals from the Rate Stabilization Fund shall not  
23 be included in Gross Revenues for the purposes of the Rate Covenant in any two  
24 consecutive calendar years;

25 (4) Property insurance proceeds which are not necessary to  
26 restore or replace the property lost or damaged and the proceeds of the sale or  
27 other disposition of any part of the System; and

28 (5) Funds received from users of the System as a  
29 reimbursement of, or otherwise in connection with, franchise fees to be paid by the  
30 Water Authority.

31 Gross Revenues do not include:

1 (1) any money received as grants or gifts from the United  
2 States of America, the State or other sources, or the proceeds of any charge or tax  
3 intended as a replacement therefor or other capital contributions from any source  
4 which are restricted as to use; and

5 (2) condemnation proceeds or the proceeds of any  
6 insurance policy, except any property insurance proceeds described above in clause  
7 (4) of this definition or derived in respect of loss of use or business interruption.

8 INTEREST COMPONENT. The portion of each Loan Agreement  
9 Payment paid as interest accruing on the Aggregate Repayable Disbursements then  
10 outstanding, calculated from the date of each Disbursement.

11 INTEREST RATE. The rate of interest on the Loan Agreement as  
12 shown on the Term Sheet.

13 JOINT WATER AND SEWER FUND. The "City of Albuquerque, New  
14 Mexico, Joint Water and Sewer Fund" originally established in Section 16 of City  
15 Ordinance No. 18-1984 and continued in Section 13 of this Ordinance as the  
16 "Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer Fund."

17 LOAN. The funds to be loaned to the Water Authority by the Finance  
18 Authority pursuant to the Loan Agreement, up to the Maximum Principal Amount.

19 LOAN AGREEMENT. The loan and subsidy agreement and any  
20 amendments or supplements thereto, including the exhibits attached to the loan  
21 agreement.

22 LOAN AGREEMENT PAYMENT. Collectively, the Principal  
23 Component, the Interest Component, and the Administrative Fee Component to be  
24 paid by the Water Authority as payment on the Aggregate Repayable Disbursements  
25 under the Loan Agreement, as shown on Exhibit "B" thereto.

26 LOAN AGREEMENT PRINCIPAL AMOUNT. As of any date of  
27 calculation, the Aggregate Repayable Disbursements then outstanding.

28 MAXIMUM FORGIVEN PRINCIPAL. The maximum amount of loan  
29 subsidy available in the form of principal forgiveness, which is equal to  
30 approximately twenty percent (20%) of the Maximum Principal Amount. The  
31 Maximum Forgiven Principal is \$705,799.

1           MAXIMUM PRINCIPAL AMOUNT. Three million four hundred thirty  
2 thousand eighty-one dollars (\$3,430,081).

3           MAXIMUM REPAYABLE PRINCIPAL. The maximum amount of  
4 Aggregate Repayable Disbursements repayable by the Water Authority pursuant to  
5 this Loan Agreement, and is equal to the Maximum Principal Amount less the  
6 Maximum Forgiven Principal. The Maximum Repayable Principal is \$2,724,282.

7           NMSA 1978. New Mexico Statutes Annotated, 1978 Compilation, as  
8 amended and supplemented.

9           NET REVENUES. The Gross Revenues after deducting Operation  
10 and Maintenance Expenses.

11           OPERATION AND MAINTENANCE EXPENSES. All reasonable and  
12 necessary current expenses of the System, paid or accrued, related to operating,  
13 maintaining and repairing the System including, without limiting the generality of the  
14 foregoing:

15                   (1) legal and overhead expenses directly related and  
16 reasonably allocable to the administration of the System;

17                   (2) insurance premiums for the System, including, without  
18 limitation, premiums for property insurance, public liability insurance and workmen's  
19 compensation insurance, whether or not self-funded;

20                   (3) premiums, expenses and other costs (other than required  
21 reimbursements of insurance proceeds and other amounts advanced to pay Debt  
22 Service Requirements on System Obligations) for Credit Facilities;

23                   (4) Expenses other than expenses paid from the proceeds of  
24 System Obligations;

25                   (5) the costs of audits of the books and accounts of the  
26 Water Authority and the System;

27                   (6) amounts required to be deposited in a rebate fund or  
28 otherwise required to make rebate payments to the United States Government;

29                   (7) salaries, administrative expenses, labor costs, surety  
30 bonds and the cost of materials and supplies used for or in connection with the  
31 current operation of the System; and

1 (8) franchise tax payments to the City, County or any other  
2 local government.

3 Operation and Maintenance Expenses do not include any allowance for  
4 depreciation, payments in lieu of taxes, liabilities incurred by the Water Authority as  
5 a result of its negligence or other misconduct in the operation of the System or any  
6 charges or costs allocable to capital improvements or replacements. Operation and  
7 Maintenance Expenses do not include any payment of or reimbursement for the  
8 payment of Debt Service Requirements on the Loan Agreement.

9 ORDINANCE. This Ordinance, as amended or supplemented from  
10 time to time.

11 OUTSTANDING. When used in reference to System Obligations, on  
12 any particular date, the aggregate of all System Obligations issued and delivered  
13 under the applicable Water Authority ordinance authorizing the issuance of, System  
14 Obligations except:

15 (1) those canceled at or prior to such date or delivered to or  
16 acquired by the Water Authority at or prior to such date for cancellation;

17 (2) those which have been paid or are deemed to be paid in  
18 accordance with the Water Authority ordinance or resolution authorizing the  
19 issuance of the applicable System Obligations or otherwise relating thereto, provided  
20 that the payment of insured Obligations with the proceeds of a bond insurance policy  
21 shall not result in those insured obligations ceasing to be Outstanding;

22 (3) in the case of Variable Rate Obligations, System  
23 Obligations deemed tendered but not yet presented for payment;

24 (4) any System Obligation which has been refunded in  
25 accordance with this Ordinance or other ordinances of the Water Authority  
26 authorizing the defeasance of such designated System Obligations; and

27 (5) those in lieu of or in exchange or substitution for which  
28 other System Obligations shall have been delivered, unless proof satisfactory to the  
29 Water Authority and the paying agent for the applicable System Obligations is  
30 presented that any System Obligation for which a new System Obligation was  
31 issued or exchanged is held by a bona fide holder in due course.

1 PROGRAM ACCOUNT. The book account established by the Finance  
2 Authority in the name of the Water Authority for purposes of tracking expenditure of  
3 the Loan by the Water Authority to pay for the costs of the Project, as shown in the  
4 Term Sheet, which account shall be kept separate and apart from all other accounts  
5 of the Finance Authority.

6 PROJECT. Acquiring additional System assets, extending, repairing,  
7 replacing and improving the Water Authority's System, including, acquisition and  
8 installation of water distribution lines for the Los Padillas community as part of the  
9 South Valley water project and the payment of Expenses associated with the  
10 execution and delivery of the Loan Agreement.

11 PUBLIC PROJECT REVOLVING FUND LOAN AGREEMENT (2011).  
12 The loan agreement dated December 15, 2011 between the Finance Authority and  
13 the Water Authority in the principal amount of \$53,400,000 and approved by  
14 Ordinance No. O-11-5 and Resolution No. R-11-17 constituting a senior lien on the  
15 Net Revenues.

16 QUALIFIED EXCHANGE AGREEMENT. Any interest rate exchange  
17 between the Water Authority and a counterparty which, when entered into by the  
18 Water Authority, satisfies the requirements of Section 6-18-8.1 NMSA 1978.

19 RATE COVENANT. The covenants in the Loan Agreement relating to  
20 charging rates for use of the System to pay Debt Service Requirements.

21 RATE STABILIZATION FUND. The Rate Stabilization Fund for  
22 System Obligations previously established by the Water Authority and continued in  
23 Section 13 of this Ordinance.

24 SENIOR OBLIGATIONS. The Series 2009A-1 Bonds, the Drinking  
25 Water State Revolving Fund Loan Agreement (2009), the Public Project Revolving  
26 Fund Loan Agreement (2011), the Series 2013A&B Bonds, the Series 2014A Bonds,  
27 the Series 2015 Bonds, the Series 2017 Bonds, the Drinking Water State Revolving  
28 Fund Loan Agreement (2018-1), the Drinking Water State Revolving Fund Loan  
29 Agreement (2018-2), the Series 2018 Bonds, the Loan Agreement and obligations  
30 related thereto designated as Senior Obligations, in any ordinance or resolution of  
31 the Water Authority relating to those Senior Obligations, and any other System

1 Obligations issued with a lien on the Net Revenues on parity with the lien of the  
2 Outstanding Senior Obligations on Net Revenues.

3           SERIES 2009A-1 BONDS. The Senior Obligations designated as  
4 “Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer  
5 System Improvement Revenue Bonds, Series 2009A-1” in the original principal  
6 amount of \$135,990,000, authorized and issued pursuant to Ordinance No. O-09-1  
7 and Resolution No. R-09-7 constituting a senior lien on the Net Revenues.

8           SERIES 2013A&B BONDS. The Senior Obligations designated as the  
9 “Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer  
10 System Improvement Revenue Bonds, Series 2013A” and the “Albuquerque  
11 Bernalillo County Water Utility Authority Joint Water and Sewer System Refunding  
12 Revenue Bonds, Series 2013B” in the combined original principal amount of  
13 \$118,215,000, authorized and issued pursuant to Ordinance No. O-13-2 and  
14 Resolution R-13-13 constituting a senior lien on the Net Revenues.

15           SERIES 2014A BONDS. The Senior Obligations designated as the  
16 “Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and  
17 Sewer System Refunding Revenue Bonds, Series 2014A” in the original principal  
18 amount of \$97,270,000, authorized and issued pursuant to Ordinance No. F/S O-14-  
19 2 and Resolution F/S R-14-10 constituting a senior lien on the Net Revenues.

20           SERIES 2014B BONDS. The Subordinate Obligations designated as  
21 the “Albuquerque Bernalillo County Water Utility Authority Subordinate Lien Joint  
22 Water and Sewer System Refunding Revenue Bonds, Series 2014B” in the original  
23 principal amount of \$87,005,000, authorized and issued pursuant to Ordinance No.  
24 F/S O-14-2 and Resolution F/S R-14-10 constituting a subordinate lien on the Net  
25 Revenues.

26           SERIES 2015 BONDS. The Senior Obligations designated as the  
27 “Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and  
28 Sewer System Refunding and Improvement Revenue Bonds, Series 2015” in the  
29 original principal amount of \$211,940,000, authorized and issued pursuant to  
30 Ordinance No. O-15-2 and Resolution F/S R-15-6 constituting a senior lien on the  
31 Net Revenues.

1           SERIES 2017 BONDS. The Senior Obligations designated as the  
2 “Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and  
3 Sewer System Refunding and Improvement Revenue Bonds, Series 2017” in the  
4 original principal amount of \$87,970,000, authorized and issued pursuant to  
5 Ordinance No. WUA O-16-2 and Resolution WUA R-16-13 constituting a senior lien  
6 on the Net Revenues.

7           SERIES 2018 BONDS. The Senior Obligations designated as the  
8 “Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and  
9 Sewer System Improvement Revenue Bonds, Series 2018” in the original principal  
10 amount of \$75,085,000, authorized and issued pursuant to Ordinance No. WUA O-  
11 18-20 and Resolution WUA R-18-20 constituting a senior lien on the Net Revenues.

12           STATE. The State of New Mexico.

13           SUBORDINATE OBLIGATIONS. The Drinking Water State Revolving  
14 Fund Loan Agreement (2008), the Series 2014B Bonds, and all other bonds and  
15 other obligations of the Water Authority now or hereafter issued with a lien on the  
16 Net Revenues subordinate to the lien of Senior Obligations and superior to the lien  
17 of the Super Subordinate Obligations on the Net Revenues.

18           SUBSIDY. Any subsidy in the form of principal forgiveness for the  
19 Water Authority, to be applied proportionally at the time of each Disbursement to the  
20 Water Authority, being approximately twenty percent (20%) of such Disbursement.

21           SUPER SUBORDINATE OBLIGATIONS. All bonds and other  
22 obligations of the Water Authority now or hereafter issued with a lien on the Net  
23 Revenues subordinate to the liens of the Senior Obligations and the Subordinate  
24 Obligations on the Net Revenues.

25           SYSTEM. The public utility owned by the Water Authority and  
26 designated as the Water Authority’s water system and sanitary sewer system  
27 (continued as a joint utility system in Section 4 of this Ordinance) consisting of all  
28 properties, real, personal, mixed or otherwise, now owned or hereafter acquired by  
29 the Water Authority, through purchase, construction or otherwise, including all  
30 extensions, enlargements and improvements of or to the water and sanitary sewer  
31 system and used in connection therewith or relating thereto, and any other related

1 activity or enterprise of the Water Authority designated by the Board as part of the  
2 water and sanitary sewer system, whether situated within or without the  
3 geographical limits of the Water Authority.

4 SYSTEM OBLIGATIONS. All bonds and other similar indebtedness  
5 payable solely or primarily from Net Revenues, including, without limitation, the  
6 Senior Obligations, the Subordinate Obligations and the Super Subordinate  
7 Obligations.

8 TERM SHEET. Exhibit "A" to the Loan Agreement.

9 VARIABLE RATE OBLIGATIONS. System Obligations, including  
10 reimbursement obligations pursuant to a Credit Facility, the interest rate on which is  
11 subject to change from time to time.

12 WATER AUTHORITY. The Albuquerque Bernalillo County Water  
13 Utility Authority created by Section 72-1-10 NMSA 1978 as a joint agency of the City  
14 and the County and operating under the name Albuquerque Bernalillo County Water  
15 Utility Authority.

16 RULES OF CONSTRUCTION. For purposes of this Ordinance, unless  
17 otherwise expressly provided or unless the context requires otherwise:

18 (1) Unless otherwise stated in this Ordinance, all references  
19 in this Ordinance to designated Sections and other subdivisions are to the  
20 designated Section and other subdivisions of this Ordinance.

21 (2) The words "herein", "hereof", "hereunder", and "herewith"  
22 and other words of similar import in this Ordinance refer to this Ordinance, as a  
23 whole, and not to any particular Section or other subdivision.

24 (3) All accounting terms not otherwise defined in this  
25 Ordinance have the meanings assigned to them in accordance with generally  
26 accepted accounting principles.

27 (4) Words of the masculine gender shall be deemed and  
28 construed to include correlative words of the feminine and neuter genders.

29 (5) The headings used in this Ordinance are for convenience  
30 of reference only and shall not define or limit the provisions of this Ordinance.

31 (6) Terms in the singular include the plural and vice versa.

1 Section 2. RATIFICATION. All actions previously taken (not inconsistent  
2 with the provisions of this Ordinance) by the Board and the officers of the Water  
3 Authority, directed toward the authorization, pledge, collection and distribution of the  
4 Net Revenues, the Project, and the authorization, execution and delivery of the Loan  
5 Agreement are ratified, approved and confirmed.

6 Section 3. FINDINGS.

7 (A) The Water Authority declares that it has considered all relevant  
8 information and data and finds that the execution and delivery of the Loan  
9 Agreement under the Act in the Maximum Principal Amount to finance the Project is  
10 necessary and in the interest of the public health, safety and welfare of the residents  
11 of the geographic area served by the Water Authority.

12 (B) The Water Authority will finance the Project with the proceeds of  
13 the Loan Agreement, together with other funds of the Water Authority, if necessary.

14 (C) It is economically feasible to accomplish the Project by the  
15 execution and delivery of the Loan Agreement.

16 (D) The Net Revenues may lawfully be pledged to secure the  
17 payment of amounts due under the Loan Agreement.

18 Section 4. JOINT UTILITY. The System shall continue to be operated and  
19 maintained as a joint public utility.

20 Section 5. LOAN AGREEMENT – AUTHORIZATION AND DETAIL.

21 (A) AUTHORIZATION. This Ordinance has been adopted by the  
22 affirmative vote of at least a majority of all of the members of the Board. For the  
23 purpose of protecting the public health, conserving the property, and protecting the  
24 general welfare and prosperity of the public served by the Water Authority and  
25 acquiring and constructing the Project, it is hereby declared necessary that the  
26 Water Authority, pursuant to the Act, execute and deliver the Loan Agreement  
27 evidencing a special limited obligation of the Water Authority to pay a principal  
28 amount of two million seven hundred twenty-four thousand two hundred eighty-two  
29 dollars (\$2,724,282) and interest thereon, and to accept a loan subsidy in the  
30 amount of seven hundred five thousand seven hundred ninety-nine dollars  
31 (\$705,799) and the execution and delivery of the Loan Agreement is hereby

1 authorized. The Water Authority shall use the proceeds of the Loan and Subsidy (i)  
2 to finance the acquisition and construction of the Project and (ii) to pay Expenses.  
3 The Project will be owned by the Water Authority.

4 (B) DETAIL. The Loan Agreement shall be in substantially the form  
5 of the Loan Agreement presented at the meeting of the Board at which this  
6 Ordinance was adopted. The Loan shall be in an amount not to exceed the  
7 Maximum Principal Amount of three million four hundred thirty thousand eighty-one  
8 dollars (\$3,430,081). The Loan Agreement Principal Amount shall be payable in  
9 installments of principal due on May 1 of the years designated in the Final Loan  
10 Agreement Payment Schedule and bear interest payable on May 1 and November 1  
11 of each year, commencing on November 1, 2019, at the rates designated in the  
12 Loan Agreement, including Exhibit "A" thereto, which rates include the Administrative  
13 Fee. Interest on Loan Agreement will be computed on the basis of a 360-day year  
14 consisting of twelve 30-day months.

15 Section 6. AUTHORIZATION OF PROJECT AND EXPENSES.

16 (A) PROJECT. The Project is hereby authorized and approved.

17 (B) EXPENSES. The payment of Expenses is authorized and  
18 approved.

19 (C) PROCEEDS. The proceeds of the Loan Agreement will be  
20 used exclusively to finance the Project including the payment of Expenses.

21 Section 7. APPROVAL OF THE LOAN AGREEMENT. The form of the  
22 Loan Agreement as presented at the meeting of the Board at which this Ordinance  
23 was adopted is hereby approved. Authorized Officers are hereby individually  
24 authorized to execute, acknowledge and deliver the Loan Agreement with such  
25 changes, insertions and omissions as may be approved by such individual  
26 Authorized Officers, and the Executive Director is hereby authorized to affix the seal  
27 of the Water Authority on the Loan Agreement and attest the same. The execution  
28 of the Loan Agreement by an Authorized Officer shall be conclusive evidence of  
29 such approval.

30 Section 8. SPECIAL LIMITED OBLIGATIONS. The Loan Agreement shall  
31 be secured by the pledge of the Net Revenues as set forth in the Loan Agreement

1 and shall be payable solely from the Net Revenues. The Loan Agreement, together  
2 with interest thereon and other obligations of the Water Authority thereunder, shall  
3 be a special, limited obligation of the Water Authority, payable solely from the Net  
4 Revenues as provided in this Ordinance, and the Loan Agreement shall not  
5 constitute a general obligation of the Water Authority, the City, the County, or the  
6 State, and the holders of the Loan Agreement may not look to any general or other  
7 fund of the Water Authority for payment of the obligations thereunder. Nothing  
8 contained in this Ordinance nor in the Loan Agreement, nor any other instruments,  
9 shall be construed as obligating the Water Authority (except with respect to the  
10 application of the Net Revenues) or as imposing a pecuniary liability or a charge  
11 upon the general credit of the Water Authority, nor shall a breach of any agreement  
12 contained in this Ordinance, the Loan Agreement, or any other instrument impose  
13 any pecuniary liability upon the Water Authority or any charge upon its general  
14 credit. The Loan Agreement shall never constitute an indebtedness of the Water  
15 Authority within the meaning of any State constitutional provision or statutory  
16 limitation and shall never constitute or give rise to a pecuniary liability of the Water  
17 Authority or a charge against its general credit. Nothing herein shall prevent the  
18 Water Authority from applying other funds of the Water Authority legally available  
19 therefor to payments required by the Loan Agreement, in its sole and absolute  
20 discretion.

21 Section 9. DISPOSITION OF PROCEEDS; COMPLETION OF  
22 ACQUISITION AND CONSTRUCTION OF THE PROJECT.

23 (A) ACCOUNTS. The Water Authority hereby consents to creation  
24 of the Program Account and Debt Service Account to be held and maintained by the  
25 Finance Authority as provided in the Loan Agreement. The Water Authority hereby  
26 approves of the deposit of a portion of the proceeds of the Loan Agreement in the  
27 Program Account. The proceeds derived from the execution and delivery of the  
28 Loan Agreement shall be deposited promptly upon receipt thereof in the Program  
29 Account, as provided in the Loan Agreement. Until the Completion Date or the date  
30 of the Final Disbursement, the money in the Program Account shall be used and  
31 paid out solely for the purpose of acquiring and constructing the Project and to pay

1 Expenses in compliance with applicable law and the provisions of the Loan  
2 Agreement.

3 (B) PROMPT COMPLETION OF THE PROJECT. The Water  
4 Authority will acquire, construct and complete the Project with all due diligence.  
5 Upon the acquisition and completion of the Project, the Water Authority shall  
6 execute and send to the Finance Authority a certificate stating that the completion of  
7 and payment for the Project has been completed.

8 (C) FINANCE AUTHORITY NOT RESPONSIBLE FOR  
9 APPLICATION OF LOAN PROCEEDS. The Finance Authority shall in no manner  
10 be responsible for the application or disposal by the Water Authority or by its officers  
11 of the net proceeds derived from the Loan Agreement.

12 Section 10. DEPOSIT OF NET REVENUES; DISTRIBUTIONS OF NET  
13 REVENUES AND FLOW OF FUNDS.

14 (A) DEPOSIT OF NET REVENUES. Net Revenues shall be paid  
15 directly by the Water Authority to the Finance Authority in an amount sufficient to pay  
16 principal and interest due under the Loan Agreement, as provided in Section 5.2 of  
17 the Loan Agreement.

18 (B) TERMINATION OF DEPOSITS TO MATURITY. No payment  
19 shall be made into the Debt Service Account if the amount in the Debt Service  
20 Account totals a sum at least equal to the entire aggregate amount of Loan  
21 Agreement Payments to become due as to principal and interest due under the Loan  
22 Agreement, in which case moneys in such account in an amount at least equal to  
23 such principal and interest requirements shall be used solely to pay such obligations  
24 as the same become due, and any moneys in excess thereof in such accounts shall  
25 be transferred to the Water Authority and used as provided in Section 10(C) below.

26 (C) USE OF SURPLUS REVENUES. After making all the  
27 payments hereinabove required to be made by this Section, any moneys remaining  
28 in the Debt Service Account shall be transferred to the Water Authority on a timely  
29 basis and applied to any other lawful purpose, including, but not limited to, the  
30 payment of any Senior Obligations, Subordinate Obligations or Super Subordinate  
31 Obligations, or purposes authorized by the Water Authority, the Constitution and

1 laws of the State, as the Water Authority may from time to time determine.

2 Section 11. LIEN ON NET REVENUES. The Loan Agreement shall be  
3 issued with a lien on the Net Revenues on parity with the lien of the Senior  
4 Obligations on the Net Revenues and a lien superior to the liens of the Subordinate  
5 Obligations and the Super Subordinate Obligations on the Net Revenues. The Net  
6 Revenues are hereby authorized to be pledged, and are hereby pledged, and the  
7 Water Authority grants a security interest therein, for the payment of the principal  
8 and interest due under the Loan Agreement, subject to the uses thereof permitted by  
9 and the priorities set forth in this Ordinance and the Loan Agreement. The Loan  
10 Agreement constitutes an irrevocable first lien, but not necessarily an exclusive first  
11 lien, on the Net Revenues as set forth herein and therein, and the Water Authority  
12 shall not create a lien on the Net Revenues superior to that of the Loan Agreement  
13 without the express prior written approval of the Finance Authority.

14 Section 12. AUTHORIZED OFFICERS; DELEGATED POWERS.  
15 Authorized Officers are hereby individually authorized and directed to execute and  
16 deliver any and all papers, instruments, opinions, affidavits and other documents  
17 and to do and cause to be done any and all acts and things necessary or proper for  
18 carrying out this Ordinance, the Loan Agreement and all other transactions  
19 contemplated hereby and thereby. Authorized Officers are hereby individually  
20 authorized to do all acts and things required of them by this Ordinance and the Loan  
21 Agreement for the full, punctual and complete performance of all the terms,  
22 covenants and agreements contained in this Ordinance and the Loan Agreement  
23 including, but not limited to, the execution and delivery of closing documents,  
24 additional agreements and reports required in connection with the execution and  
25 delivery of the Loan Agreement, and the publication of the summary of this  
26 Ordinance set out in Section 19 of this Ordinance (with such changes, additions and  
27 deletions as may be necessary).

28 Section 13. FUNDS AND ACCOUNTS.

29 (A) JOINT WATER AND SEWER FUND. The Water Authority shall  
30 continue the Joint Water and Sewer Fund as a separate, distinct and segregated  
31 fund. As long as the Loan Agreement is outstanding, all Gross Revenues shall

1 continue to be set aside and credited to the Joint Water and Sewer Fund.

2 (B) DEBT SERVICE FUND AND ACCOUNTS. The Water Authority  
3 shall continue the Debt Service Fund as a separate, distinct and segregated fund for  
4 the deposit of Net Revenues for the payment of System Obligations, including the  
5 Loan Agreement. The Water Authority shall continue the Expense Account as part  
6 of the Debt Service Fund. Money on deposit or credited to the Expense Account  
7 shall be used for the purpose of payment of Expenses.

8 (C) RATE STABILIZATION FUND. The Water Authority shall  
9 continue the Rate Stabilization Fund as a separate, distinct and segregated fund.

10 Section 14. AMENDMENT OF ORDINANCE. Prior to the Closing Date, the  
11 provisions of this Ordinance may be supplemented or amended by ordinance of the  
12 Board with respect to any changes which are not inconsistent with the substantive  
13 provisions of this Ordinance. After the Closing Date, this Ordinance may be  
14 amended without receipt by the Water Authority of any additional consideration, but  
15 only with the prior written consent of the Finance Authority.

16 Section 15. LIMITATION OF RIGHTS. Nothing in this Ordinance expressed  
17 or implied is intended or shall be construed to give to any person other than the  
18 Water Authority, the Finance Authority and the parties to which such right, remedy or  
19 claim is expressly granted by this Ordinance any legal or equitable right, remedy or  
20 claim under or in respect to the Ordinance.

21 Section 16. ORDINANCE IRREPEALABLE. After the Closing Date, this  
22 Ordinance shall be and remain irrevocable until all obligations due under the Loan  
23 Agreement shall be fully paid, canceled and discharged, as herein provided.

24 Section 17. SEVERABILITY CLAUSE. If any section, paragraph, clause or  
25 provision of this Ordinance shall for any reason be held to be invalid or  
26 unenforceable, the invalidity or unenforceability of that section, paragraph, clause or  
27 provision shall not affect any of the remaining provisions of this Ordinance.

28 Section 18. REPEALER CLAUSE. All bylaws, orders, resolutions and  
29 ordinances, or parts thereof, inconsistent with this Ordinance are repealed to the  
30 extent only of such inconsistency. This repealer shall not be construed to revive any  
31 bylaw, order, resolution or ordinance, or part thereof, previously repealed.

1 Section 19. GENERAL SUMMARY FOR PUBLICATION. The title and a  
2 general summary of the subject matter contained in this Ordinance shall be  
3 published in substantially the following form:

4 (Form of Summary of Ordinance for Publication)

5 Albuquerque Bernalillo County Water Utility Authority

6 Notice of Adoption of Ordinance

7 NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 6-14-6  
8 NMSA 1978, that on March 20, 2019, the Board of Albuquerque Bernalillo County  
9 Water Utility Authority (the "Water Authority") adopted Water Authority Ordinance  
10 No. O-19-1, an ordinance which authorizes the execution and delivery of a loan  
11 agreement with the New Mexico Finance Authority in an aggregate principal amount  
12 of \$3,430,081 to make improvements to the Water Authority's Joint Water and  
13 Sanitary Sewer System.

14 The title of the Ordinance is:

15 **ORDINANCE**

16 **AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN**  
17 **AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE**  
18 **ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE**  
19 **"WATER AUTHORITY") AND THE NEW MEXICO FINANCE AUTHORITY,**  
20 **EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE WATER AUTHORITY**  
21 **TO PAY A PRINCIPAL AMOUNT OF NO MORE THAN TWO MILLION SEVEN**  
22 **HUNDRED TWENTY-FOUR THOUSAND TWO HUNDRED EIGHTY-TWO**  
23 **DOLLARS (\$2,724,282), TOGETHER WITH INTEREST, COSTS OF ISSUANCE**  
24 **AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY**  
25 **OF NO MORE THAN SEVEN HUNDRED FIVE THOUSAND SEVEN HUNDRED**  
26 **NINETY-NINE DOLLARS (\$705,799), FOR THE PURPOSE OF FINANCING THE**  
27 **COSTS OF EXTENDING AND IMPROVING THE WATER INFRASTRUCTURE**  
28 **SYSTEM TO THE LOS PADILLAS COMMUNITY AS PART OF THE SOUTH**  
29 **VALLEY WATER PROJECT, INCLUDING, ACQUISITION AND INSTALLATION**  
30 **OF WATER DISTRIBUTION LINES; PROVIDING FOR THE PLEDGE AND**  
31 **PAYMENT OF THE PRINCIPAL, INTEREST AND ADMINISTRATIVE FEES DUE**

1 UNDER THE LOAN AGREEMENT SOLELY FROM NET REVENUES; SETTING A  
2 MAXIMUM INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND  
3 OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING  
4 ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT  
5 WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER  
6 ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE  
7 LOAN AGREEMENT.

8 The title contains a general summary of the subject matter contained in the  
9 Ordinance.

10 This notice constitutes compliance with § 6-14-6 NMSA 1978.

11 (End of Summary of Ordinance for Publication)

12

13 PASSED AND ADOPTED THIS 20<sup>th</sup> DAY OF MARCH, 2019.

14 BY A VOTE OF \_\_\_ FOR AND \_\_\_ AGAINST.

15

16

17

18

\_\_\_\_\_  
Chair

19 ATTEST:

20

21

22

23

\_\_\_\_\_  
Secretary

\$3,430,081 Maximum Principal Amount

DRINKING WATER STATE REVOLVING LOAN FUND  
LOAN AND SUBSIDY AGREEMENT

dated

April 26, 2019

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY,  
BERNALILLO COUNTY, NEW MEXICO

DRINKING WATER STATE REVOLVING LOAN FUND  
LOAN AND SUBSIDY AGREEMENT

This LOAN AND SUBSIDY AGREEMENT (the “Loan Agreement”), dated as of April 26, 2019, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”), and the ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY in BERNALILLO COUNTY, NEW MEXICO (the “Governmental Unit”), a public body duly organized and existing under the laws of the State of New Mexico (the “State”).

WITNESSETH:

Capitalized terms used in the following recitals of this Loan Agreement and not defined in the first Paragraph above or in these recitals shall have the same meaning as defined in Article I of this Loan Agreement, unless the context requires otherwise.

WHEREAS, the Finance Authority is authorized, pursuant to the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended (the “DWSRLF Act”) to implement a program to permit qualified local authorities, such as the Governmental Unit, to enter into agreements with the Finance Authority to provide financial assistance in the acquisition, design, construction, improvement, expansion, repair and rehabilitation of drinking water supply facilities as authorized by the Safe Drinking Water Act; and

WHEREAS, a portion of the Loan funds made available under this Agreement pursuant to the DWSRLF Act and the Safe Drinking Water Act may be forgiven and, if forgiven, will not be required to be repaid; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and the public it serves that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan and subsidy from the Finance Authority to finance the costs of the Project, as more fully described on the Term Sheet attached hereto as Exhibit “A”; and

WHEREAS, the Project appears on the Drinking Water Fundable Priority List; and

WHEREAS, the Project has been planned and authorized in conformity with the Intended Use Plan; and

WHEREAS, the New Mexico Environment Department (the “Department”) has determined that the Governmental Unit’s Project plans and specifications comply with the provisions of 42 U.S.C. Section 300j-12 and the requirements of the laws and regulations of the State governing the construction and operation of drinking water systems; and

WHEREAS, a portion of the funds made available under this Loan Agreement pursuant to the DWSRLF Act and the Safe Drinking Water Act are federal funds categorized as CFDA 66.468; and

WHEREAS, pursuant to information provided by the Governmental Unit and environmental review by applicable State and federal agencies, and in accordance with 40 C.F.R. Sections 6.204, 6.300(c)(1), and 6.301(f), and pursuant to the environmental review process of the State, the Finance Authority has determined that the Project meets the requirements for a Categorical Exclusion as defined in the State Environmental Review Process (SERP) for the Drinking Water State Revolving Loan Fund, and the Finance Authority has found and determined that the Project meets all applicable requirements of the State Environmental Review Process (SERP) for the Drinking Water State Revolving Loan Fund; and

WHEREAS, the Finance Authority has found and determined that the Project qualifies for funding from the Green Project Reserve funds set aside for projects that consider green infrastructure, water or energy efficiency improvements or other environmentally innovative activities in accordance with the objectives of the Safe Drinking Water Act and the loan management policies for the Drinking Water State Revolving Loan Fund pertaining to Green projects under the Safe Drinking Water Act and applicable rules, regulations and policies of the Environmental Protection Agency; and

WHEREAS, the New Mexico Environment Department Drinking Water Bureau (“DWB”) has determined that the Governmental Unit has sufficient technical, managerial and financial capability to operate the Project for its useful life and ensure compliance with the requirements of the Safe Drinking Water Act.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the Finance Authority and the Governmental Unit agree:

## ARTICLE I

### DEFINITIONS

Capitalized terms defined in this Article I shall have the meaning specified in this Article I wherever used in this Loan Agreement, including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms defined in the foregoing recitals, if not defined in this Article I, shall have the same meaning as therein stated when used in this Loan Agreement, unless the context clearly requires otherwise.

“Administrative Fee” or “Administrative Fee Component” means the 0.25% annual fee payable to the Finance Authority as 0.125% of the Loan Agreement Principal Amount then outstanding as a part of each Loan Agreement Payment for the costs of originating and servicing the Loan.

“Aggregate Disbursements” means, at any time after the Closing Date, the sum of all Disbursements.

“Aggregate Forgiven Disbursements” means the amount of Subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date be equal to the product of the Subsidy times the Aggregate Disbursements, up to the Maximum Forgiven Principal.

“Aggregate Program Amount” means, with respect to this Loan Agreement, the sum of \$3,430,081 which amount shall be available for disbursement to the Governmental Unit to pay costs of the Project.

“Aggregate Repayable Disbursements” means, at any time after the Closing Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

“Approved Requisition” means a requisition in the form of Exhibit “C” to this Loan Agreement, together with the required supporting documentation set out in Exhibit “C” submitted to and approved by the Finance Authority pursuant to Section 4.2 of this Loan Agreement.

“Authorized Officers” means, with respect to the Governmental Unit, the Chair and Executive Director thereof or other officer or employee of the Governmental Unit when designated by a certificate signed by the Chair from time to time; and with respect to the Finance Authority, any one or more of the Chairperson, Vice-Chairperson, Secretary and Chief Executive Officer of the Finance Authority, and any other officer or employee of the Finance Authority designated in writing by an Authorized Officer of the Finance Authority.

“Bonds” means drinking water state revolving loan fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to this Loan Agreement and the Loan Agreement Payments.

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

“Debt Service Account” means the debt service account established in the name of the Governmental Unit and administered by the Finance Authority to pay the Loan Agreement Payments under this Loan Agreement as the same become due.

“Department” means the New Mexico Environment Department.

“Disbursement” means an amount caused to be paid by the Finance Authority for an Approved Requisition for costs of the Project, including the Expense Fund Component calculated on the basis of the amount of such Approved Requisition.

“Drinking Water Fundable Priority List” means the list of drinking water projects compiled by the Department pursuant to the Memorandum of Understanding and the Intended Use Plan.

“DWSRLF Act” means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended; and enactments of the Governing Body relating to this Loan Agreement including the Ordinance.

“Drinking Water State Revolving Loan Fund” means the drinking water state revolving loan fund established by the DWSRLF Act.

“Environmental Protection Agency” means the United States Environmental Protection Agency.

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

“Expense Fund” means the expense fund hereby created to be held and administered by the Finance Authority to pay Expenses.

“Expense Fund Component” means an amount equal to one percent (1%) of each disbursement for the Project, minus any amount forgiven under this Loan Agreement, simultaneously withdrawn and deposited in the Expense Fund to pay Expenses.

“Expenses” means the Governmental Unit’s and the Finance Authority’s costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

“Final Requisition” means the final requisition of moneys to be submitted by the Governmental Unit, which shall be submitted by the Governmental Unit on or before the date provided for in Section 4.1(b) of this Loan Agreement.

“Final Loan Agreement Payment Schedule” means the schedule of Loan Agreement Payments due on this Loan Agreement following the Final Requisition, as determined on the basis of the Aggregate Repayable Disbursements.

“Finance Authority Act” means NMSA 1978, §§ 6-21-1 through 6-21-31, as amended.

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

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

“Governing Body” means the duly organized Board of Directors of the Governmental Unit and any successor governing body of the Governmental Unit.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, for any particular Fiscal Year period to which the term is applicable, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System and from the sale and use of water and sanitary sewer services or facilities, or any other service, commodity or facility or any combination thereof furnished by the System. In the event there is a conflicting description of Gross Revenues in any ordinance or resolution of the Governmental Unit, the language of such ordinance or resolution shall control.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

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

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

“Intended Use Plan” means the current plan prepared by the Finance Authority and the Department and approved by the Environmental Protection Agency pursuant to 42 U.S.C. Section 300j-12(b) which establishes criteria for extending drinking water improvements financial assistance to qualifying public drinking water utility systems.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest accruing on the Aggregate Repayable Disbursements then outstanding, calculated from the date of each disbursement.

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

“Interim Period” means the period no greater than twenty-seven (27) months, or a longer period as may be approved by the Finance Authority as provided in Section 4.1(b) of the Agreement, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Governmental Unit to pay costs of the Project, unless extended pursuant to Section 4.1(b) of this Loan Agreement.

“Interim Loan Agreement Payment Schedule” means the anticipated schedule of Loan Agreement Payments due on this Loan Agreement following the Final Requisition, assuming disbursement of the entire Aggregate Program Amount within twenty-seven (27) months of the Closing Date. The Interim Loan Agreement Payment Schedule is attached hereto as Exhibit “B”.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement, up to the Maximum Principal Amount.

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

“Loan Agreement Payment” means, collectively, the Principal Component, the Interest Component, Expenses, and the Administrative Fee Component to be paid by the Governmental Unit as payment on the Aggregate Repayable Disbursements under this Loan Agreement, as shown on Exhibit “B” hereto.

“Loan Agreement Payment Date” means each date a payment is due on this Loan Agreement as shown on the Interim Loan Agreement Payment Schedule, attached hereto as Exhibit “B,” or in the Final Loan Agreement Payment Schedule.

“Loan Agreement Principal Amount” means, as of any date of calculation, the Aggregate Repayable Disbursements then outstanding.

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

“Maximum Forgiven Principal” means the maximum amount of loan subsidy available in the form of principal forgiveness, which is equal to seventy-five percent (75%) of the Maximum Principal Amount. The Maximum Forgiven Principal is \$705,799.

“Maximum Repayable Principal” means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to this Loan Agreement, and is equal to the Maximum Principal Amount less the Maximum Forgiven Principal. The Maximum Repayable Principal is \$2,724,282.

“Maximum Principal Amount” means \$3,430,081.

“Memorandum of Understanding” means the current memorandum of understanding by and between the Finance Authority and the Department pursuant to the DWSRLF Act describing and allocating duties and responsibilities in connection with the Drinking Water State Revolving Loan Fund.

“Net Revenues” means the Gross Revenues of the System owned and operated by the Governmental Unit minus Operation and Maintenance Expenses of the System.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented from time to time.

“Operating Agreement” means the operating agreement entered into between the Finance Authority and the Environmental Protection Agency, Region 6, for the Drinking Water State Revolving Loan Fund program.

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

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

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

“Ordinance” means Ordinance No. O-19-\_\_ adopted by the Governing Body of the Governmental Unit on March 20, 2019, approving this Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet, as supplemented from time to time.

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

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

“Pledged Revenues” means the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments by the Ordinance and this Loan Agreement and described in the Term Sheet.

“Principal Component” means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement, based upon the Aggregate Repayable Disbursements, as shown on Exhibit “B” attached to this Loan Agreement.

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

“Safe Drinking Water Act” means 42 U.S.C. §§ 300f et seq.

“Senior Obligations” means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the

Pledged Revenues and issued with a lien on the Pledged Revenues superior to the lien created by this Loan Agreement, including any such obligations shown on the Term Sheet.

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

“State Environmental Review Process” or “SERP” means the environmental review process adopted by the Finance Authority, as required by and approved by the Environmental Protection Agency, pursuant to the Operating Agreement.

“Subordinated Obligations” means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the lien created by this Loan Agreement and subordinate to any other outstanding Parity Obligations having a lien on the Pledged Revenues and superior to any Super Subordinated Obligations have a lien on the Pledged Revenues, including any such obligations shown on the Term Sheet.

“Subsidy” means any subsidy in the form of principal forgiveness for the Governmental Unit, to be applied proportionally at the time of each Disbursement to the Governmental Unit, being seventy-five percent (75%) of such Disbursement.

“Super Subordinated Obligations” means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the liens of any outstanding Parity Obligations and Subordinated Obligations, including any such obligations shown on the Term Sheet.

“System” means the joint water and wastewater system, and all improvements or additions thereto, including additions and improvements to be acquired or constructed with the proceeds of this Loan Agreement.

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

“Unrequisitioned Principal Amount” means the amount, if any, by which the Maximum Principal Amount exceeds the Aggregate Disbursements at the time the Governmental Unit submits the certificate of completion required pursuant to Section 6.3 of this Loan Agreement.

“Utility Revenue Bonds” means any bonds and other similar indebtedness payable solely or primarily from the Pledged Revenues, including this Loan Agreement, and any Senior Obligations, Parity Obligations, Subordinated Obligations, and Super-Subordinated Obligations.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit 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 Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Authorization of Loan Agreement and Readiness to Proceed. The Governmental Unit is a public body politic and corporate separate and apart from the City of Albuquerque and Bernalillo County, and is a duly organized and existing water and wastewater utility authority under the statutes and laws of the State, including specifically Section 72-1-10, NMSA 1978, as amended. The Governmental Unit is a local authority as defined in the DWSRLF Act. The Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement and the other documents related to the transaction. The Governmental Unit has met all readiness to proceed requirements of the Finance Authority and has met and will continue to meet all requirements of law applicable to this Loan Agreement.

(c) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the Aggregate Program Amount, pursuant to Section 6.1 of this Loan Agreement to the acquisition and completion of the Project and to no other purpose, as follows:

(i) The Governmental Unit shall requisition moneys to pay for the costs of the Project not less frequently than quarterly following the Closing Date;

(ii) The Governmental Unit shall, within two (2) years after the Closing Date, have completed the acquisition of the Project, and shall within twenty-seven (27) months after the Closing Date have requisitioned the Aggregate Program Amount, or such portion thereof as shall be necessary to complete the Project, unless an extension is agreed to pursuant to Section 4.1(b) of this Loan Agreement.

(d) Payment of Loan Agreement Payments. The Governmental Unit meets and will continue to meet the requirements established by the Finance Authority to assure sufficient revenues to operate and maintain the System for its useful life and repay the Loan. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in the Interim Loan Agreement Payment Schedule or the Final Loan Agreement Payment Schedule, as applicable, according to the true intent and meaning of this Loan Agreement.

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

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

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

(h) Loan Agreement Term. The Loan Agreement Term does not exceed the anticipated useful life of the Project.

(i) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit and the public it serves.

(j) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan 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 Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(k) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(l) Outstanding and Additional Debt. Except for any Senior Obligations, and any Parity Obligations described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a lien on the Pledged Revenues superior to or on a parity with the lien of this Loan Agreement. No additional indebtedness, bonds or notes of the Governmental Unit, payable on a priority ahead of the indebtedness herein authorized out of Pledged Revenues, shall be created or incurred while this Loan Agreement remains outstanding without the prior written approval of the Finance Authority.

(m) No Litigation. To the knowledge of the Governmental Unit after due investigation, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or to comply with its obligations under this Loan Agreement. Neither the execution and delivery of this Loan Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under this Loan Agreement 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.

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

(o) Existing Pledges; Pledged Revenues Not Budgeted. Except as described on the Term Sheet the Pledged Revenues have not been pledged or hypothecated in any manner for any purpose at the time of execution and delivery of this Loan Agreement. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(p) Expected Coverage Ratio. The Pledged Revenues from the current Fiscal Year are projected to equal or exceed one hundred twenty percent (120%) and, on an ongoing basis during each year of the Loan Agreement Term are reasonably expected to equal or exceed, one hundred twenty percent (120%) of the maximum annual principal and interest due on all outstanding Parity Obligations of the Governmental Unit.

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

(r) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: Project documents, annual audits, operational data required to update information in any disclosure documents used in connection with assignment or securitizing this Loan Agreement or the Loan Agreement Payments by issuance of Bonds by the Finance Authority, and notification of any event deemed material by the Finance Authority. For the purposes of this Loan Agreement, a material event shall include, without limitation, any violation or alleged violation of federal law, regulation, or policy which governs or applies to participants in the Drinking Water State Revolving Loan Fund as notified by a state or federal agency of appropriate jurisdiction.

(s) Single Audit Act Requirement. The Governmental Unit acknowledges that the funding provided pursuant to this Loan Agreement is derived in large part from federal grants to the Drinking Water State Revolving Loan Fund program pursuant to the Operating

Agreement. During the Loan Agreement Term, the Governmental Unit shall annually, so long as the Governmental Unit expends more or equal to the threshold amount set forth in 2 C.F.R. Section 200.501 during any one Fiscal Year, cause an audit of the books and accounts of its operations in their entirety, or in the alternative an audit of the books and accounts of each of its departments, agencies and other organizational units which expended or otherwise administered the Loan or any other funds derived from the government of the United States, to be completed by an Independent Accountant in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. Section 7501 et seq.), and applicable regulations thereunder. The audit will be available for inspection by the Finance Authority and by the Environmental Protection Agency.

(t) Construction Requirements. The Governmental Unit shall require any contractor hired by it in connection with the construction of the Project to post a performance and payment bond as provided by NMSA 1978, § 13-4-18, as amended.

Section 2.2 Protective Covenants Regarding Operation of the System. The Governmental Unit further represents, covenants and warrants as follows:

(a) Rate Covenant. The Governmental Unit covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year in which the Loan is outstanding the Gross Revenues shall at least equal the Operation and Maintenance Expenses of the System for the Fiscal Year, plus one hundred twenty percent (120%) of the maximum annual principal and interest payments due on all outstanding Parity Obligations.

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

(c) Records. So long as this Loan Agreement remains outstanding, proper books of record and account will be kept by the Governmental Unit, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. However, pursuant to NMSA 1978, § 6-14-10(E), as amended, records with regard to the ownership or pledge of Utility Revenue Bonds are not subject to inspection or copying.

(d) Right to Inspect. The Finance Authority, or its duly authorized agents, shall have the right to inspect at all reasonable times the Project and all records, accounts and data relating to the Project, the Pledged Revenues, and the System.

(e) Audits. Within two hundred seventy (270) days following the close of each Fiscal Year, the Governmental Unit will cause an audit of the books and accounts of the System and its separate systems to be made by an Independent Accountant and the audit to be made available for inspection by the Finance Authority. Each audit of the System shall comply with Generally Accepted Accounting Principles. The audit required by this section may, at the

Governmental Unit's discretion, be performed as a part of or in conjunction with the audit required under the Single Audit Act as set forth in Section 2.1(s) of this Loan Agreement.

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

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

(h) Insurance. Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, the Governmental Unit will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by entities which operate systems such as the System. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the Governmental Unit may have a material interest and of which the Governmental Unit may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Governmental Unit determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the

property lost or damaged and thereafter, and any remainder may be used to redeem Utility Revenue Bonds or be treated as Gross Revenues and used in any legally permissible manner.

(i) Competing Utility System. Unless contrary to any provision of, or required by, applicable law, as long as this Loan Agreement is outstanding, the Governmental Unit prior to granting any franchise or license to a competing utility system, or permitting any person, association, firm or corporation to sell similar utility services or facilities to any consumer, public or private, within the Service Area of the System, shall obtain a written report from an independent utility rate consultant stating that in the opinion of the consultant the use charges in effect immediately prior to the approval of the franchise or license by the Governmental Unit are sufficient to meet the requirement of section 2.1(p) (expected coverage ratio) for the first full calendar year after the approval of the franchise or license, based on the new Service Area of the System.

(j) Alienating System. While this Loan Agreement is outstanding, the Governmental Unit shall not transfer, sell or otherwise dispose of the System, except that the Governmental Unit may dispose of inadequate, obsolete or worn out property. For purposes of this Section, any transfer of an asset over which the Governmental Unit retains or regains substantial control shall, for so long as the Governmental Unit has such control, not be deemed a disposition of the System.

(k) Management of the System. If an Event of Default shall occur or if the Pledged Revenues in any Fiscal Year fail to equal principal and interest due on the Senior Obligations and the Parity Obligations, the Governmental Unit shall retain an independent consultant qualified in the management of water and wastewater utility systems to assist in the management of the System so long as such default continues.

(l) Competent Management. The Governmental Unit shall employ experienced and competent personnel to manage the System.

(m) Performing Duties. The Governmental Unit will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State and the regulations, policies or ordinances and resolutions of the Governmental Unit relating to the System and this Loan Agreement, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as required by this Loan Agreement and the proper segregation and application of the Gross Revenues.

(n) Other Liens. Except for any Senior Obligations and Parity Obligations listed in the Term Sheet, there are no liens or encumbrances of any nature whatsoever, on or against the System or the Gross Revenues or Net Revenues on parity with or senior to the lien of this Loan Agreement.

Section 2.3 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit:

(a) Legal Status and Authorization of Loan Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly the Finance Authority Act. The Finance Authority has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and has duly authorized the execution and delivery of this Loan Agreement.

(b) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, nor the consummation of the transactions contemplated in this Loan Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority 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 Finance Authority, or its property and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

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

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

Section 2.4 Finance Authority Compliance with Policies. As related to this Loan Agreement, the Finance Authority has complied with all applicable policies and procedures, as adopted and approved by the Finance Authority Board of Directors, or such policies or procedures have been waived by the Finance Authority Board of Directors.

Section 2.5 Compliance with Securities Laws. The Finance Authority acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The Finance Authority has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit and has assumed and relied on the accuracy of such information. The Finance Authority will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of the Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding the Loan Agreement

and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable State securities laws and regulations.

### ARTICLE III

#### LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until the Governmental Unit's obligations under this Loan Agreement have been paid in full or provision for payment of this Loan Agreement has been made pursuant to Article VIII hereof.

### ARTICLE IV

#### LOAN; APPLICATION OF MONEYS

##### Section 4.1 Application of Loan Agreement Proceeds.

(a) On the Closing Date, the amount shown on the Term Sheet as the Aggregate Program Amount shall be made available for disbursement by the Finance Authority to the Governmental Unit pursuant to Section 6.2 of this Loan Agreement at the request of the Governmental Unit and as needed by the Governmental Unit to implement the Project.

(b) The Final Requisition shall be submitted by the Governmental Unit within twenty seven (27) months following the Closing Date, except only as otherwise approved in writing by an Authorized Officer of the Finance Authority, based on the Governmental Unit's demonstration, to the reasonable satisfaction of the Authorized Officer of the Finance Authority, that unanticipated circumstances beyond the control of the Governmental Unit resulted in delaying the acquisition and completion of the Project, and submission of the Governmental Unit's Final Requisition.

Section 4.2 Disbursements; Approval of Payment Requests. The Governmental Unit shall transmit payment requisitions in the form attached to this Loan Agreement as Exhibit "C" and the supporting documentation required pursuant to Exhibit "C" to the Finance Authority. The Finance Authority or its designee shall review each requisition for compliance with (i) the Project's construction plans and specifications and (ii) all applicable state and federal laws, rules and regulations, and shall approve or disapprove the requisition accordingly. The Finance Authority shall cause Approved Requisitions to be paid from the State Drinking Water Revolving Loan Fund.

Section 4.3 Expense Fund Deposit. The Finance Authority shall determine the amount of the Expense Fund Component at the time of each payment to the Governmental Unit pursuant to Section 6.2 of this Loan Agreement and deposit such amount to the Expense Fund.

## ARTICLE V

### LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount not to exceed the Maximum Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Governmental Unit does hereby grant a lien on and a security interest in and does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on a parity with any Parity Obligations and subordinate to any Senior Obligations, (ii) the Debt Service Account, and (iii) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments, provided, however, that if the Governmental Unit, its successors or assigns, shall pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, or shall provide as permitted by Article VIII of this Loan Agreement for the payment thereof, and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions then, upon such final payment, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Aggregate Repayable Disbursements, as set forth in the Final Loan Agreement Payment Schedule.

Within five (5) days after each payment of an Approved Requisition during the Interim Period, the Finance Authority shall recalculate on the basis of the Aggregate Repayable Disbursements to that date the Interest Component and Administrative Fee Component next coming due as set out in Section 5.2(a)(i) of this Loan Agreement and shall provide written notice to the Governmental Unit of the recalculated Interest Component and Administrative Fee Component. Within thirty (30) days after the final disbursement, the Finance Authority shall provide a Final Loan Agreement Payment Schedule. The schedule of Loan Agreement Payments, assuming the disbursal of the entire Aggregate Program Amount within twenty-seven (27) months after the Closing Date, identified as the Interim Loan Agreement Payment Schedule, is attached to this Loan Agreement as Exhibit "B". The Finance Authority shall provide a Final Loan Agreement Payment Schedule following the final disbursement which shall supersede the schedule attached as Exhibit "B".

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the sources of the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that the Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit or the

State within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law and the laws of the State.

Section 5.2 Payment Obligations of Governmental Unit. The Debt Service Account shall be established and held by the Finance Authority or its designee on behalf of the Governmental Unit. All Loan Agreement Payments received by the Finance Authority or its designee pursuant to this Loan Agreement shall be accounted for and maintained by the Finance Authority or its designee in the Debt Service Account, which account shall be kept separate and apart from all other accounts of the Finance Authority. The amounts on deposit in the Debt Service Account shall be expended and used by the Finance Authority only in the manner and order of priority specified herein.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority and the Finance Authority shall collect and deposit into the Debt Service Account from the Governmental Unit the Pledged Revenues in the manner specified herein.

(i) Payment of Interest Component and Administrative Fee Component during Interim Period.

(A) During the Interim Period, Interest and Administrative Fees shall accrue on the amount of Aggregate Repayable Disbursements, from the date of each Disbursement.

(B) During the Interim Period the Governmental Unit shall monthly, commencing on the first day of the month next following the first payment by the Finance Authority of an Approved Requisition, pay to the Finance Authority for deposit into the Debt Service Account such amount as is necessary, in monthly installments, to pay the Interest Component and Administrative Fee Component on the Aggregate Repayable Disbursements as of each Loan Agreement Payment Date.

(ii) Loan Agreement Payments Following the Interim Period. After the Interim Period, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account the following amounts:

(A) Interest and Administrative Fee Components. Monthly, commencing on the first day of the month next following the final disbursement, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account an amount in equal monthly installments which is necessary to pay the first maturing Interest

Component and Administrative Fee Component coming due on this Loan Agreement and monthly thereafter, commencing on each Loan Agreement Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component and Administrative Fee Component on this Loan Agreement as described in the Final Loan Agreement Payment Schedule.

(B) Principal Payments. Monthly, commencing on the first day of the month next following the final disbursement, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account an amount in equal monthly installments which is necessary to pay the first maturing Principal Component; and thereafter on the first day of each month thereafter, one-twelfth (1/12) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in the Final Loan Agreement Payment Schedule.

(iii) Method of Payment. The Governmental Unit shall transfer each month to the Finance Authority, from Pledged Revenues, the amounts set forth in Subsections (i)(B), (ii)(A) and (ii)(B) of this Section 5.2(a) during the time that this Loan Agreement is outstanding, provided, that in the event of any default in making the Loan Agreement Payments by the Governmental Unit, the Finance Authority shall be entitled to seek payment of the amounts due through any of the remedies provided in Article X of this Loan Agreement.

(b) In the event that the balance of payments held in the Debt Service Account should exceed the amount needed to cover Loan Agreement Payments then due, the Finance Authority shall use the balance of the Pledged Revenues received, at the request of the Governmental Unit (i) to credit against upcoming Loan Agreement Payments, or (ii) to distribute to the Governmental Unit for any other purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority or its designee at the address designated in Section 11.1 of this Loan Agreement. The obligation of the Governmental Unit 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 Governmental Unit, the Finance Authority or its designee, any vendor or any other person, the Governmental Unit 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 Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4. Additional Parity Obligations Payable from Pledged Revenues. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but

including parity refunding bonds and obligations which refund Subordinated Obligations as provided in Section 5.5 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Debt Service Account as provided in this Loan Agreement.

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

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred twenty percent (120%) of the combined maximum annual principal, interest requirement and the Administrative Fee Component coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.5 hereof.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior or superior to this Loan Agreement, without the written approval of the Finance Authority.

Section 5.5 Refunding Obligations Payable from Pledged Revenues. The provisions of Section 5.4 hereof are subject to the following exceptions:

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

provided in subparagraph (f) of Section 5.4 hereof and in subparagraphs (b) and (c) of this Section 5.5.

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

(i) The outstanding obligations so refunded have a lien on the Pledged Revenues on a parity with the lien thereon of this Loan Agreement and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with subparagraphs (a) through (f) of Section 5.4 of this Loan Agreement.

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

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

(ii) The refunding bonds or other refunding obligations are issued in compliance with subparagraphs (a) through (f) of Section 5.4 hereof; or

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

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

Section 5.6 Investment of Governmental Unit Funds. Money on deposit in the Debt Service Account created hereunder may be invested by the Finance Authority or its designee in Permitted Investments at the written direction of the Governmental Unit or, in the absence of such written direction of the Governmental Unit, at the discretion of the Finance Authority. Any earnings on Permitted Investments shall be held and administered in the Debt Service Account

and utilized in the same manner as the other moneys on deposit therein for the benefit of the Governmental Unit.

Section 5.7 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

## ARTICLE VI

### THE PROJECT

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

The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed by the Finance Authority pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements. So long as no Event of Default shall occur and the requirements of Section 4.2 are satisfied, the Finance Authority or its designee shall disburse moneys to pay a requisition upon receipt and approval by the Finance Authority or its designee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit, with required supporting documentation.

Section 6.3 Completion of the Acquisition of the Project. Upon completion of the acquisition of the Project, which shall occur no later than two (2) years after the Closing Date, unless a later date is approved as provided in Section 4.1(b) of this Agreement, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority, substantially in the form of Exhibit "D" attached hereto, stating that, to his or her knowledge, the acquisition of the Project has been completed and the Project has been accepted by the Governmental Unit, and all costs have been paid, except for any reimbursements requested pursuant to requisitions submitted prior to the end of the Interim Period. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Unrequisitioned Amounts. In the event that, (1) at the time of the delivery of the certificate of completion required by Section 6.3 hereof, there remains an Unrequisitioned Principal Amount, or (2) the Finance Authority shall not have received a Final Requisition, by the date that is twenty seven (27) months from the Closing Date, unless an extension is approved

pursuant to Section 4.1(b) of this Loan Agreement, then the Governmental Unit shall have no right or title to the Unrequisitioned Principal Amount, nor any right to pledge, encumber or draw upon such Unrequisitioned Principal Amount, and the Finance Authority will not approve, honor, or enforce any requisition upon such Unrequisitioned Principal Amount pursuant to this Loan Agreement.

## ARTICLE VII

### COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof. Authorized Officers are authorized to execute, acknowledge and deliver any such supplements and further instruments.

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

Section 7.3 Compliance with Court Orders. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 Compliance with Applicable State and Federal Laws. During the Loan Agreement Term, the Governmental Unit shall comply with all applicable State and federal laws, including, without limitation, the following:

(a) For all contracts, the Governmental Unit shall comply with the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or its local procurement ordinances and regulations, as applicable.

(b) For all construction contracts awarded in excess of \$10,000, the Governmental Unit shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 12, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. chapters 40 and 60). In addition, for all contracts, the Governmental Unit shall comply with all State laws and

regulations and all executive orders of the Governor of the State pertaining to equal employment opportunity.

(c) For all contracts awarded for construction or repair, the Governmental Unit shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 C.F.R. part 3).

(d) For all construction subcontracts, and subgrants of amounts in excess of \$100,000, the Governmental Unit shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15). In addition, for all contracts, the Contractor shall comply with all applicable State laws and regulations and with all executive orders of the Governor of the State pertaining to protection of the environment.

(e) For all contracts the Governmental Unit shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with section 362 of the Energy Policy and Conservation Act (42 U.S.C. § 6322).

(f) For all contracts in excess of \$2,000 the Governmental Unit shall comply with applicable standards of the Davis-Bacon Wage Act (40 U.S.C. § 3141 et seq.), as amended and supplemented, relating to wages paid to laborers and mechanics employed by contractors and sub-contractors on a Project funded directly by or assisted in whole or in part by and through the Governmental Unit.

(g) For all contracts, the Governmental Unit shall comply with the requirements of the Environmental Protection Agency’s Program for Utilization of Minority and Women’s Business Enterprises set out in Title 40, Chapter I, Subchapter B, Part 33 of the Code of Federal Regulations.

(h) For all contracts, the Governmental Unit shall comply with the requirements of Executive Order 13502 on Use of Project Agreements for Federal Construction Projects.

(i) For all contracts, the Governmental Unit shall comply with the requirements of Executive Order dated September 25, 2012 on Strengthening Protections Against Trafficking in Persons in Federal Contracts.

(j) For all contracts, the Governmental Unit shall comply with all federal requirements applicable to the Loan (including those imposed by P.L. 113-76, 2014 Consolidated Appropriations Act, Section 436 and related SRF Policy Guidelines) which the Governmental Unit understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Governmental Unit has requested and obtained a waiver from the Finance Authority pertaining to the Project or (ii) the Finance Authority has otherwise advised

the Governmental Unit in writing that the American Iron and Steel Requirement is not applicable to the Project.

(k) For all contracts, the Governmental Unit shall comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Governmental Unit understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default under this Agreement.

(l) For all contracts, the Governmental Unit shall comply with Executive Order 12549 – Debarment and Suspension and all rules, regulations and guidelines issued pursuant to Executive Order 12549, including compliance with the requirement that each prospective participant in transactions related to the Loan execute a written certification that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in transactions related to the Loan.

(m) For all contracts, the Governmental Unit shall comply with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts, and the Governmental Unit and procurement contractors shall include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the Project shall include in any contract in excess of \$2,000 the contract clauses set out in the EPA publication entitled “Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act Section 1450(e).”

(n) The Governmental Unit shall comply with the requirement of the June 3, 2015 Guidelines for Enhancing Public Awareness of SRF Assistance Agreements issued by the United States Environmental Protection Agency relating to signage, posters, advertisements, website or press releases indicating that financial assistance was received from the EPA for the Project.

The Finance Authority or its designee shall have the right to review all contracts, work orders and other documentation related to the Project that it deems necessary to assure compliance with applicable laws, rules and regulations, and may conduct such review as it deems appropriate prior to disbursing funds for payment of an Approved Requisition.

Section 7.5 First Lien Status. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.6 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

## ARTICLE VIII

### PREPAYMENT OF LOAN AGREEMENT PAYMENTS

The Governmental Unit is hereby granted the option to prepay the Principal Component of this Loan Agreement in whole or in part on any day without penalty or prepayment premium, beginning one (1) year after the Closing Date. The Governmental Unit may designate the due date or due dates of the Principal Component or portions thereof being prepaid in the event of a partial prepayment. Any such prepayment shall include accrued interest to the redemption date of the corresponding Bonds to be redeemed, if any, and notice of intent to make such prepayment shall be provided to the Finance Authority or its designee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Finance Authority or its designee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

## ARTICLE IX

### INDEMNIFICATION

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

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

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

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

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Governmental Unit by the Finance Authority or its designee, if any, unless the Finance Authority or its designee, as applicable, 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 Finance Authority or its designee but cannot be cured within the applicable thirty (30) day period, the Finance Authority or its designee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (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 Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect; or

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority shall have the right to intervene in the proceedings to protect the Finance Authority's interests; or

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

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

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to

become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement:

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

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

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

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues and Aggregate Disbursements (except the Expense Fund Component); or,

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

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

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 of this Loan Agreement, no remedy herein conferred upon or reserved to the Finance Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as 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 Finance Authority 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 Finance Authority may in its discretion waive any Event of Default hereunder and the consequences of an Event of Default by written waiver; provided, however, that there shall not be waived (i) any Event of Default in the payment of principal of this Loan Agreement at the date when due as specified in this Loan Agreement, or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payment of principal and all expenses of the Finance Authority, in connection with such Event of Default shall have been paid or provided. Such waiver shall be effective only if made by written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority on account of any such Event of Default shall have been discontinued or abandoned or determined

adversely, then and in every such case, the Finance Authority shall be restored to its former position 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.

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

## ARTICLE XI

### MISCELLANEOUS

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

If to the Governmental Unit, then to:

Albuquerque Bernalillo County Water Utility Authority  
Attn: Executive Director  
P.O. Box 568  
Albuquerque, New Mexico 87103

If to the Finance Authority, then to:

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

And if to Finance Authority's designated servicing agent for this Loan Agreement, if any, at the address to be provided by the servicing agent. The Governmental Unit and the Finance Authority 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 Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. This Loan Agreement may be amended only with the written consent of the Finance Authority and the Governmental Unit, except as provided in Section 4.1(b) of this Loan Agreement. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Loan Agreement may be given by an Authorized Officer of the Finance Authority. The execution of any such consent by an Authorized Officer of the Finance Authority shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Loan Agreement.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority or against any officer, employee, director or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, 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 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. This Loan Agreement (except as to the Administrative Fee and Expense Fund Component) may be assigned and transferred by the Finance Authority to a trustee, which right to assign and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 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 Loan Agreement.

*[Remainder of page intentionally left blank.]*

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself has executed this Loan Agreement, which was approved by the Finance Authority's Board of Directors on November 29, 2018, in its corporate name by its duly authorized officers; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and attested by duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Chief Executive Officer

Prepared for Execution by Officers of the Finance Authority:

SUTIN, THAYER & BROWNE  
A PROFESSIONAL CORPORATION  
As Loan Counsel to the Finance Authority

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

Approved for Execution by Officers of the Finance Authority:

By \_\_\_\_\_  
Daniel C. Opperman, General Counsel

ALBUQUERQUE BERNALILLO COUNTY WATER  
UTILITY AUTHORITY, BERNALILLO COUNTY, NEW  
MEXICO

By \_\_\_\_\_  
Debbie O'Malley, Chair

ATTEST:

By \_\_\_\_\_  
Mark S. Sanchez, Executive Director

EXHIBIT "A"

TERM SHEET

LOAN NO. DW-4202  
TO THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY,  
BERNALILLO COUNTY, NEW MEXICO

Governmental Unit:	Albuquerque Bernalillo County Water Utility Authority, Bernalillo County, New Mexico
Project Description:	Acquiring additional System assets, extending, repairing, replacing and improving the Water Authority's System, including, acquisition and installation of water distribution lines for the Los Padillas community as part of the South Valley water project and the payment of Expenses associated with the execution and delivery of the Loan Agreement
Pledged Revenues:	Net Revenues
Currently Outstanding Parity Obligations for Pledged Revenues:	Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer System Improvement Revenue Bonds: Series 2009A-1 (\$135,990,000); Series 2013A&B (\$118,215,000); Series 2014A (\$97,270,000); Series 2015 (\$211,940,000); Series 2017 (\$87,970,000); Series 2018 (\$75,085,000); New Mexico Finance Authority Public Project Revolving Fund Loan Agreement (2648-PP, 2011) (\$53,400,000); New Mexico Finance Authority Drinking Water State Revolving Fund Loan Agreement (2316-DW, 2009) (\$1,010,000); New Mexico Finance Authority Drinking Water State Revolving Fund Loan Agreement (4200-DW, 2018) (\$1,010,000); and New Mexico Finance Authority Drinking Water State Revolving Fund Loan Agreement (4202-DW, 2018) (\$1,000,000).
Currently Outstanding Senior Obligations:	None

Currently Outstanding Subordinated Obligations:	Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer System Improvement Revenue Bonds: Series 2014B (\$87,005,000); New Mexico Finance Authority Drinking Water State Revolving Fund Loan Agreement: (1727-DW, 2008) (\$9,627,877)
Currently Outstanding Super Subordinated Obligations:	None
Closing Date:	April 26, 2019
Interest Rate:	2.00% for \$2,124,282 (which includes the Administrative Fee) 0.25% for \$600,000
Maximum Forgiven Program Fund Component:	\$705,799
Maximum Repayable Program Fund Component:	\$2,724,282
Aggregate Program Fund Amount:	\$3,430,081
Maximum Forgiven Expense Fund Component:	\$0
Maximum Repayable Expense Fund Component:	\$0
Maximum Expense Fund Component:	\$0
Maximum Principal Amount:	\$1,000,000
Subsidy Percent:	

EXHIBIT "B"

LOAN AGREEMENT PAYMENT SCHEDULE

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: \$3,430,081 Loan Agreement by and between the Finance Authority and the Albuquerque Bernalillo County Water Utility Authority (the "Loan Agreement")

TO: New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
Attn: Loan Servicing

LOAN NO. DW-4877

CLOSING DATE: April 26, 2019

You are hereby authorized to disburse to the Albuquerque Bernalillo County Water Utility Authority or its payee with regard to the above-referenced Loan Agreement the following:

REQUISITION NUMBER:		<input type="checkbox"/> Interim Request <input type="checkbox"/> Final Request
AMOUNT OF PAYMENT:	\$	

PURPOSE OF PAYMENT:

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This is a request of REIMBURSEMENT of incurred and paid project expenses. (Attach proof of payment, e.g. check stubs, and corresponding invoices)

This is a request of DIRECT PAYMENT to vendor or service provider of incurred project expenses. (Attach invoices)

PAYEE INFORMATION

NAME:	
CONTACT NAME:	
ADDRESS:	
PHONE NUMBER:	
FAX NUMBER:	
E-MAIL ADDRESS:	

WIRING INFORMATION

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

Please indicate if this Business is considered a

<input type="checkbox"/> SBE (Small Business Entrepreneur)	<input type="checkbox"/> MBE (Minority Business Entrepreneur)	<input type="checkbox"/> WBE (Women owned business Entrepreneur)	<input type="checkbox"/> N/A
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(Attach SBE/MBE/WBE Certification)

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge for requisition and payment.

Each obligation, item of cost or expense mentioned herein is not for costs related to the purchase of land or easement.

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the Albuquerque Bernalillo County Water Utility Authority is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the Albuquerque Bernalillo County Water Utility Authority understands its obligation to complete the acquisition and installation of the Project and shall complete the acquisition and installation of the Project from other legally available funds.

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

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

By: \_\_\_\_\_

Authorized Officer

\_\_\_\_\_  
(Print name and title)

EXHIBIT "D"

FORM OF CERTIFICATE OF COMPLETION

RE: \$3,430,081 Loan Agreement by and between the Finance Authority and the Albuquerque Bernalillo County Water Utility Authority (the "Loan Agreement")

Loan No. DW-4877

Closing Date: April 26, 2019

TO: NEW MEXICO FINANCE AUTHORITY

I, \_\_\_\_\_, the \_\_\_\_\_ of the  
[Name] [Title or position]

Albuquerque Bernalillo County Water Utility Authority, hereby certify as follows:

1. The project described in the Loan Agreement (the "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 was \$ \_\_\_\_\_.
4. The portion of the Maximum Principal 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 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.

ALBUQUERQUE BERNALILLO COUNTY WATER  
UTILITY AUTHORITY, BERNALILLO COUNTY, NEW  
MEXICO

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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Meeting Date: March 20, 2019  
Staff Contact: Stan Allred, Chief Financial Officer

**TITLE: R-19-4 – Confirming Approval of the Execution and Delivery of a Loan and Subsidy Agreement by and Between the Albuquerque Bernalillo County Water Utility Authority and the New Mexico Finance Authority**

**ACTION: Recommend Approval**

**BACKGROUND:**

The Water Authority submitted an application for financial assistance for the Los Padillas South Valley Drinking Water Project Phase 7B and 7C. To date, the Water Authority has completed approximately 98% (10,733' / 10,983') of the total waterline installation for the area located east of Isleta Boulevard. TLC Inc. has concrete work left to complete and Water Authority crews need to install waterline, services, valve, and fire hydrants on Marcelino Rd, east of Indian Lateral.

Phase 1: Waterline: Approximately 95% (10,733' / 10,983') of the waterline in this phase has been installed, including hydrostatic pressure tests and bacteria tests. The remaining section of waterline to be installed is on the east side of Marcelino Rd.

The Water Authority has completed approximately 24% (4240' / 17,705') of the total waterline installation for the area located east of Isleta Boulevard.

Phase 2: Waterline: Approximately 49% (4240' / 8,700') of the waterline in this phase has been installed. Santiago Rd has completed Bac-T and hydrostatic testing (passed) and paving has been completed. The Water Authority has completed the hydrostatic and Bac-T for the middle and east portions of Black Mesa Lp. Paving will commence the week of February 18, 2019.

**SUMMARY:**

This legislation is the ratification, approval and confirmation of the actions taken by the Board and the officers of the Water Authority toward the financing of a loan/grant with the New Mexico Finance Authority in the amount of \$3,430,081. The ratification, approval and confirmation include the execution of a Loan Agreement, the pledge of the Pledged Revenues and the adoption of Ordinance O-19-1. All capitalized terms shall have the same meaning as such terms have in Ordinance O-19-1.

**FISCAL IMPACT:**

There is no fiscal impact associated with this legislation.

**COMMENTS:**

This Resolution is subject to the adoption by the Water Authority Board of Ordinance O-19-1, authorizing the execution of a \$3,430,081 loan/grant agreement by and between the Water Authority, and the New Mexico Finance Authority. The Loan authorized by Ordinance O-19-1, will provide financing assistance to complete Phase 7 of the Los Padillas South Valley Drinking Water Project.



1 unenforceability of such section, paragraph, clause or provision shall not affect any of  
2 the remaining provisions of this Confirming Resolution.

3 SECTION 3. This Confirming Resolution shall be in full force and effect  
4 immediately upon adoption.

5 SECTION 4. Pursuant to the general laws of the State, the title and general  
6 summary of the subject matter contained in this Confirming Resolution shall be  
7 published in substantially the following form:

8 ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY  
9 LEGAL NOTICE

10 Notice is hereby given that the Board of Directors of Albuquerque Bernalillo  
11 County Water Utility Authority did on the 20<sup>th</sup> day of March, 2019, adopt a resolution  
12 entitled:

13 **CONFIRMING APPROVAL OF THE EXECUTION AND DELIVERY OF A LOAN AND**  
14 **SUBSIDY AGREEMENT (THE "LOAN AGREEMENT") BY AND BETWEEN THE**  
15 **ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE**  
16 **"WATER AUTHORITY") AND THE NEW MEXICO FINANCE AUTHORITY**  
17 **EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE WATER AUTHORITY TO**  
18 **PAY A PRINCIPAL AMOUNT OF NO MORE THAN TWO MILLION SEVEN**  
19 **HUNDRED TWENTY-FOUR THOUSAND TWO HUNDRED EIGHTY-TWO DOLLARS**  
20 **(\$2,724,282), TOGETHER WITH INTEREST, COSTS OF ISSUANCE AND**  
21 **ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO**  
22 **MORE THAN SEVEN HUNDRED FIVE THOUSAND SEVEN HUNDRED NINETY-**  
23 **NINE DOLLARS (\$705,799); AND RATIFYING ACTION PREVIOUSLY TAKEN IN**  
24 **CONNECTION THEREWITH.**

25 The Confirming Resolution authorizes the execution and delivery of the Loan  
26 Agreement. Complete copies of the Confirming Resolution are available for public  
27 inspection during normal and regular business hours at the offices of the Water  
28 Authority, One Civic Plaza, NW, Albuquerque, New Mexico.

29 Dated this 20<sup>th</sup> day of March, 2019.

30

1 PASSED AND ADOPTED THIS 20<sup>th</sup> DAY OF MARCH, 2019. BY A VOTE OF  
2 \_\_\_\_\_ FOR AND \_\_\_\_\_ AGAINST.

3

4

5

6

\_\_\_\_\_  
CHAIR

7 ATTEST:

8

9

\_\_\_\_\_

10 SECRETARY

11

12

\$3,430,081 Maximum Principal Amount

DRINKING WATER STATE REVOLVING LOAN FUND  
LOAN AND SUBSIDY AGREEMENT

dated

April 26, 2019

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY,  
BERNALILLO COUNTY, NEW MEXICO

DRINKING WATER STATE REVOLVING LOAN FUND  
LOAN AND SUBSIDY AGREEMENT

This LOAN AND SUBSIDY AGREEMENT (the “Loan Agreement”), dated as of April 26, 2019, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”), and the ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY in BERNALILLO COUNTY, NEW MEXICO (the “Governmental Unit”), a public body duly organized and existing under the laws of the State of New Mexico (the “State”).

WITNESSETH:

Capitalized terms used in the following recitals of this Loan Agreement and not defined in the first Paragraph above or in these recitals shall have the same meaning as defined in Article I of this Loan Agreement, unless the context requires otherwise.

WHEREAS, the Finance Authority is authorized, pursuant to the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended (the “DWSRLF Act”) to implement a program to permit qualified local authorities, such as the Governmental Unit, to enter into agreements with the Finance Authority to provide financial assistance in the acquisition, design, construction, improvement, expansion, repair and rehabilitation of drinking water supply facilities as authorized by the Safe Drinking Water Act; and

WHEREAS, a portion of the Loan funds made available under this Agreement pursuant to the DWSRLF Act and the Safe Drinking Water Act may be forgiven and, if forgiven, will not be required to be repaid; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and the public it serves that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan and subsidy from the Finance Authority to finance the costs of the Project, as more fully described on the Term Sheet attached hereto as Exhibit “A”; and

WHEREAS, the Project appears on the Drinking Water Fundable Priority List; and

WHEREAS, the Project has been planned and authorized in conformity with the Intended Use Plan; and

WHEREAS, the New Mexico Environment Department (the “Department”) has determined that the Governmental Unit’s Project plans and specifications comply with the provisions of 42 U.S.C. Section 300j-12 and the requirements of the laws and regulations of the State governing the construction and operation of drinking water systems; and

WHEREAS, a portion of the funds made available under this Loan Agreement pursuant to the DWSRLF Act and the Safe Drinking Water Act are federal funds categorized as CFDA 66.468; and

WHEREAS, pursuant to information provided by the Governmental Unit and environmental review by applicable State and federal agencies, and in accordance with 40 C.F.R. Sections 6.204, 6.300(c)(1), and 6.301(f), and pursuant to the environmental review process of the State, the Finance Authority has determined that the Project meets the requirements for a Categorical Exclusion as defined in the State Environmental Review Process (SERP) for the Drinking Water State Revolving Loan Fund, and the Finance Authority has found and determined that the Project meets all applicable requirements of the State Environmental Review Process (SERP) for the Drinking Water State Revolving Loan Fund; and

WHEREAS, the Finance Authority has found and determined that the Governmental Unit is a severely disadvantaged community under the Intended Use Plan in that its median annual household income is \$37,639, which is less than 90% of the State median annual household income of \$44,963, and it has an affordability ratio determined as provided in the Intended Use Plan of above 0.015; and

WHEREAS, the New Mexico Environment Department Drinking Water Bureau (“DWB”) has determined that the Governmental Unit has sufficient technical, managerial and financial capability to operate the Project for its useful life and ensure compliance with the requirements of the Safe Drinking Water Act.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the Finance Authority and the Governmental Unit agree:

## ARTICLE I

### DEFINITIONS

Capitalized terms defined in this Article I shall have the meaning specified in this Article I wherever used in this Loan Agreement, including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms defined in the foregoing recitals, if not defined in this Article I, shall have the same meaning as therein stated when used in this Loan Agreement, unless the context clearly requires otherwise.

“Administrative Fee” or “Administrative Fee Component” means the 0.25% annual fee payable to the Finance Authority as 0.125% of the Loan Agreement Principal Amount then outstanding as a part of each Loan Agreement Payment for the costs of originating and servicing the Loan.

“Aggregate Disbursements” means, at any time after the Closing Date, the sum of all Disbursements.

“Aggregate Forgiven Disbursements” means the amount of Subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date be equal to the product of the Subsidy times the Aggregate Disbursements, up to the Maximum Forgiven Principal.

“Aggregate Program Amount” means, with respect to this Loan Agreement, the sum of \$3,430,081 which amount shall be available for disbursal to the Governmental Unit to pay costs of the Project.

“Aggregate Repayable Disbursements” means, at any time after the Closing Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

“Approved Requisition” means a requisition in the form of Exhibit “C” to this Loan Agreement, together with the required supporting documentation set out in Exhibit “C” submitted to and approved by the Finance Authority pursuant to Section 4.2 of this Loan Agreement.

“Authorized Officers” means, with respect to the Governmental Unit, the Chair and Executive Director thereof or other officer or employee of the Governmental Unit when designated by a certificate signed by the Chair from time to time; and with respect to the Finance Authority, any one or more of the Chairperson, Vice-Chairperson, Secretary and Chief Executive Officer of the Finance Authority, and any other officer or employee of the Finance Authority designated in writing by an Authorized Officer of the Finance Authority.

“Bonds” means drinking water state revolving loan fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to this Loan Agreement and the Loan Agreement Payments.

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

“Debt Service Account” means the debt service account established in the name of the Governmental Unit and administered by the Finance Authority to pay the Loan Agreement Payments under this Loan Agreement as the same become due.

“Department” means the New Mexico Environment Department.

“Disbursement” means an amount caused to be paid by the Finance Authority for an Approved Requisition for costs of the Project calculated on the basis of the amount of such Approved Requisition.

“Drinking Water Fundable Priority List” means the list of drinking water projects compiled by the Department pursuant to the Memorandum of Understanding and the Intended Use Plan.

“DWSRLF Act” means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended; and enactments of the Governing Body relating to this Loan Agreement including the Ordinance.

“Drinking Water State Revolving Loan Fund” means the drinking water state revolving loan fund established by the DWSRLF Act.

“Environmental Protection Agency” means the United States Environmental Protection Agency.

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

“Expenses” means the Governmental Unit’s and the Finance Authority’s costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

“Final Loan Agreement Payment Schedule” means the schedule of Loan Agreement Payments due on this Loan Agreement following the Final Requisition, as determined on the basis of the Aggregate Repayable Disbursements.

“Final Requisition” means the final requisition of moneys to be submitted by the Governmental Unit, which shall be submitted by the Governmental Unit on or before the date provided for in Section 4.1(b) of this Loan Agreement.

“Finance Authority Act” means NMSA 1978, §§ 6-21-1 through 6-21-31, as amended.

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

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

“Governing Body” means the duly organized Board of Directors of the Governmental Unit and any successor governing body of the Governmental Unit.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, for any particular Fiscal Year period to which the term is applicable, and includes, without limitation, all

revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System and from the sale and use of water and sanitary sewer services or facilities, or any other service, commodity or facility or any combination thereof furnished by the System. In the event there is a conflicting description of Gross Revenues in any ordinance or resolution of the Governmental Unit, the language of such ordinance or resolution shall control.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

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

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

“Intended Use Plan” means the current plan prepared by the Finance Authority and the Department and approved by the Environmental Protection Agency pursuant to 42 U.S.C. Section 300j-12(b) which establishes criteria for extending drinking water improvements financial assistance to qualifying public drinking water utility systems.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest accruing on the Aggregate Repayable Disbursements then outstanding, calculated from the date of each disbursement.

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

“Interim Period” means the period no greater than twenty-seven (27) months, or a longer period as may be approved by the Finance Authority as provided in Section 4.1(b) of the

Agreement, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Governmental Unit to pay costs of the Project, unless extended pursuant to Section 4.1(b) of this Loan Agreement.

“Interim Loan Agreement Payment Schedule” means the anticipated schedule of Loan Agreement Payments due on this Loan Agreement following the Final Requisition, assuming disbursement of the entire Aggregate Program Amount within twenty-seven (27) months of the Closing Date. The Interim Loan Agreement Payment Schedule is attached hereto as Exhibit “B”.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement, up to the Maximum Principal Amount.

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

“Loan Agreement Payment” means, collectively, the Principal Component, the Interest Component and the Administrative Fee Component to be paid by the Governmental Unit as payment on the Aggregate Repayable Disbursements under this Loan Agreement, as shown on Exhibit “B” hereto.

“Loan Agreement Payment Date” means each date a payment is due on this Loan Agreement as shown on the Interim Loan Agreement Payment Schedule, attached hereto as Exhibit “B,” or in the Final Loan Agreement Payment Schedule.

“Loan Agreement Principal Amount” means, as of any date of calculation, the Aggregate Repayable Disbursements then outstanding.

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

“Maximum Forgiven Principal” means the maximum amount of loan subsidy available in the form of principal forgiveness, which is equal to approximately twenty percent (29%) of the Maximum Principal Amount. The Maximum Forgiven Principal is \$705,799.

“Maximum Repayable Principal” means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to this Loan Agreement, and is equal to the Maximum Principal Amount less the Maximum Forgiven Principal. The Maximum Repayable Principal is \$2,724,282.

“Maximum Principal Amount” means \$3,430,081.

“Memorandum of Understanding” means the current memorandum of understanding by and between the Finance Authority and the Department pursuant to the DWSRLF Act describing and allocating duties and responsibilities in connection with the Drinking Water State Revolving Loan Fund.

“Net Revenues” means the Gross Revenues of the System owned and operated by the Governmental Unit minus Operation and Maintenance Expenses of the System.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented from time to time.

“Operating Agreement” means the operating agreement entered into between the Finance Authority and the Environmental Protection Agency, Region 6, for the Drinking Water State Revolving Loan Fund program.

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

(a) Legal and overhead expenses of the Governmental Unit directly related and reasonably allocable to the administration of the System;

(b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;

(e) The costs of audits of the books and accounts of the System;

(f) Amounts required to be deposited in any rebate fund or otherwise required to make rebate payments to the United States government;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

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

“Ordinance” means Ordinance No. O-19-\_\_ adopted by the Governing Body of the Governmental Unit on March 20, 2019, approving this Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet, as supplemented from time to time.

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

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

“Pledged Revenues” means the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments by the Ordinance and this Loan Agreement and described in the Term Sheet.

“Principal Component” means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement, based upon the Aggregate Repayable Disbursements, as shown on Exhibit “B” attached to this Loan Agreement.

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

“Safe Drinking Water Act” means 42 U.S.C. §§ 300f et seq.

“Senior Obligations” means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues superior to the lien created by this Loan Agreement, including any such obligations shown on the Term Sheet.

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

“State Environmental Review Process” or “SERP” means the environmental review process adopted by the Finance Authority, as required by and approved by the Environmental Protection Agency, pursuant to the Operating Agreement.

“Subordinated Obligations” means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the lien created by this Loan Agreement and subordinate to any other outstanding Parity Obligations having a lien on the Pledged Revenues and superior to any Super Subordinated Obligations have a lien on the Pledged Revenues, including any such obligations shown on the Term Sheet.

“Subsidy” means any subsidy in the form of principal forgiveness for the Governmental Unit, to be applied proportionally at the time of each Disbursement to the Governmental Unit, being approximately twenty percent (20%) of such Disbursement.

“Super Subordinated Obligations” means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the liens of any outstanding Parity Obligations and Subordinated Obligations, including any such obligations shown on the Term Sheet.

“System” means the joint water and wastewater system, and all improvements or additions thereto, including additions and improvements to be acquired or constructed with the proceeds of this Loan Agreement.

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

“Unrequisitioned Principal Amount” means the amount, if any, by which the Maximum Principal Amount exceeds the Aggregate Disbursements at the time the Governmental Unit submits the certificate of completion required pursuant to Section 6.3 of this Loan Agreement.

“Utility Revenue Bonds” means any bonds and other similar indebtedness payable solely or primarily from the Pledged Revenues, including this Loan Agreement, and any Senior Obligations, Parity Obligations, Subordinated Obligations, and Super-Subordinated Obligations.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit 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 Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Authorization of Loan Agreement and Readiness to Proceed. The Governmental Unit is a public body politic and corporate separate and apart from the City of Albuquerque and Bernalillo County, and is a duly organized and existing water and wastewater utility authority under the statutes and laws of the State, including specifically Section 72-1-10, NMSA 1978, as amended. The Governmental Unit is a local authority as defined in the DWSRLF Act. The Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement and the other documents related to the transaction. The Governmental Unit has met all readiness to proceed requirements of the Finance Authority and has met and will continue to meet all requirements of law applicable to this Loan Agreement.

(c) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the Aggregate Program Amount, pursuant to Section 6.1 of this Loan Agreement to the acquisition and completion of the Project and to no other purpose, as follows:

(i) The Governmental Unit shall requisition moneys to pay for the costs of the Project not less frequently than quarterly following the Closing Date;

(ii) The Governmental Unit shall, within two (2) years after the Closing Date, have completed the acquisition of the Project, and shall within twenty-seven (27) months after the Closing Date have requisitioned the Aggregate Program Amount, or such portion thereof as shall be necessary to complete the Project, unless an extension is agreed to pursuant to Section 4.1(b) of this Loan Agreement.

(d) Payment of Loan Agreement Payments. The Governmental Unit meets and will continue to meet the requirements established by the Finance Authority to assure sufficient revenues to operate and maintain the System for its useful life and repay the Loan. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in the Interim Loan Agreement Payment Schedule or the Final Loan Agreement Payment Schedule, as applicable, according to the true intent and meaning of this Loan Agreement.

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

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

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

(h) Loan Agreement Term. The Loan Agreement Term does not exceed the anticipated useful life of the Project.

(i) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit and the public it serves.

(j) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan 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 Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(k) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(l) Outstanding and Additional Debt. Except for any Senior Obligations, and any Parity Obligations described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a lien on the Pledged Revenues superior to or on a parity with the lien of this Loan Agreement. No additional indebtedness, bonds or notes of the Governmental Unit, payable on a priority ahead of the indebtedness herein authorized out of Pledged Revenues, shall be created or incurred while this Loan Agreement remains outstanding without the prior written approval of the Finance Authority.

(m) No Litigation. To the knowledge of the Governmental Unit after due investigation, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or to comply with its obligations under this Loan Agreement. Neither the execution and delivery of this Loan Agreement by the Governmental Unit nor compliance by the

Governmental Unit with the obligations under this Loan Agreement 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.

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

(o) Existing Pledges; Pledged Revenues Not Budgeted. Except as described on the Term Sheet the Pledged Revenues have not been pledged or hypothecated in any manner for any purpose at the time of execution and delivery of this Loan Agreement. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(p) Expected Coverage Ratio. The Pledged Revenues from the current Fiscal Year are projected to equal or exceed one hundred twenty percent (120%) and, on an ongoing basis during each year of the Loan Agreement Term are reasonably expected to equal or exceed, one hundred twenty percent (120%) of the maximum annual principal and interest due on all outstanding Parity Obligations of the Governmental Unit.

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

(r) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: Project documents, annual audits, operational data required to update information in any disclosure documents used in connection with assignment or securitizing this Loan Agreement or the Loan Agreement Payments by issuance of Bonds by the Finance Authority, and notification of any event deemed material by the Finance Authority. For the purposes of this Loan Agreement, a material event shall include, without limitation, any violation or alleged violation of federal law, regulation, or policy which governs or applies to participants in the Drinking Water State Revolving Loan Fund as notified by a state or federal agency of appropriate jurisdiction.

(s) Single Audit Act Requirement. The Governmental Unit acknowledges that the funding provided pursuant to this Loan Agreement is derived in large part from federal grants to the Drinking Water State Revolving Loan Fund program pursuant to the Operating Agreement. During the Loan Agreement Term, the Governmental Unit shall annually, so long as the Governmental Unit expends more or equal to the threshold amount set forth in 2 C.F.R. Section 200.501 during any one Fiscal Year, cause an audit of the books and accounts of its operations in their entirety, or in the alternative an audit of the books and accounts of each of its departments, agencies and other organizational units which expended or otherwise administered

the Loan or any other funds derived from the government of the United States, to be completed by an Independent Accountant in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. Section 7501 et seq.), and applicable regulations thereunder. The audit will be available for inspection by the Finance Authority and by the Environmental Protection Agency.

(t) Construction Requirements. The Governmental Unit shall require any contractor hired by it in connection with the construction of the Project to post a performance and payment bond as provided by NMSA 1978, § 13-4-18, as amended.

Section 2.2 Protective Covenants Regarding Operation of the System. The Governmental Unit further represents, covenants and warrants as follows:

(a) Rate Covenant. The Governmental Unit covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year in which the Loan is outstanding the Gross Revenues shall at least equal the Operation and Maintenance Expenses of the System for the Fiscal Year, plus one hundred twenty percent (120%) of the maximum annual principal and interest payments due on all outstanding Parity Obligations.

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

(c) Records. So long as this Loan Agreement remains outstanding, proper books of record and account will be kept by the Governmental Unit, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. However, pursuant to NMSA 1978, § 6-14-10(E), as amended, records with regard to the ownership or pledge of Utility Revenue Bonds are not subject to inspection or copying.

(d) Right to Inspect. The Finance Authority, or its duly authorized agents, shall have the right to inspect at all reasonable times the Project and all records, accounts and data relating to the Project, the Pledged Revenues, and the System.

(e) Audits. Within two hundred seventy (270) days following the close of each Fiscal Year, the Governmental Unit will cause an audit of the books and accounts of the System and its separate systems to be made by an Independent Accountant and the audit to be made available for inspection by the Finance Authority. Each audit of the System shall comply with Generally Accepted Accounting Principles. The audit required by this section may, at the Governmental Unit's discretion, be performed as a part of or in conjunction with the audit required under the Single Audit Act as set forth in Section 2.1(s) of this Loan Agreement.

(f) Billing Procedure. Bills for water and sanitary sewer utility services or facilities, or any combination, furnished by or through the System shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall

be due as required by the applicable ordinance of the Governmental Unit. To the extent permitted by law, if a bill is not paid within the period of time required by such ordinance, water and sanitary sewer utility services shall be discontinued as required by Governmental Unit regulation, policy or ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Water and sanitary sewer utility services may be billed jointly with each other, provided that each such joint bill shall show separately the water and sanitary sewer utility charges.

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

(h) Insurance. Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, the Governmental Unit will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by entities which operate systems such as the System. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the Governmental Unit may have a material interest and of which the Governmental Unit may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Governmental Unit determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, and any remainder may be used to redeem Utility Revenue Bonds or be treated as Gross Revenues and used in any legally permissible manner.

(i) Competing Utility System. Unless contrary to any provision of, or required by, applicable law, as long as this Loan Agreement is outstanding, the Governmental Unit prior to granting any franchise or license to a competing utility system, or permitting any person, association, firm or corporation to sell similar utility services or facilities to any

consumer, public or private, within the Service Area of the System, shall obtain a written report from an independent utility rate consultant stating that in the opinion of the consultant the use charges in effect immediately prior to the approval of the franchise or license by the Governmental Unit are sufficient to meet the requirement of section 2.1(p) (expected coverage ratio) for the first full calendar year after the approval of the franchise or license, based on the new Service Area of the System.

(j) Alienating System. While this Loan Agreement is outstanding, the Governmental Unit shall not transfer, sell or otherwise dispose of the System, except that the Governmental Unit may dispose of inadequate, obsolete or worn out property. For purposes of this Section, any transfer of an asset over which the Governmental Unit retains or regains substantial control shall, for so long as the Governmental Unit has such control, not be deemed a disposition of the System.

(k) Management of the System. If an Event of Default shall occur or if the Pledged Revenues in any Fiscal Year fail to equal principal and interest due on the Senior Obligations and the Parity Obligations, the Governmental Unit shall retain an independent consultant qualified in the management of water and wastewater utility systems to assist in the management of the System so long as such default continues.

(l) Competent Management. The Governmental Unit shall employ experienced and competent personnel to manage the System.

(m) Performing Duties. The Governmental Unit will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State and the regulations, policies or ordinances and resolutions of the Governmental Unit relating to the System and this Loan Agreement, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as required by this Loan Agreement and the proper segregation and application of the Gross Revenues.

(n) Other Liens. Except for any Senior Obligations and Parity Obligations listed in the Term Sheet, there are no liens or encumbrances of any nature whatsoever, on or against the System or the Gross Revenues or Net Revenues on parity with or senior to the lien of this Loan Agreement.

Section 2.3 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit:

(a) Legal Status and Authorization of Loan Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly the Finance Authority Act. The Finance Authority has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and has duly authorized the execution and delivery of this Loan Agreement.

(b) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, nor the consummation of the transactions contemplated in this Loan Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority 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 Finance Authority, or its property and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

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

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

Section 2.4 Finance Authority Compliance with Policies. As related to this Loan Agreement, the Finance Authority has complied with all applicable policies and procedures, as adopted and approved by the Finance Authority Board of Directors, or such policies or procedures have been waived by the Finance Authority Board of Directors.

Section 2.5 Compliance with Securities Laws. The Finance Authority acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The Finance Authority has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit and has assumed and relied on the accuracy of such information. The Finance Authority will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of the Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding the Loan Agreement and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable State securities laws and regulations.

### ARTICLE III

#### LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until the Governmental Unit's obligations under this Loan Agreement have been paid in full or provision for payment of this Loan Agreement has been made pursuant to Article VIII hereof.

#### ARTICLE IV

##### LOAN; APPLICATION OF MONEYS

###### Section 4.1 Application of Loan Agreement Proceeds.

(a) On the Closing Date, the amount shown on the Term Sheet as the Aggregate Program Amount shall be made available for disbursement by the Finance Authority to the Governmental Unit pursuant to Section 6.2 of this Loan Agreement at the request of the Governmental Unit and as needed by the Governmental Unit to implement the Project.

(b) The Final Requisition shall be submitted by the Governmental Unit within twenty seven (27) months following the Closing Date, except only as otherwise approved in writing by an Authorized Officer of the Finance Authority, based on the Governmental Unit's demonstration, to the reasonable satisfaction of the Authorized Officer of the Finance Authority, that unanticipated circumstances beyond the control of the Governmental Unit resulted in delaying the acquisition and completion of the Project, and submission of the Governmental Unit's Final Requisition.

Section 4.2 Disbursements; Approval of Payment Requests. The Governmental Unit shall transmit payment requisitions in the form attached to this Loan Agreement as Exhibit "C" and the supporting documentation required pursuant to Exhibit "C" to the Finance Authority. The Finance Authority or its designee shall review each requisition for compliance with (i) the Project's construction plans and specifications and (ii) all applicable state and federal laws, rules and regulations, and shall approve or disapprove the requisition accordingly. The Finance Authority shall cause Approved Requisitions to be paid from the State Drinking Water Revolving Loan Fund.

#### ARTICLE V

##### LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount not to exceed the Maximum Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Governmental Unit does hereby grant a lien on and a security interest in and does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to (i) the Pledged Revenues to the extent required to pay the Loan

Agreement Payments on a parity with any Parity Obligations and subordinate to any Senior Obligations, (ii) the Debt Service Account, and (iii) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments, provided, however, that if the Governmental Unit, its successors or assigns, shall pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, or shall provide as permitted by Article VIII of this Loan Agreement for the payment thereof, and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions then, upon such final payment, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Aggregate Repayable Disbursements, as set forth in the Final Loan Agreement Payment Schedule.

Within five (5) days after each payment of an Approved Requisition during the Interim Period, the Finance Authority shall recalculate on the basis of the Aggregate Repayable Disbursements to that date the Interest Component and Administrative Fee Component next coming due as set out in Section 5.2(a)(i) of this Loan Agreement and shall provide written notice to the Governmental Unit of the recalculated Interest Component and Administrative Fee Component. Within thirty (30) days after the final disbursement, the Finance Authority shall provide a Final Loan Agreement Payment Schedule. The schedule of Loan Agreement Payments, assuming the disbursal of the entire Aggregate Program Amount within twenty-seven (27) months after the Closing Date, identified as the Interim Loan Agreement Payment Schedule, is attached to this Loan Agreement as Exhibit "B". The Finance Authority shall provide a Final Loan Agreement Payment Schedule following the final disbursement which shall supersede the schedule attached as Exhibit "B".

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

Section 5.2 Payment Obligations of Governmental Unit. The Debt Service Account shall be established and held by the Finance Authority or its designee on behalf of the Governmental Unit. All Loan Agreement Payments received by the Finance Authority or its designee pursuant to this Loan Agreement shall be accounted for and maintained by the Finance Authority or its designee in the Debt Service Account, which account shall be kept separate and

apart from all other accounts of the Finance Authority. The amounts on deposit in the Debt Service Account shall be expended and used by the Finance Authority only in the manner and order of priority specified herein.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority and the Finance Authority shall collect and deposit into the Debt Service Account from the Governmental Unit the Pledged Revenues in the manner specified herein.

(i) Payment of Interest Component and Administrative Fee Component during Interim Period.

(A) During the Interim Period, Interest and Administrative Fees shall accrue on the amount of Aggregate Repayable Disbursements, from the date of each Disbursement.

(B) During the Interim Period the Governmental Unit shall monthly, commencing on the first day of the month next following the first payment by the Finance Authority of an Approved Requisition, pay to the Finance Authority for deposit into the Debt Service Account such amount as is necessary, in monthly installments, to pay the Interest Component and Administrative Fee Component on the Aggregate Repayable Disbursements as of each Loan Agreement Payment Date.

(ii) Loan Agreement Payments Following the Interim Period. After the Interim Period, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account the following amounts:

(A) Interest and Administrative Fee Components. Monthly, commencing on the first day of the month next following the final disbursement, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account an amount in equal monthly installments which is necessary to pay the first maturing Interest Component and Administrative Fee Component coming due on this Loan Agreement and monthly thereafter, commencing on each Loan Agreement Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component and Administrative Fee Component on this Loan Agreement as described in the Final Loan Agreement Payment Schedule.

(B) Principal Payments. Monthly, commencing on the first day of the month next following the final disbursement, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account an amount in equal monthly installments which is necessary to pay the first maturing Principal Component; and thereafter on the first day of each month thereafter, one-twelfth (1/12) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in the Final Loan Agreement Payment Schedule.

(iii) Method of Payment. The Governmental Unit shall transfer each month to the Finance Authority, from Pledged Revenues, the amounts set forth in Subsections (i)(B), (ii)(A) and (ii)(B) of this Section 5.2(a) during the time that this Loan Agreement is outstanding, provided, that in the event of any default in making the Loan Agreement Payments by the Governmental Unit, the Finance Authority shall be entitled to seek payment of the amounts due through any of the remedies provided in Article X of this Loan Agreement.

(b) In the event that the balance of payments held in the Debt Service Account should exceed the amount needed to cover Loan Agreement Payments then due, the Finance Authority shall use the balance of the Pledged Revenues received, at the request of the Governmental Unit (i) to credit against upcoming Loan Agreement Payments, or (ii) to distribute to the Governmental Unit for any other purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority or its designee at the address designated in Section 11.1 of this Loan Agreement. The obligation of the Governmental Unit 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 Governmental Unit, the Finance Authority or its designee, any vendor or any other person, the Governmental Unit 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 Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4. Additional Parity Obligations Payable from Pledged Revenues. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund Subordinated Obligations as provided in Section 5.5 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Debt Service Account as provided in this Loan Agreement.

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

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred twenty percent (120%) of the combined maximum annual principal, interest requirement and the Administrative Fee

Component coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.5 hereof.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior or superior to this Loan Agreement, without the written approval of the Finance Authority.

Section 5.5 Refunding Obligations Payable from Pledged Revenues. The provisions of Section 5.4 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (f) of Section 5.4 hereof and in subparagraphs (b) and (c) of this Section 5.5.

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

(i) The outstanding obligations so refunded have a lien on the Pledged Revenues on a parity with the lien thereon of this Loan Agreement and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with subparagraphs (a) through (f) of Section 5.4 of this Loan Agreement.

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

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

(ii) The refunding bonds or other refunding obligations are issued in compliance with subparagraphs (a) through (f) of Section 5.4 hereof; or

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

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

Section 5.6 Investment of Governmental Unit Funds. Money on deposit in the Debt Service Account created hereunder may be invested by the Finance Authority or its designee in Permitted Investments at the written direction of the Governmental Unit or, in the absence of such written direction of the Governmental Unit, at the discretion of the Finance Authority. Any earnings on Permitted Investments shall be held and administered in the Debt Service Account and utilized in the same manner as the other moneys on deposit therein for the benefit of the Governmental Unit.

Section 5.7 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

## ARTICLE VI

### THE PROJECT

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

The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed by the Finance Authority pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements. So long as no Event of Default shall occur and the requirements of Section 4.2 are satisfied, the Finance Authority or its designee shall disburse moneys to pay a requisition upon receipt and approval by the Finance Authority or its designee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit, with required supporting documentation.

Section 6.3 Completion of the Acquisition of the Project. Upon completion of the acquisition of the Project, which shall occur no later than two (2) years after the Closing Date, unless a later date is approved as provided in Section 4.1(b) of this Agreement, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority, substantially in the form of Exhibit "D" attached hereto, stating that, to his or her knowledge, the acquisition of the Project has been completed and the Project has been accepted by the Governmental Unit, and all costs have been paid, except for any reimbursements requested pursuant to requisitions submitted prior to the end of the Interim Period. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Unrequisitioned Amounts. In the event that, (1) at the time of the delivery of the certificate of completion required by Section 6.3 hereof, there remains an Unrequisitioned Principal Amount, or (2) the Finance Authority shall not have received a Final Requisition, by the date that is twenty seven (27) months from the Closing Date, unless an extension is approved pursuant to Section 4.1(b) of this Loan Agreement, then the Governmental Unit shall have no right or title to the Unrequisitioned Principal Amount, nor any right to pledge, encumber or draw upon such Unrequisitioned Principal Amount, and the Finance Authority will not approve, honor, or enforce any requisition upon such Unrequisitioned Principal Amount pursuant to this Loan Agreement.

## ARTICLE VII

### COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such

further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof. Authorized Officers are authorized to execute, acknowledge and deliver any such supplements and further instruments.

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

Section 7.3 Compliance with Court Orders. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 Compliance with Applicable State and Federal Laws. During the Loan Agreement Term, the Governmental Unit shall comply with all applicable State and federal laws, including, without limitation, the following:

(a) For all contracts, the Governmental Unit shall comply with the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or its local procurement ordinances and regulations, as applicable.

(b) For all construction contracts awarded in excess of \$10,000, the Governmental Unit shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 12, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. chapters 40 and 60). In addition, for all contracts, the Governmental Unit shall comply with all State laws and regulations and all executive orders of the Governor of the State pertaining to equal employment opportunity.

(c) For all contracts awarded for construction or repair, the Governmental Unit shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 C.F.R. part 3).

(d) For all construction subcontracts, and subgrants of amounts in excess of \$100,000, the Governmental Unit shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15). In addition, for all contracts, the Contractor shall comply with all applicable State laws and regulations and with all executive orders of the Governor of the State pertaining to protection of the environment.

(e) For all contracts the Governmental Unit shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with section 362 of the Energy Policy and Conservation Act (42 U.S.C. § 6322).

(f) For all contracts in excess of \$2,000 the Governmental Unit shall comply with applicable standards of the Davis-Bacon Wage Act (40 U.S.C. § 3141 et seq.), as amended and supplemented, relating to wages paid to laborers and mechanics employed by contractors and sub-contractors on a Project funded directly by or assisted in whole or in part by and through the Governmental Unit.

(g) For all contracts, the Governmental Unit shall comply with the requirements of the Environmental Protection Agency's Program for Utilization of Minority and Women's Business Enterprises set out in Title 40, Chapter I, Subchapter B, Part 33 of the Code of Federal Regulations.

(h) For all contracts, the Governmental Unit shall comply with the requirements of Executive Order 13502 on Use of Project Agreements for Federal Construction Projects.

(i) For all contracts, the Governmental Unit shall comply with the requirements of Executive Order dated September 25, 2012 on Strengthening Protections Against Trafficking in Persons in Federal Contracts.

(j) For all contracts, the Governmental Unit shall comply with all federal requirements applicable to the Loan (including those imposed by P.L. 113-76, 2014 Consolidated Appropriations Act, Section 436 and related SRF Policy Guidelines) which the Governmental Unit understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Governmental Unit has requested and obtained a waiver from the Finance Authority pertaining to the Project or (ii) the Finance Authority has otherwise advised the Governmental Unit in writing that the American Iron and Steel Requirement is not applicable to the Project.

(k) For all contracts, the Governmental Unit shall comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Governmental Unit understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default under this Agreement.

(l) For all contracts, the Governmental Unit shall comply with Executive Order 12549 – Debarment and Suspension and all rules, regulations and guidelines issued pursuant to Executive Order 12549, including compliance with the requirement that each prospective participant in transactions related to the Loan execute a written certification that

neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in transactions related to the Loan.

(m) For all contracts, the Governmental Unit shall comply with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts, and the Governmental Unit and procurement contractors shall include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the Project shall include in any contract in excess of \$2,000 the contract clauses set out in the EPA publication entitled “Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act Section 1450(e).”

(n) The Governmental Unit shall comply with the requirement of the June 3, 2015 Guidelines for Enhancing Public Awareness of SRF Assistance Agreements issued by the United States Environmental Protection Agency relating to signage, posters, advertisements, website or press releases indicating that financial assistance was received from the EPA for the Project.

The Finance Authority or its designee shall have the right to review all contracts, work orders and other documentation related to the Project that it deems necessary to assure compliance with applicable laws, rules and regulations, and may conduct such review as it deems appropriate prior to disbursing funds for payment of an Approved Requisition.

Section 7.5 First Lien Status. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.6 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

## ARTICLE VIII

### PREPAYMENT OF LOAN AGREEMENT PAYMENTS

The Governmental Unit is hereby granted the option to prepay the Principal Component of this Loan Agreement in whole or in part on any day without penalty or prepayment premium, beginning one (1) year after the Closing Date. The Governmental Unit may designate the due date or due dates of the Principal Component or portions thereof being prepaid in the event of a partial prepayment. Any such prepayment shall include accrued interest to the redemption date of the corresponding Bonds to be redeemed, if any, and notice of intent to make such prepayment shall be provided to the Finance Authority or its designee by the Governmental Unit no less than

forty-five (45) days prior to the prepayment date. The Finance Authority or its designee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

## ARTICLE IX

### INDEMNIFICATION

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

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

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

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

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Governmental Unit by the Finance Authority or its designee, if any, unless the Finance Authority or its designee, as applicable, 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 Finance Authority or its designee but cannot be cured within the applicable thirty (30) day period, the Finance Authority or its designee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is

unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (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 Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect; or

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority shall have the right to intervene in the proceedings to protect the Finance Authority's interests; or

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

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

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

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

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

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

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

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

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

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 of this Loan Agreement, no remedy herein conferred upon or reserved to the Finance Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as 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 Finance Authority 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 Finance Authority may in its discretion waive any Event of Default hereunder and the consequences of an Event of Default by written waiver; provided, however, that there shall not be waived (i) any Event of Default in the payment of principal of this Loan Agreement at the date when due as specified in this Loan Agreement, or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payment of principal and all expenses of the Finance Authority, in connection with such Event of Default shall have been paid or provided. Such waiver shall be effective only if made by written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority shall be restored to its former position 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.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses Related to Defaults. In the event that the Governmental Unit should default under any of the provisions hereof and the Finance Authority employs attorneys or incurs other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit contained in this Loan Agreement, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority the fees of such attorneys

and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## ARTICLE XI

### MISCELLANEOUS

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

If to the Governmental Unit, then to:

Albuquerque Bernalillo County Water Utility Authority  
Attn: Executive Director  
P.O. Box 568  
Albuquerque, New Mexico 87103

If to the Finance Authority, then to:

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

And if to Finance Authority's designated servicing agent for this Loan Agreement, if any, at the address to be provided by the servicing agent. The Governmental Unit and the Finance Authority 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 Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. This Loan Agreement may be amended only with the written consent of the Finance Authority and the Governmental Unit, except as provided in Section 4.1(b) of this Loan Agreement. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Loan Agreement may be given by an Authorized Officer of the Finance Authority. The execution of any such consent by an Authorized Officer of the Finance Authority shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Loan Agreement.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the

Finance Authority, either directly or through the Finance Authority or against any officer, employee, director or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, 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 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. This Loan Agreement (except as to the Administrative Fee) may be assigned and transferred by the Finance Authority to a trustee, which right to assign and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 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 Loan Agreement.

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself has executed this Loan Agreement, which was approved by the Finance Authority's Board of Directors on November 29, 2018, in its corporate name by its duly authorized officers; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and attested by duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

Prepared for Execution by Officers of the Finance Authority:

SUTIN, THAYER & BROWNE  
A PROFESSIONAL CORPORATION  
As Loan Counsel to the Finance Authority

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

Approved for Execution by Officers of the Finance Authority:

By \_\_\_\_\_  
Daniel C. Opperman, General Counsel

ALBUQUERQUE BERNALILLO COUNTY WATER  
UTILITY AUTHORITY, BERNALILLO COUNTY, NEW  
MEXICO

By \_\_\_\_\_  
Debbie O'Malley, Chair

ATTEST:

By \_\_\_\_\_  
Mark S. Sanchez, Executive Director

EXHIBIT "A"

TERM SHEET

LOAN NO. DW-4202  
TO THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY,  
BERNALILLO COUNTY, NEW MEXICO

Governmental Unit:	Albuquerque Bernalillo County Water Utility Authority, Bernalillo County, New Mexico
Project Description:	Acquiring additional System assets, extending, repairing, replacing and improving the Water Authority's System, including, acquisition and installation of water distribution lines for the Los Padillas community as part of the South Valley water project and the payment of Expenses associated with the execution and delivery of the Loan Agreement
Pledged Revenues:	Net Revenues
Currently Outstanding Parity Obligations for Pledged Revenues:	Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer System Improvement Revenue Bonds: Series 2009A-1 (\$135,990,000); Series 2013A&B (\$118,215,000); Series 2014A (\$97,270,000); Series 2015 (\$211,940,000); Series 2017 (\$87,970,000); Series 2018 (\$75,085,000); New Mexico Finance Authority Public Project Revolving Fund Loan Agreement (2648-PP, 2011) (\$53,400,000); New Mexico Finance Authority Drinking Water State Revolving Fund Loan Agreement (2316-DW, 2009) (\$1,010,000); New Mexico Finance Authority Drinking Water State Revolving Fund Loan Agreements: (4200-DW, 2018) (\$1,010,000); and (4202-DW, 2018) (\$1,000,000).
Currently Outstanding Senior Obligations:	None

Currently Outstanding Subordinated Obligations:	Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer System Improvement Revenue Bonds: Series 2014B (\$87,005,000); New Mexico Finance Authority Drinking Water State Revolving Fund Loan Agreement: (1727-DW, 2008) (\$9,627,877)
Currently Outstanding Super Subordinated Obligations:	None
Closing Date:	April 26, 2019
Interest Rate:	2.00% for \$2,124,282 (which includes the Administrative Fee) 0.25% for \$600,000
Maximum Forgiven Program Fund Component:	\$705,799
Maximum Repayable Program Fund Component:	\$2,724,282
Aggregate Program Fund Amount:	\$3,430,081
Maximum Principal Amount:	\$3,430,081
Subsidy Percent:	Approximately 20.58% of the Maximum Principal Amount

EXHIBIT "B"

LOAN AGREEMENT PAYMENT SCHEDULE

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: \$3,430,081 Loan Agreement by and between the Finance Authority and the Albuquerque Bernalillo County Water Utility Authority (the "Loan Agreement")

TO: New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
Attn: Loan Servicing

LOAN NO. DW-4877

CLOSING DATE: April 26, 2019

You are hereby authorized to disburse to the Albuquerque Bernalillo County Water Utility Authority or its payee with regard to the above-referenced Loan Agreement the following:

REQUISITION NUMBER:		<input type="checkbox"/> Interim Request <input type="checkbox"/> Final Request
AMOUNT OF PAYMENT:	\$	

PURPOSE OF PAYMENT:

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This is a request of REIMBURSEMENT of incurred and paid project expenses. (Attach proof of payment, e.g. check stubs, and corresponding invoices)

This is a request of DIRECT PAYMENT to vendor or service provider of incurred project expenses. (Attach invoices)

PAYEE INFORMATION

NAME:	
CONTACT NAME:	
ADDRESS:	
PHONE NUMBER:	
FAX NUMBER:	
E-MAIL ADDRESS:	

WIRING INFORMATION

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

Please indicate if this Business is considered a

<input type="checkbox"/> SBE (Small Business Entrepreneur)	<input type="checkbox"/> MBE (Minority Business Entrepreneur)	<input type="checkbox"/> WBE (Women owned business Entrepreneur)	<input type="checkbox"/> N/A
--	---	--	------------------------------

(Attach SBE/MBE/WBE Certification)

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge for requisition and payment.

Each obligation, item of cost or expense mentioned herein is not for costs related to the purchase of land or easement.

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the Albuquerque Bernalillo County Water Utility Authority is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the Albuquerque Bernalillo County Water Utility Authority understands its obligation to complete the acquisition and installation of the Project and shall complete the acquisition and installation of the Project from other legally available funds.

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

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

By: \_\_\_\_\_

Authorized Officer

\_\_\_\_\_  
(Print name and title)

EXHIBIT "D"

FORM OF CERTIFICATE OF COMPLETION

RE: \$3,430,081 Loan Agreement by and between the Finance Authority and the Albuquerque Bernalillo County Water Utility Authority (the "Loan Agreement")

Loan No. DW-4877

Closing Date: April 26, 2019

TO: NEW MEXICO FINANCE AUTHORITY

I, \_\_\_\_\_, the \_\_\_\_\_ of the  
[Name] [Title or position]

Albuquerque Bernalillo County Water Utility Authority, hereby certify as follows:

1. The project described in the Loan Agreement (the "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 was \$ \_\_\_\_\_.
4. The portion of the Maximum Principal 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 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.

ALBUQUERQUE BERNALILLO COUNTY WATER  
UTILITY AUTHORITY, BERNALILLO COUNTY, NEW  
MEXICO

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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Meeting Date: March 20, 2019  
Staff Contact: Stan Allred, Chief Financial Officer

**TITLE: R-19-5 – Authorizing the Removal of Certain Uncollectable Accounts from the Albuquerque Bernalillo County Water Utility Authority Accounts Receivable Records FY2014 and Prior**

**ACTION: Recommend Approval**

**SUMMARY:**

This legislation provides information to support a request to the Board authorizing the removal of uncollectable accounts greater than four years old totaling \$110,296.77.

**FISCAL IMPACT:**

Since 1965, pursuant to NMSA 1978, § 3-37-7, New Mexico municipalities have been expressly permitted to write off uncollectable debt. Counties and political subdivisions like the Albuquerque Bernalillo County Water Authority (Water Authority) may use the same process as a municipality to write off uncollectable debt through the procedure set forth in state law. This process will avoid an excessive accrual of accounts receivable while also accurately report the financial position of the Water Authority and comply with state debt-collection law. Further, the Water Authority should not represent to its customers, either in invoices or in any demand, that the customer owes any amount that was accrued more than four years prior to the demand.

The Chief Financial Officer (CFO) of the Water Authority states that:

- a) a utility account or any unsecured account services have been incurred;
- b) diligent efforts were made to collect the utility account or unsecured account and to locate a debtor;
- c) that the utility account or unsecured account has been uncollectable for a period of more than four years; and
- d) that in his opinion the utility account or unsecured account is uncollectable.

Staff recommends authorization to remove the uncollectable accounts as shown in Exhibit A.



CCB ACCT #	ACCOUNT NAME	MAILING ADDRESS	AMOUNT DUE
8800122872	REULE, ROBERT	1213 PARSIFAL NE	\$ 401.10
3578644820	GRIEGO, JERONIMO T	8801 SAN FRANCISCO RD NE	\$ 90.30
4220614786	ARMSTRONG, GLENDA	3330 HYDER SE	\$ 23.36
Compost Sales		Subtotal	\$ 514.76

9943389560		2039 LENA DR SW	\$ 11,139.81
4630339560		7300 DESERT MORNING RD SW	\$ 7,625.95
9246279560		1044 LURA PL SW	\$ 7,336.62
5461043037		4109 FLORA VISTA AVE SW	\$ 6,617.25
1104539560		1002 BELLAMAH AVE NW	\$ 6,617.25
4087139560		1427 DONA ARCELIA ST SW	\$ 6,026.27
4928189560		152 NARA VISA RD NW	\$ 5,909.92
9379389560		2735 HUNTER CT SW	\$ 5,154.83
4986829560		1306 HIGH ST SE	\$ 5,050.93
4344039560		2503 RIO GRANDE BLVD NW	\$ 4,717.69
3101189560		217 GARCIA RD NE	\$ 4,565.30
3193389560		2009 FOOTHILL DR SW	\$ 4,367.64
9794289560		917 BROTHER RD SW	\$ 4,242.99
5501929560		1911 JOHN ST SE	\$ 4,242.05
7059829560		1935 ARNO ST SE	\$ 4,147.10
9911589560		4006 GLENN DR SE	\$ 4,117.12
3166289560		821 DOLLY AVE SW	\$ 4,078.78
4393459560		7500 KRISTA DR NE	\$ 4,024.34
3453929560		705 3RD ST SW	\$ 4,112.24
1520949560		7120 JET RD NE	\$ 1,646.94
7867289560		312 GREENWICH RD SW	\$ 4,040.99
Water/Wastewater		Subtotal	\$ 109,782.01

Grand Total \$ 110,296.77



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Meeting Date: March 20, 2019

Staff Contact: Katherine M. Yuhás, Water Resources Division Manager

**TITLE: R-19-6 – Entering into a Memorandum of Agreement with Explora Science Center & Children’s Museum of Albuquerque**

**ACTION: Recommend Approval**

**SUMMARY:**

This agreement provides for the Water Authority to partner with Explora as they develop a new STEM Education and Workforce Development Center. The Water Authority working with Explora will develop a long-term water exhibition for this new center and the existing Explora museum. The exhibition will provide 7-9 interactive indoor and outdoor water experiences related to the scientific properties of water, surface water, groundwater, aquifers, the water cycle, conservation and the importance of water in Albuquerque’s urban environment and New Mexico’s deserts. Water Authority staff will assist Explora by providing funding and expertise in development of the exhibits.

**FISCAL IMPACT:**

\$425,000 from Water Resources Division contractual services. An initial contribution of \$350,000 will be made for design and construction of the exhibits. Then \$15,000 will be contributed each year for the next five years (2021 – 2025) for maintenance and operation of the exhibits.



# *Southside Water Reclamation Plant*

## Renewal Program

2009 to present

March 20, 2019

David K. Laughlin, P.E.  
Chief Engineer

Water Authority  
Planning and Engineering



Albuquerque Bernalillo County  
Water Utility Authority

# Renewal Program History

2009 – Water Authority authorizes Brown & Caldwell (B & C) to produce Reclamation Asset Management Plan (RAMP)

B & C meets with SWRP staff, begins collecting data

## Objectives:

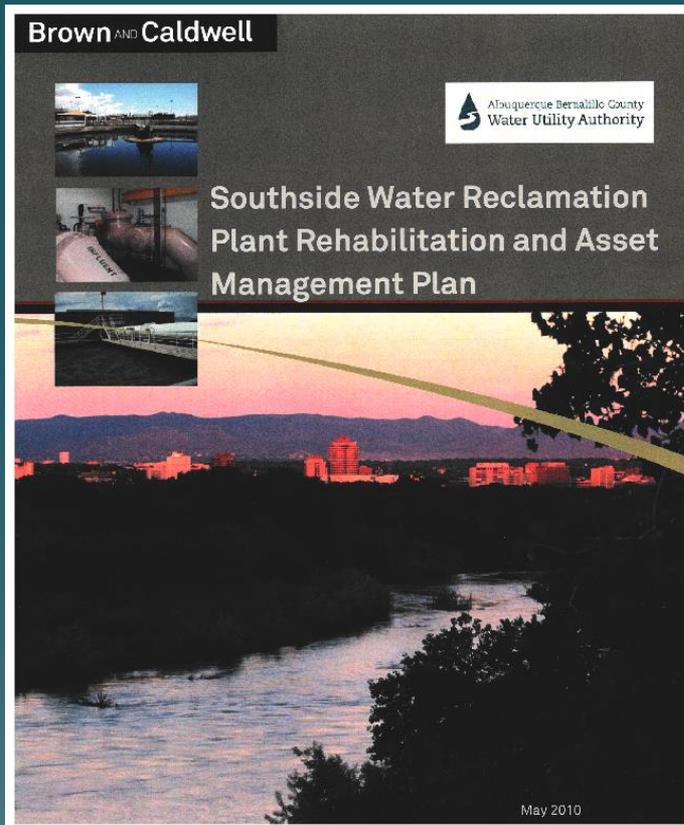
- Meet permit requirements
- Safe work environment
- Good neighbor
- Improve O & M



# Renewal Program History

2010 – B & C finalizes

Reclamation Asset Management Plan (RAMP)



- Identified deficiencies
- Evaluated criticality
- Prioritized renewal
- Estimated total renewal cost \$250 million

## Renewal Program History

June 2011 – Water Authority Board meeting

SWRP progress update by 2011 Plant Mgr. Joe Chwirka

- Emphasized need to invest in SWRP process and odor control renewal

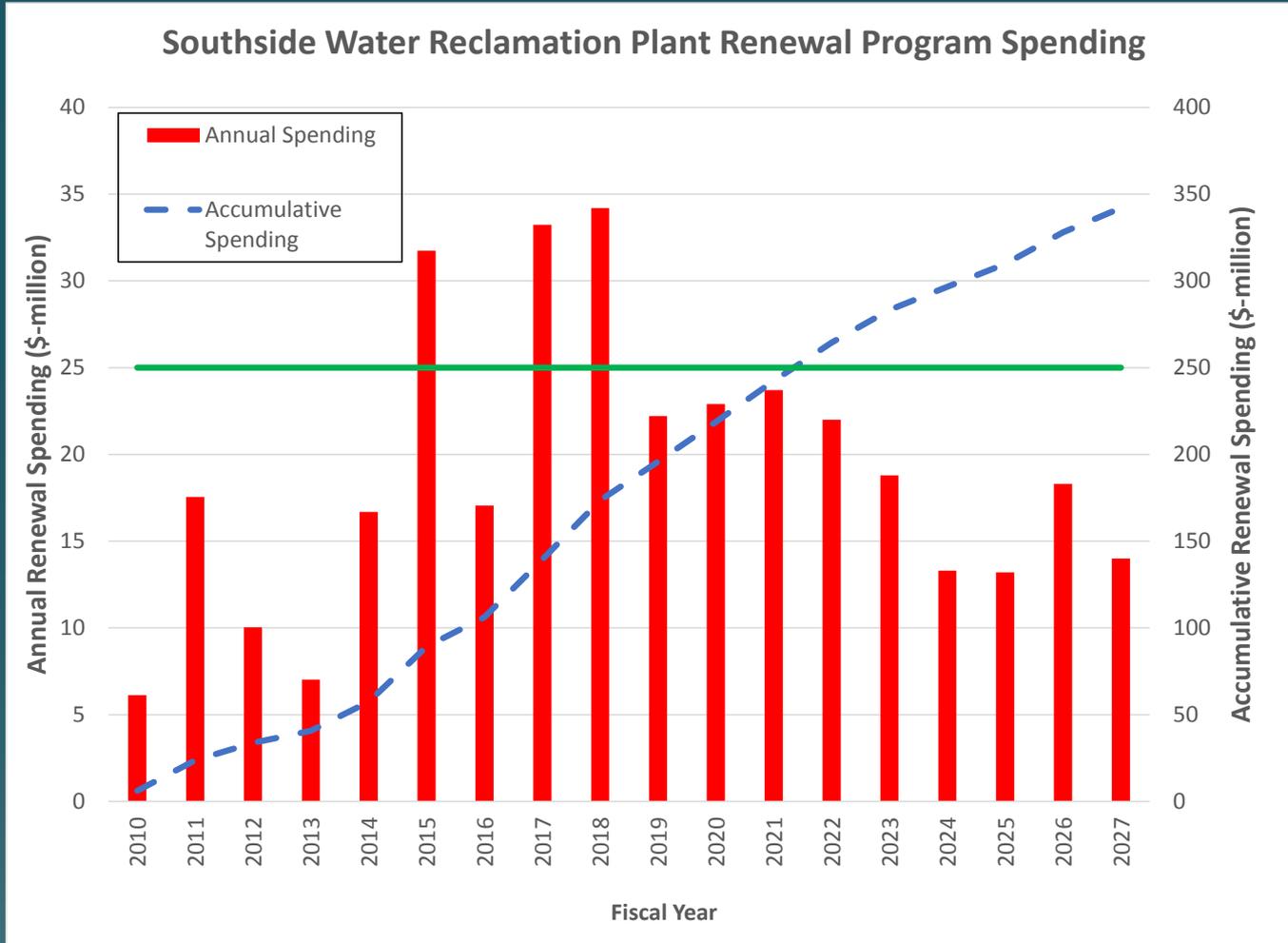
October 2011 – Water Authority Board votes to

approve \$60 million in bond sales for water & sewer system needs including SWRP renewal



# Southside Water Reclamation Plant (SWRP)

## \$250-million Renewal Program



*Southside Water Reclamation Plant (SWRP)*

**2011-2018 Paid to date:**

Total Construction: \$ 149 M

Total Engineering: \$ 29 M

\$ 178 M

The \$250 million dollar program is 71 % complete



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Water Utility Authority

## *Southside Water Reclamation Plant (SWRP)*

### Some Projects:

- Ultra-Violet (UV) Disinfection (\$8.7-million)
- Preliminary Treatment Facility (\$34.3-million)
- Aeration Basins and Blowers (\$7.9-million)
- Final Clarifiers (\$8.4-million)
- Non-Potable Water System (\$16.9-million)
- Electrical Systems (\$6-million)
- Solids Dewatering Facility (\$21.9 –million)
- New Storage Facility (\$2.4-million)
- New Digested Sludge Tank (\$7.2-million)



*Southside Water Reclamation Plant (SWRP)*

# UV Disinfection Facility

Complete 2011

Construction cost: \$8.7 M



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Water Utility Authority

# Preliminary Treatment Facility (PTF)

Complete 2016

Construction cost: \$34.3 M



Sept. 2013



same location Dec. 2015



# Southside Water Reclamation Plant (SWRP)

## PTF

Complete 2016

Construction cost: \$34.3 M



Architect's Rendering



Complete



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Water Utility Authority

# Solids Dewatering Facility (SDF)

Complete 2018

Construction cost: \$31.5 M

including Warehouse and 2 million gallon Sludge Storage tank



May 2016



May 2018



# *Southside Water Reclamation Plant (SWRP)*

## **SDF**

Complete 2018

Construction cost: \$31.5 M

including Warehouse and 2 million gallon Sludge Storage Tank



Albuquerque Bernalillo County  
Water Utility Authority

## Primary Clarifiers 5-8 Renewal

To be complete in  
winter 2019-2020

Construction cost:  
\$13.6 M

Includes domes over clarifiers



## *Southside Water Reclamation Plant (SWRP)*

# Aeration Basins 7 & 8 Renewal

Complete 2014

Construction cost: \$1.4 M

New valves relocated above  
water level, new piping and  
diffusers



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Water Utility Authority

*Southside Water Reclamation Plant (SWRP)*

# Portable Generator Power

Complete 2016

Acquisition cost: \$1.8 M



Cummins 2 MW  
Generator



Cummins 1 MW  
Generator



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## **Electrical Projects 2019**

- Power Loop A & B – separate power loops currently sharing vaults and construct additional Facility Isolation Station (FIS)  
\$8.4 M under construction
- Lightning Protection – protect 45 structures.  
\$2.1 M under construction
- MCC and Switchgear – upgrade and provide operational flexibility  
\$3 M to \$5 M estimated

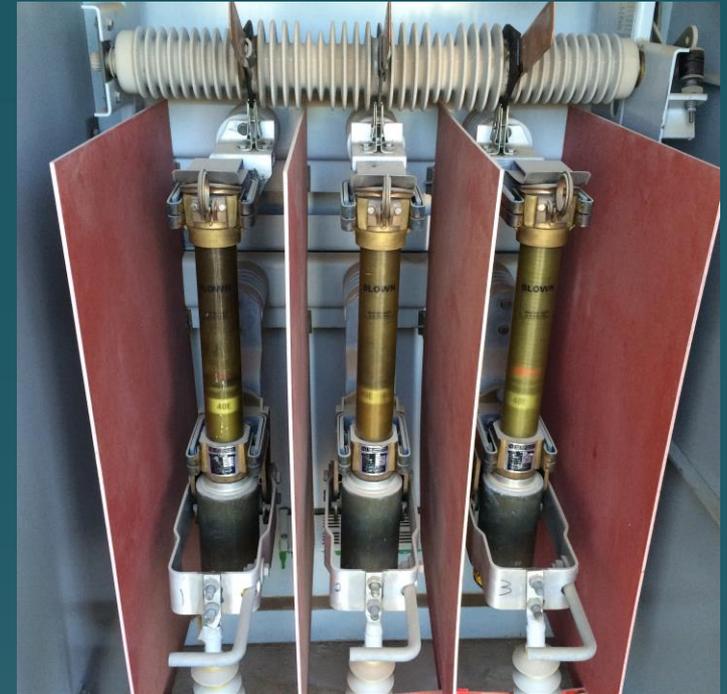


# Southside Water Reclamation Plant (SWRP)

## Power Loop A & B

Estimate Completion 2021  
\$8.4 M

Separate the 12 kV Plant Feeders  
in utility vaults



Replace fused switchgear with  
faster, auto-synching circuit  
breakers



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Water Utility Authority

# Southside Water Reclamation Plant (SWRP)

## Lightning Protection

Estimate Completion 2020  
\$2.1 M



Catenary System to protect Digesters and Gas Holders



Improve Grounding of structures and connect to rooftop air terminals



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Water Utility Authority

# Southside Water Reclamation Plant (SWRP)

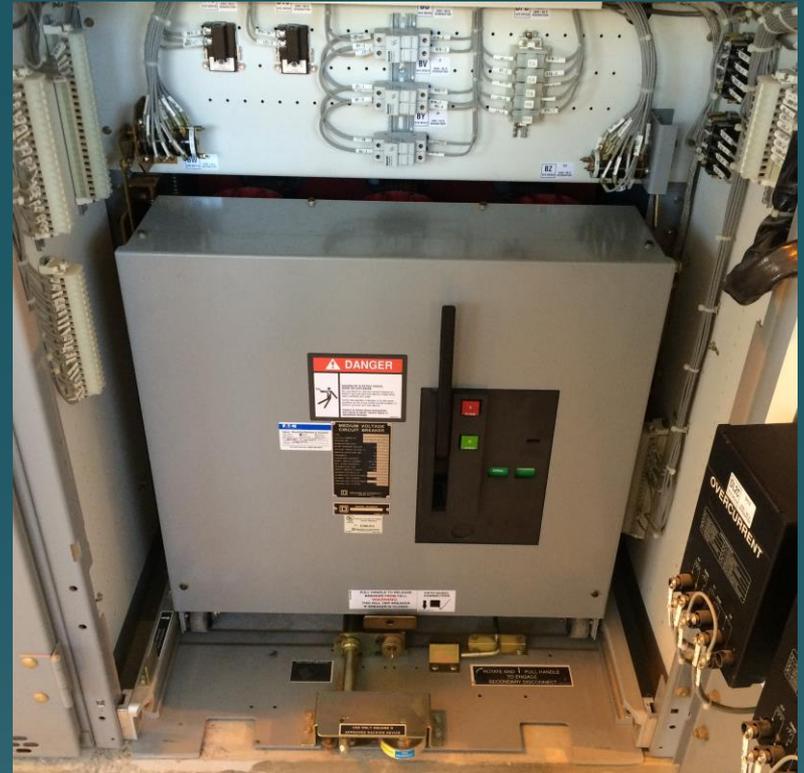
## MCC & Switchgear Replacement

Estimate Completion 2020

\$3 M to \$ 5 M estimated cost



Antiquated & undersized motor control center



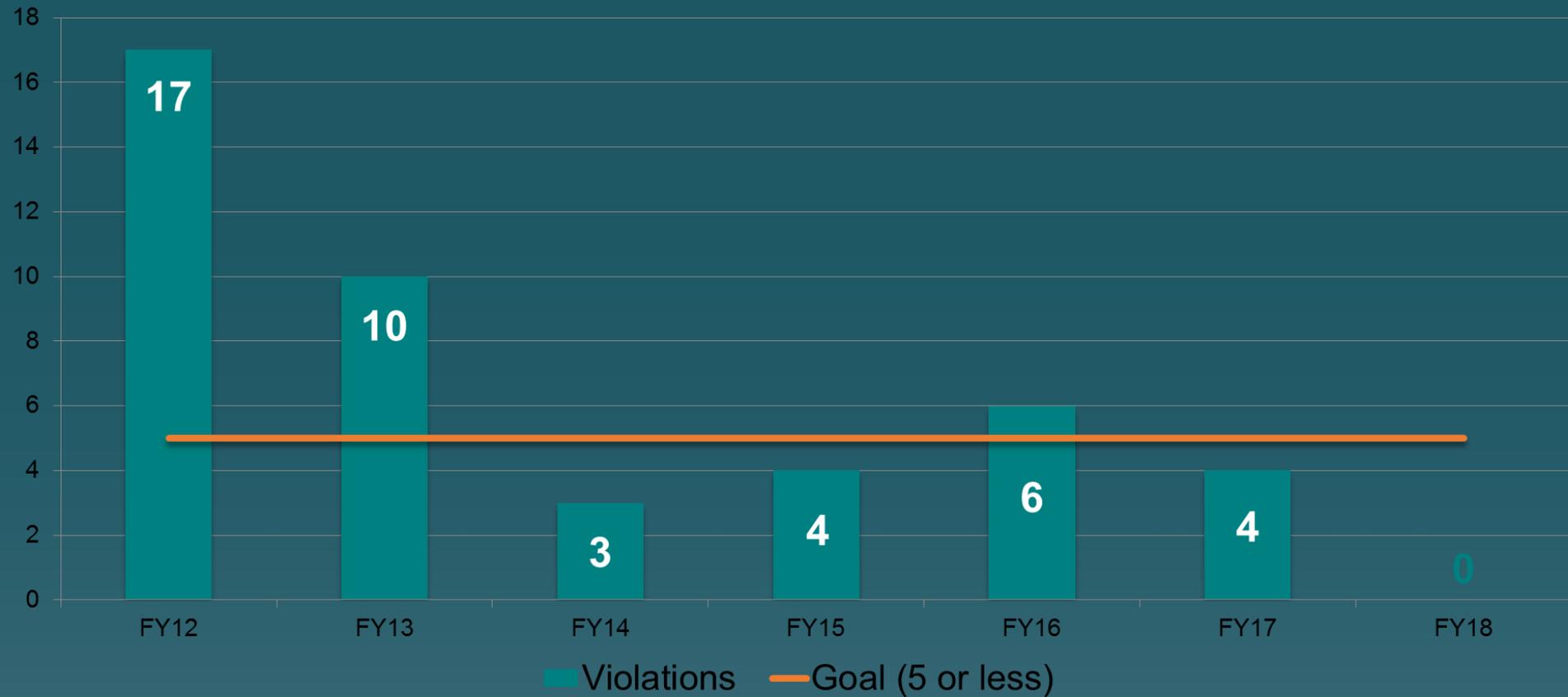
Antiquated & undersized switchgear



Albuquerque Bernalillo County  
Water Utility Authority

# Southside Water Reclamation Plant (SWRP)

## Discharge Permit Violations



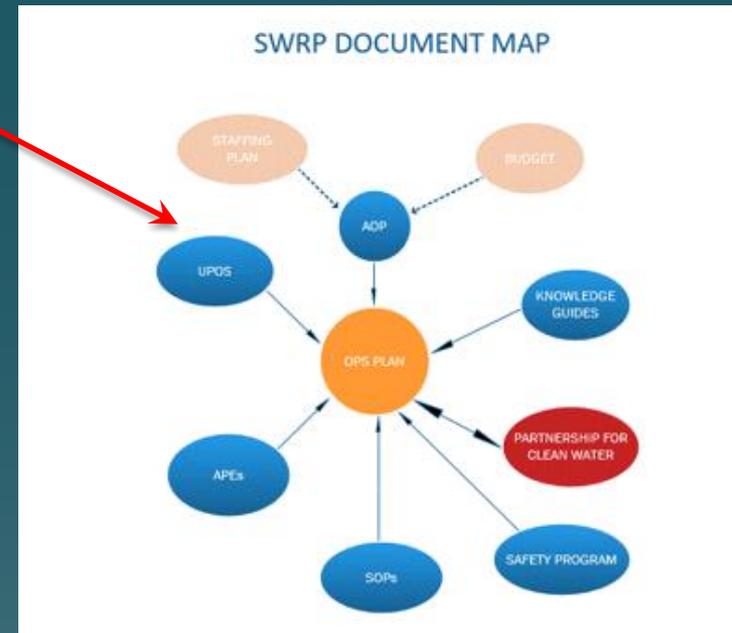
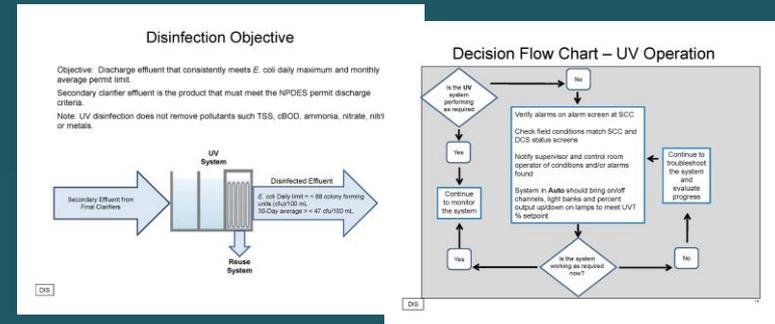
# Highlights of Improved Permit Compliance

- 2018 RMWEA Performance Award for Outstanding Results
- National Association of Clean Water Agencies (NACWA) Peak Performance Silver Award in 2013, 14, 15, 17, and 18
- AWWA Partnership for Clean Water; Charter member  
*“Complacency is the ENEMY”*



## Knowledge Mgmt / Transfer Initiatives

- APEs and KPIs...*what gets measured gets managed*
- SWRP Operational Plan a guide to how SWRP operates and why
- Annual refresher training on Technical Topics for everyone including M-series Staff



# Strategic Asset Management Initiatives

- Updated / re-organized database for existing assets
- Good on-boarding procedures for new assets;  
Disposal procedures for worn / obsolete assets
- PM/(PM+CM) ratio improvements at SWRP
- Role of conditional monitoring to strategically plan PM efforts
- The Future: Use AI to help identify / respond to future problems...*in advance!* e.g. blower bearings



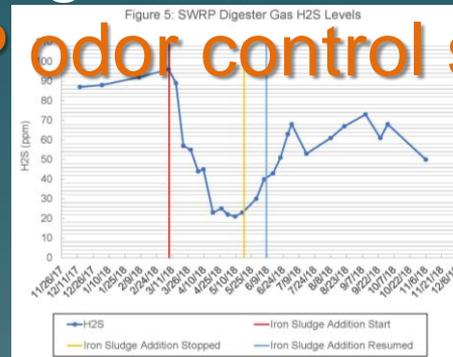
# Odor Control Initiatives

- FACT: What's good for odor control in the collection system helps with odor control at SWRP
- Meet annually with Mountain View NA; *"How are we doing? Here's what we're doing"*
- Meeting with specific neighbors when they call to document issue / proposed fix
- Primary clarifier dome project



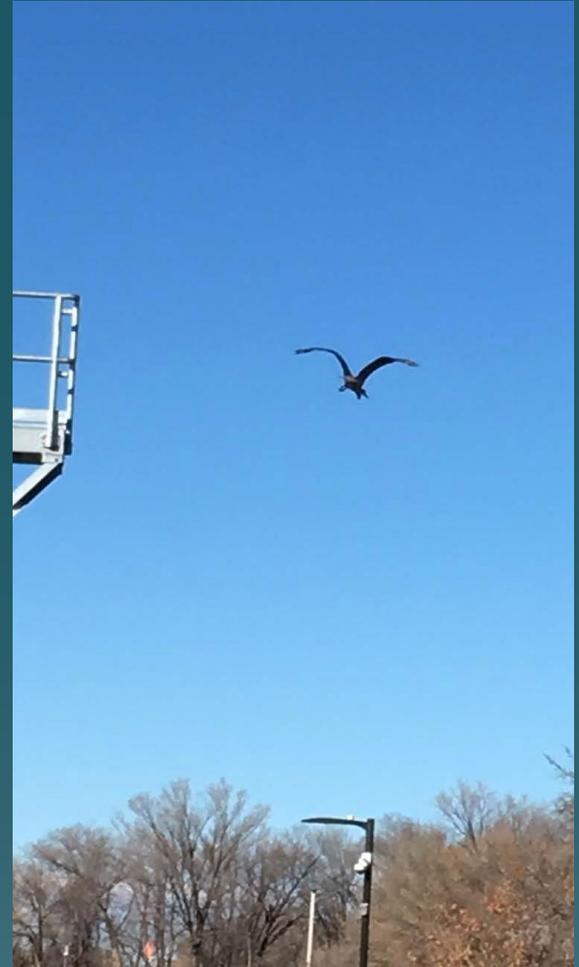
## Odor Control Initiatives continued

- React quickly when needed;  
Activated carbon units
- Be pro-active
  - Chemical addition program by Collections Group
  - 3<sup>rd</sup> party monitoring at SWRP property line
- Excess iron sludge from SJCWTP becomes cost-effective **SWRP odor control solution** “w/benefits”



# Southside Water Reclamation Plant (SWRP)

## - Questions ?



Great Blue Heron -- unexpected benefactor of PTF renewal



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