



Meeting Date: November 17, 2021
Staff Contact: Stan Allred, Chief Financial Officer

TITLE: **R-21-31 – Authorizing the Execution and Delivery of Water Project Fund Loan/Grant Agreement by and between the New Mexico Water Trust Board and the New Mexico Finance Authority (“Finance Authority”) and the Albuquerque Bernalillo County Water Utility Authority (the “Water Authority”), in the Total Amount of \$2,000,000(\$1,200,000 Grant Amount/\$800,000 Loan Amount), Evidencing A Special Limited Obligation of the Water Authority To Utilize the Loan/Grant Amount Solely for the Purpose of Financing the Cost of the Water Authority’s Advanced Metering Infrastructure Project, and Solely in the Manner Described in the Loan/Grant Agreement; Providing for the Pledge and Payment of the Loan Amount and an Administrative Fee Solely From Net Revenues; Certifying that the Loan/Grant Amount, Together with Other Funds Available to the Water Authority, is Sufficient to Complete the Project; Approving the Form of and Other Details Concerning the Loan/Grant Agreement; Ratifying Actions Heretofore Taken; Repealing All Action Inconsistent With this Resolution; and Authorizing the Taking of Other Actions in Connection with the Execution and Delivery of the Loan/Grant Agreement**

ACTION: **Recommend Approval**

BACKGROUND:

Conservation is a critical component of the Water Authority’s newly adopted 100-year water plan entitled Water 2120: Securing our Water Future. Advanced Metering Infrastructure (AMI) meters provide near real-time water usage data that can be used to help customers reduce over usage such as leaks or excessive landscape watering. Conservation measures taken now reduce the need to obtain additional water supplies in the future. The Water Authority has successfully installed AMI towers, associated AMI infrastructure, and approximately 100,000 AMI meters, which has already replaced approximately 50% of water meters throughout the distribution system.

This resolution authorizes the Water Authority to enter into a loan agreement in the amount of \$800,000 with \$1,200,000 grant funding from the New Mexico Water Trust Board. This funding will replace approximately 10,000 existing water meters with AMI meters connected to the Water Authority’s existing AMI Network. Installation of modern smart meters saves money, delivers more accurate bills and encourages users to conserve water.

SUMMARY:

Resolution R-21-31 authorizes a loan/grant agreement in the amount of \$2,000,000 (\$800,000 Loan/\$1,200,000 Grant) between the New Mexico Water Trust Board and New Mexico Finance Authority (NMFA) and the Water Authority for the purpose of financing the costs of Advanced Metering Infrastructure meters. The loan amount is \$800,000 and the grant amount is \$1,200,000. The resolution was prepared by McCall, Parkhurst & Horton L.L.P. who is serving as the Water Authority's Counsel for this borrowing. The financing will be completed by January 2021.

The application for funding was approved by the Water Authority Board.

FISCAL IMPACT:

The Water Authority will provide a 60% match, or \$800,000, which would come from appropriated capital funds for this project. A subordinate lien of the Net Revenues of the System are pledged as security for this loan.

COMMENTS:

This Resolution gives the Executive Director authorization to enter into the loan agreement with the New Mexico Water Trust Board and the NMFA to secure a loan for the purpose of financing the costs of the installation of 10,000 AMI meters. This project is consistent with Policy D in Water 2120 – Securing our Water Future to encourage conservation with a goal of meeting 110 gallons per capita per day (gpcd) by 2037.

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. R-21-31

RESOLUTION

AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY ("FINANCE AUTHORITY") AND THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE "WATER AUTHORITY"), IN THE TOTAL AMOUNT OF \$2,000,000 (\$1,200,000 GRANT AMOUNT/\$800,000 LOAN AMOUNT), EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE WATER AUTHORITY TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE WATER AUTHORITY'S PHASE 6 ADVANCED METER INFRASTRUCTURE PROJECT IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT AND AN ADMINISTRATIVE FEE SOLELY FROM NET REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE WATER AUTHORITY, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT

Capitalized terms used in the following preambles have the same meaning as defined in this Resolution unless the context requires otherwise.

WHEREAS, the Water Authority is a legally and regularly created, established, duly organized and existing public body politic and corporate, separate and apart from the City and the County, under the general laws of the State, is a qualifying entity under the Act and is qualified for financial assistance as determined by the Finance Authority

1 and approved by the Water Trust Board pursuant to the Board Rules and the applicable
2 policies and the Act; and

3 WHEREAS, pursuant to the Board Rules the Water Trust Board has
4 recommended the Project for funding as a qualifying project to the legislature of the
5 State; and

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

8 WHEREAS, the Water Authority is obligated on the outstanding Senior
9 Obligations set forth in Exhibit A, payable from Net Revenues with a senior first lien on
10 the Net Revenues; and

11 WHEREAS, the Water Authority is obligated on the outstanding Subordinate
12 Obligations set forth in Exhibit A, payable from Net Revenues with a lien on the Net
13 Revenues subordinate to the Senior Obligations, and superior to the lien of the Super
14 Subordinated Obligations; and

15 WHEREAS, the Water Authority currently has no Super Subordinated
16 Obligations outstanding payable from Net Revenues with a lien on the Net Revenues
17 subordinate to the Senior Obligations and Subordinate Obligations; and

18 WHEREAS, except as stated in these preambles, the Net Revenues have not
19 been pledged or hypothecated to the payment of any Outstanding obligations and no
20 other obligations are payable from the Net Revenues on the date of this Resolution; and

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

23 WHEREAS, legislature of the State, authorized the funding of the Project from
24 the Water Project Fund; and

25 WHEREAS, the Water Trust Board has recommended that the Finance Authority
26 enter into and administer the Loan/Grant Agreement in order to finance the Project; and

27 WHEREAS, the Finance Authority approved the Water Authority's qualification
28 and ability to receive financial assistance in the form of the Loan/Grant; and

29 WHEREAS, the Governing Body has determined and hereby determines that the
30 Project may be financed with amounts granted and loaned pursuant to the Loan/Grant
31 Agreement, that the Loan/Grant Amount, together with the Additional Funding Amount
32 and other moneys available to the Water Authority, is sufficient to complete the Project,

1 and that it is in the best interest of the Water Authority and the constituent public it
2 serves that the Loan/Grant Agreement be executed and delivered and that the funding
3 of the Project take place by executing and delivering the Loan/Grant Agreement; and

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

7 WHEREAS, the Governing Body has determined that it may lawfully pledge the
8 Net Revenues for repayment of the Loan/Grant Agreement; and

9 WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation
10 of the Water Authority, the Water Trust Board or the Finance Authority or a debt or
11 pledge of the full faith and credit of the Water Authority, the Water Trust Board, the
12 Finance Authority or the State; and

13 WHEREAS, there have been presented to the Governing Body and there
14 presently are on file with the Water Authority this Resolution and the form of the
15 Loan/Grant Agreement which is incorporated by reference and considered to be a part
16 hereof; and

17 WHEREAS, the Governing Body hereby determines that the Additional Funding
18 Amount is now available to the Water Authority to complete the Project; and

19 WHEREAS, the Water Authority has met or will meet prior to the first
20 disbursement of any portion of the Loan/Grant Amount, the Conditions and readiness to
21 proceed requirements established for the portion of the Loan/Grant Amount disbursed
22 or caused to be disbursed by the Finance Authority, including but not limited to the
23 requirements of Executive Order 2013-006; and

24 WHEREAS, all required authorizations, consents and approvals in connection
25 with (i) the use of the Loan/Grant Amount for the purposes described, and according to
26 the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other
27 moneys necessary and sufficient, including the Additional Funding Amount and together
28 with the Loan/Grant Amount, to complete the Project; and (iii) the authorization,
29 execution and delivery of the Loan/Grant Agreement which are required to have been
30 obtained by the date of this Resolution, have been obtained or are reasonably expected
31 to be obtained.

1 NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF
2 WATER AUTHORITY:

3 Section 1. Definitions. As used in this Resolution, the following terms shall, for
4 all purposes, have the meanings herein specified, unless the context clearly requires
5 otherwise (such meanings to be equally applicable to both the singular and the plural
6 forms of the terms defined); and, any term not defined herein shall have the definition
7 given it by the Loan/Grant Agreement:

8 “Act” means the general laws of the State, particularly the Water Project Finance
9 Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended, and enactments of the
10 Governing Body relating to the Loan/Grant Agreement, including this Resolution, all as
11 amended and supplemented.

12 “Additional Funding Amount” means the amount to be provided by the Water
13 Authority which includes the total value of hard or of the soft match, which, in
14 combination with the Loan/Grant Amount and other amounts available to the Water
15 Authority, is sufficient to complete the Project. The Additional Funding Amount is One
16 Million Two Hundred Thousand Dollars (\$1,200,000).

17 “Administrative Fee” means an amount equal to one-quarter of one percent
18 (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into
19 account both payments made by the Water Authority and hardship waivers of payments
20 granted to the Water Authority pursuant to Section 5.1(a)(iii) of the Loan/Grant
21 Agreement.

22 “Authorized Officers” The Chair, the Executive Director of the Water Authority,
23 the Chief Financial Officer or other officer or employee of the Water Authority when
24 designated by a certificate signed by the Chair from time to time.

25 “Board Rules” means Review and Eligibility of Proposed Water Projects, New
26 Mexico Water Trust Board, 19.25.10 NMAC.

27 “City” means the City of Albuquerque, New Mexico.

28 “County” means Bernalillo County, New Mexico.

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

30 “Conditions” has the meaning given to that term in the Loan/Grant Agreement.

31 “Closing Date” means the date of execution and delivery of the Loan/Grant
32 Agreement, by the Water Authority and the Finance Authority.

1 “Credit Facility” means a letter of credit, line of credit, bond insurance policy or
2 reserve account surety bond, guaranty or similar agreement provided by a Credit
3 Source to provide support to pay the purchase price of, or the payment when due of the
4 principal of and interest on, System Obligations.

5 “Credit Source” means any bank, insurance company or other financial institution
6 which provides a Credit Facility for a series of System Obligations.

7 “Debt Service Account” means the debt service account established in the name
8 of the Water Authority and administered by the Finance Authority to pay principal and
9 interest on the Loan/Grant Agreement as the same become due.

10 “Debt Service Fund” means Debt Service Fund previously established by the
11 Water Authority and continued in Section 13 of this Resolution.

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

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

1 In any computation of Debt Service Requirements relating to the issuance of
2 additional System Obligations, there shall be excluded from the computation of the Debt
3 Service Requirements amounts and investments which are irrevocably committed to
4 make designated payments on System Obligations during the applicable period,
5 including, without limitation, money on deposit in any Debt Service Account and
6 amounts on deposit in an escrow account irrevocably committed to make designated
7 payments on System Obligations during the applicable period and earnings on such
8 investments which are payable and committed to the payment of such System
9 Obligations during the applicable period.

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

15 (1) During any historical period for which the actual variable interest rate or
16 rates are determinable, the actual variable interest rate shall be used. During any
17 historical period when the actual variable interest rate is not determinable, the variable
18 interest rate shall, for the purpose of determining Debt Service Requirements, be
19 deemed to be the higher of:

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

21 or

22 (b) a fixed annual rate equal to the prevailing rate on the Variable Rate
23 Obligations on the date of computation (which, for the purpose of determining the
24 Debt Service Requirements, shall be a date which is no more than 60 days prior
25 to the date of issuance of the applicable System Obligations) as certified by the
26 Water Authority's financial advisor, the underwriters of the System Obligations,
27 an investment banker designated by the Water Authority from time to time or a
28 counterparty with respect to a Qualified Exchange Agreement.

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

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

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

11 "Eligible Fiscal Agent Fees" has the meaning given to that term in the Loan/Grant
12 Agreement.

13 "Eligible Items" means eligible Project costs for which grants and loans may be
14 made pursuant to NMSA 1978, § 72-4A-7(C), as amended, of the Act, the Board Rules
15 and applicable policies, and includes, without limitation, Eligible Legal Costs and Eligible
16 Fiscal Agent Fees.

17 "Eligible Legal Costs" has the meaning given to that term in the Loan/Grant
18 Agreement.

19 "Expense Account" means the account within the Debt Service Fund which shall
20 be continued and used for purposes of paying Expenses.

21 "Expenses" means the reasonable and necessary fees, costs and expenses
22 incurred by the Water Authority and the Finance Authority with respect to the execution
23 and delivery of the Loan/Grant Agreement, including, without limitation, attorneys' fees
24 and costs, financial advisor's fees and costs, costs of advertising and publication, and
25 all reasonable and necessary fees and administrative costs of the Water Authority and
26 Finance Authority relating to the foregoing.

27 "Finance Authority" means the New Mexico Finance Authority.

28 "Generally Accepted Accounting Principles" means the officially established
29 accounting principles applicable to the Water Authority consisting of the statements,
30 determinations and other official pronouncements of the Government Accounting
31 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 Water Authority.

“Governing Body” means the duly organized board of the Water Authority, or any future successor governing body of the Water Authority.

“Grant” or “Grant Amount” means the amount provided to the Water Authority as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall not equal more than \$1,200,000 (one million two hundred thousand dollars).

“Gross Revenues” means all income and revenues directly or indirectly derived by the Water Authority from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the Water Authority, or any municipal corporation or agency succeeding to the rights of the Water Authority, from the System and from the sale and use of water, water services or facilities, sewer service or facilities or any other service, commodity or facility or any combination thereof furnished to the inhabitants of the geographic area served by the Water Authority by means of the System as the same may at any time exist to serve customers outside the Water Authority’s geographical limits as well as customers within the Water Authority’s geographical limits. Such term also includes:

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

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

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

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

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

1 Gross Revenues do not include:

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

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

9 "Joint Water and Sewer Fund" means the "City of Albuquerque, New Mexico,
10 Joint Water and Sewer Fund" originally established in Section 16 of City Ordinance No.
11 18-1984 and continued in Section 13 of this Resolution as the "Albuquerque Bernalillo
12 County Water Utility Authority Joint Water and Sewer Fund."

13 "Loan" or "Loan Amount" means the amount provided to the Water Authority as a
14 loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, in
15 the maximum amount of eight hundred thousand dollars (\$800,000).

16 "Loan/Grant" or "Loan/Grant Amount" means the combined amount partially
17 provided to the Water Authority as the Grant Amount and partially borrowed by the
18 Water Authority as the Loan Amount pursuant to the Loan/Grant Agreement for the
19 purpose of funding the Project, in the maximum aggregate amount of two million dollars
20 (\$2,000,000).

21 "Loan/Grant Agreement" means the Water Project Fund Loan/Grant Agreement
22 entered into by and between the Water Authority and the Finance Authority as
23 authorized by this Resolution.

24 "Net Revenues" means the Gross Revenues after deducting Operation and
25 Maintenance Expenses.

26 "NMAC" means the New Mexico Administrative Code.

27 "NMSA 1978" means the New Mexico Statutes Annotated, 1978 Compilation, as
28 amended and supplemented from time to time.

29 "Operation and Maintenance Expenses" means all reasonable and necessary
30 current expenses of the System, paid or accrued, related to operating, maintaining and
31 repairing the System including, without limiting the generality of the foregoing:

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

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

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

9 (4) Expenses other than expenses paid from the proceeds of System
10 Obligations;

11 (5) the costs of audits of the books and accounts of the Water Authority and
12 the System;

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

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

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

19 Operation and Maintenance Expenses do not include any allowance for
20 depreciation, payments in lieu of taxes, liabilities incurred by the Water Authority as a
21 result of its negligence or other misconduct in the operation of the System or any
22 charges or costs allocable to capital improvements or replacements. Operation and
23 Maintenance Expenses do not include any payment of or reimbursement for the
24 payment of Debt Service Requirements on the Loan/Grant Agreement.

25 "Outstanding" means when used in reference to System Obligations, on any
26 particular date, the aggregate of all System Obligations issued and delivered under the
27 applicable Water Authority ordinance or resolution authorizing the issuance of System
28 Obligations except:

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

31 (2) those which have been paid or are deemed to be paid in accordance with
32 the Water Authority ordinance or resolution authorizing the issuance of the applicable

1 System Obligations or otherwise relating thereto, provided that the payment of insured
2 Obligations with the proceeds of a bond insurance policy shall not result in those
3 insured obligations ceasing to be Outstanding;

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

6 (4) any System Obligation which has been refunded in accordance with this
7 Resolution or other ordinances or resolutions of the Water Authority authorizing the
8 defeasance of such designated System Obligations; and

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

14 "Project" means the replacement of approximately 18,000 existing water meters
15 with advanced metering infrastructure meters and devices as may be more fully
16 described in the Term Sheet.

17 "Project Account" means the book account established by the Finance Authority
18 in the name of the Water Authority for purposes of tracking expenditure of the
19 Loan/Grant Amount by the Water Authority to pay for the costs of the Project, as shown
20 in the Term Sheet, which account shall be kept separate and apart from all other
21 accounts of the Finance Authority.

22 "Qualified Exchange Agreement" means any interest rate exchange between the
23 Water Authority and a counterparty which, when entered into by the Water Authority,
24 satisfies the requirements of Section 6-18-8.1 NMSA 1978.

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

31 "Rate Covenant" means the covenants in the Loan/Grant Agreement relating to
32 charging rates for use of the System to pay Debt Service Requirements.

1 “Rate Stabilization Fund” means the Rate Stabilization Fund for System
2 Obligations previously established by the Water Authority and continued in Section 13
3 of this Resolution.

4 “Resolution” means this Resolution as it may be supplemented or amended from
5 time to time.

6 “Senior Obligations” means the outstanding “Senior Obligations” set forth in
7 Exhibit A and obligations related thereto designated as Senior Obligations, in any
8 ordinance or resolution of the Water Authority relating to those bonds, and any other
9 System Obligations issued with a lien on the Net Revenues on a parity with the lien of
10 the Outstanding Senior Obligations on Net Revenues.

11 “State” means the State of New Mexico.

12 “Subordinate Obligations” means the “Subordinate Obligations” set forth in
13 Exhibit A, and all other bonds and other obligations of the Water Authority now or
14 hereafter issued with a lien on the Net Revenues subordinate to the lien of Senior
15 Obligations and superior to the lien of the Super Subordinated Obligations on the Net
16 Revenues.

17 “Super Subordinated Obligations” means all bonds and other obligations of the
18 Water Authority now or hereafter issued with a lien on the Net Revenues subordinate to
19 the liens of the Senior Obligations and the Subordinate Obligations on the Net
20 Revenues and as may be further set forth in Exhibit A.

21 “System” means the public utility owned by the Water Authority and designated
22 as the Water Authority’s water system and sanitary sewer system (continued as a joint
23 utility system in Section 4 of this Resolution) consisting of all properties, real, personal,
24 mixed or otherwise, now owned or hereafter acquired by the Water Authority, through
25 purchase, construction or otherwise, including all extensions, enlargements and
26 improvements of or to the water and sanitary sewer system and used in connection
27 therewith or relating thereto, and any other related activity or enterprise of the Water
28 Authority designated by the Governing Body as part of the water and sanitary sewer
29 system, whether situated within or without the geographical limits of the Water Authority.

30 “System Obligations” means all bonds and other similar indebtedness payable
31 solely or primarily from Net Revenues, including, without limitation, the Senior
32 Obligations, the Subordinate Obligations and the Super Subordinated Obligations.

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

2 “Variable Rate Obligations” means System Obligations, including reimbursement
3 obligations pursuant to a Credit Facility, the interest rate on which is subject to change
4 from time to time.

5 “Useful Life” means the structural and material design life of the Project, including
6 planning and design features, which shall not be less than twenty (20) years as required
7 by the Act and the Board Rules.

8 “Water Authority” means the Albuquerque Bernalillo County Water Utility created
9 by Section 72-1-10 NMSA 1978 as a joint agency of the City of Albuquerque, New
10 Mexico and the County of Bernalillo, New Mexico and operating under the name
11 Albuquerque Bernalillo County Water Utility Authority.

12 “Water Project Fund” means the fund of the same name created pursuant to the
13 Act and held and administered by the Finance Authority.

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

16 Section 2. Rules of Construction. For purposes of this Resolution, unless
17 otherwise expressly provided or unless the context requires otherwise:

18 A. Unless otherwise stated in this Resolution, all references in this Resolution
19 to designated Sections and other subdivisions are to the designated Section and other
20 subdivisions of this Resolution.

21 B. The words “herein”, “hereby”, “hereof”, “hereunder”, “hereinabove”,
22 “hereafter” and “herewith” and other words of similar import in this Resolution refer to
23 this entire Resolution and not solely to any particular section or paragraph of this
24 Resolution in which such word is used.

25 C. All accounting terms not otherwise defined in this Resolution have the
26 meanings assigned to them in accordance with Generally Accepted Accounting
27 Principles.

28 D. Words of the masculine gender shall be deemed and construed to include
29 correlative words of the feminine and neuter genders, and vice versa.

30 E. The headings used in this Resolution are for convenience of reference
31 only and shall not define or limit the provisions of this Resolution.

32 F. Terms in the singular include the plural and vice versa.

1 Section 3. Ratification. All action heretofore taken (not inconsistent with the
2 provisions of this Resolution) by the Water Authority and officers of the Water Authority
3 directed toward the acquisition and completion of the Project, the pledge of the Net
4 Revenues to payment of amounts due under the Loan/Grant Agreement, and the
5 execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is,
6 ratified, approved and confirmed.

7 Section 4. Authorization of the Project and the Loan/Grant Agreement. The
8 acquisition and completion of the Project and the method of funding the Project through
9 execution and delivery of the Loan/Grant Agreement and the other documents related to
10 the transaction are hereby authorized and ordered. The Project is for the benefit and
11 use of the Water Authority and the public whom it serves.

12 Section 5. Findings. The Governing Body hereby declares that it has
13 considered all relevant information and data and hereby makes the following findings:

14 A. The Project is needed to meet the needs of the Water Authority and
15 the public whom it serves.

16 B. Moneys available and on hand for the Project from all sources other
17 than the Loan/Grant are not sufficient to defray the cost of acquiring and completing the
18 Project but, together with the Loan/Grant Amount, are sufficient to complete the Project.

19 C. The Project and the execution and delivery of the Loan/Grant
20 Agreement pursuant to the Act to provide funds for the financing of the Project are
21 necessary, convenient and in furtherance of the governmental purposes of the Water
22 Authority, and in the interest of the public health, safety, and welfare of the constituent
23 public served by the Water Authority.

24 D. The Water Authority will acquire and complete the Project with the
25 proceeds of the Loan/Grant, the Additional Funding Amount and other amounts
26 available to the Water Authority, and except as otherwise expressly provided by the
27 Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of
28 its Useful Life, which is not less than twenty (20) years, as required by NMSA 1978, §
29 72-4A-7(A)(1), as amended.

30 E. Together with the Loan/Grant Amount, and other amounts available
31 to the Water Authority, the Additional Funding Amount is now available to the Water

1 Authority, and in combination with the Loan/Grant Amount, will be sufficient to complete
2 the Project.

3 F. The Finance Authority shall maintain on behalf of the Water
4 Authority a separate Project Account as a book account only on behalf of the Water
5 Authority and financial records in accordance with Generally Accepted Accounting
6 Principles during the construction or implementation of the Project.

7 Section 6. Loan/Grant Agreement—Authorization and Detail.

8 A. Authorization. This Resolution has been adopted by the affirmative vote
9 of a majority of all members of the Governing Body. For the purpose of protecting the
10 public health, conserving the property, and protecting the general welfare and prosperity
11 of the constituent public served by the Water Authority and acquiring and completing the
12 Project, it is hereby declared necessary that the Water Authority execute and deliver the
13 Loan/Grant Agreement evidencing the special limited obligation of the Water Authority
14 to make payments on the Loan Amount of Eight Hundred Thousand Dollars (\$800,000)
15 and the Water Authority's acceptance of the Grant Amount of One Million Two Hundred
16 Thousand Dollars (\$1,200,000). The Loan/Grant Amount shall be utilized solely for
17 Eligible Items necessary to finance the acquisition and completion of the Project, and
18 solely in the manner and according to the restrictions set forth in the Loan/Grant
19 Agreement, the execution and delivery of which is hereby authorized.

20 B. Detail. The Loan/Grant Agreement shall be in substantially the form of the
21 Loan/Grant Agreement presented at the meeting of the Governing Body at which this
22 Resolution was adopted. The Grant shall be in the amount of One Million Two Hundred
23 Thousand Dollars (\$1,200,000) and the Loan shall be in the amount of Eight Hundred
24 Thousand Dollars (\$800,000). Interest on the Loan Amount shall be zero percent (0%)
25 per annum of the unpaid principal balance of the Loan Amount, and the Administrative
26 Fee shall be one-quarter of one percent (0.25%) per annum of the unpaid principal
27 balance of the Loan Amount, taking into account both payments made by the Water
28 Authority and hardship waivers of payments granted to the Water Authority.

29 Section 7. Approval of Loan/Grant Agreement. The form of the Loan/Grant
30 Agreement as presented at the meeting of the Governing Body at which this Resolution
31 was adopted, is hereby approved. Authorized Officers are hereby individually
32 authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such

1 changes, insertions and omissions as may be approved by such individual Authorized
2 Officers, and the Executive Director is hereby authorized to affix the seal of the Water
3 Authority on the Loan/Grant Agreement and attest the same. The execution of the
4 Loan/Grant Agreement shall be conclusive evidence of such approval.

5 Section 8. Security. The Loan Amount and Administrative Fee shall be solely
6 secured by a subordinate lien (but not an exclusive subordinate lien) on the pledge of
7 the Net Revenues herein made and as set forth in the Loan/Grant Agreement. The
8 Loan/Grant Agreement, together with interest thereon and other obligations of the Water
9 Authority thereunder, shall be a special, limited obligation of the Water Authority,
10 payable solely from the Net Revenues as provided in this Resolution, and the
11 Loan/Grant Agreement shall not constitute a general obligation of the Water Authority,
12 the City, the County, or the State, and the holders of the Loan/Grant Agreement may
13 not look to any general or other fund of the Water Authority for payment of the
14 obligations thereunder. Nothing contained in this Resolution nor in the Loan/Grant
15 Agreement, nor any other instruments, shall be construed as obligating the Water
16 Authority (except with respect to the application of the Net Revenues) or as imposing a
17 pecuniary liability or a charge upon the general credit of the Water Authority, nor shall a
18 breach of any agreement contained in this Resolution, the Loan/Grant Agreement, or
19 any other instrument impose any pecuniary liability upon the Water Authority or any
20 charge upon its general credit. The Loan/Grant Agreement shall never constitute an
21 indebtedness of the Water Authority within the meaning of any State constitutional
22 provision or statutory limitation and shall never constitute or give rise to a pecuniary
23 liability of the Water Authority or a charge against its general credit. Nothing herein
24 shall prevent the Water Authority from applying other funds of the Water Authority
25 legally available therefor to payments required by the Loan/Grant Agreement, in its sole
26 and absolute discretion.

27 Section 9. Disposition of Proceeds: Completion of the Project.

28 A. Accounts. The Water Authority hereby consents to creation of the
29 Project Account and the Debt Service Account by the Finance Authority. Until the
30 Completion Date, the amount of the Loan/Grant credited to the Project Account shall be
31 used and paid out solely for Eligible Items necessary to acquire and complete the

1 Project in compliance with applicable law and the provisions of the Loan/Grant
2 Agreement.

3 B. Completion of the Project. The Water Authority shall proceed to
4 complete the Project with all due diligence. Upon the Completion Date, the Water
5 Authority shall execute a certificate stating that completion of and payment for the
6 Project has been completed. Following the Completion Date or the earlier expiration of
7 the time allowed for disbursement of the Loan/Grant Amount as provided in the
8 Loan/Grant Agreement, any balance remaining in the Project Account shall be
9 transferred and deposited into the Water Project Fund or otherwise distributed as
10 provided in the Loan/Grant Agreement.

11 C. Finance Authority Not Responsible. Water Authority shall apply the
12 funds derived from the Loan/Grant Agreement as provided therein, and in particular
13 Article VII of the Loan/Grant Agreement. The Finance Authority shall not in any manner
14 be responsible for the application or disposal by the Water Authority or by its officers of
15 the funds derived from the Loan/Grant Agreement or of any other funds held by or made
16 available to the Water Authority in connection with the Project.

17 Section 10. Payment of Loan Amount.

18 A. DEPOSIT OF NET REVENUES. Net Revenues shall be paid directly by
19 the Water Authority to the Finance Authority in an amount sufficient to pay principal and
20 interest and Administrative Fees due under the Loan/Grant Agreement, as provided in
21 the Loan/Grant Agreement.

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

30 C. USE OF SURPLUS REVENUES. After making all the payments
31 hereinabove required to be made by this Section, any moneys remaining in the Debt
32 Service Account shall be transferred to the Water Authority on a timely basis and

1 applied to any other lawful purpose, including, but not limited to, the payment of any
2 Senior Obligations, Subordinate Obligations or Super Subordinated Obligations, or
3 purposes authorized by the Water Authority, the Constitution and laws of the State, as
4 the Water Authority may from time to time determine.

5 Section 11. Lien on Net Revenues. The Loan/Grant Agreement shall be
6 issued with a lien on the Net Revenues on parity with the lien of the Subordinate
7 Obligations on the Net Revenues and a lien inferior to the lien of the Senior Obligations
8 but superior to the lien of the Super Subordinated Obligations on the Net Revenues.
9 The Net Revenues are hereby authorized to be pledged, and are hereby pledged, and
10 the Water Authority grants a security interest therein, for the payment of the principal
11 and interest and Administrative Fees due under the Loan/Grant Agreement, subject to
12 the uses thereof permitted by and the priorities set forth in this Resolution and the
13 Loan/Grant Agreement. The Loan/Grant Agreement constitutes an irrevocable
14 subordinate lien, but not necessarily an exclusive subordinate lien, on the Net
15 Revenues on a parity with the lien of the Subordinate Obligations on the Net Revenues.

16 Section 12. Authorized Officers. Authorized Officers are hereby individually
17 authorized and directed to execute and deliver any and all papers, instruments,
18 opinions, affidavits and other documents and to do and cause to be done any and all
19 acts and things necessary or proper for carrying out this Resolution, the Loan/Grant
20 Agreement and all other transactions contemplated hereby and thereby. Authorized
21 Officers are hereby individually authorized to do all acts and things required of them by
22 this Resolution and the Loan/Grant Agreement for the full, punctual and complete
23 performance of all the terms, covenants and agreements contained in this Resolution
24 and the Loan/Grant Agreement including but not limited to, the execution and delivery of
25 closing documents in connection with the execution and delivery of the Loan/Grant
26 Agreement.

27 Section 13. Funds and Accounts.

28 A. JOINT WATER AND SEWER FUND. The Water Authority shall continue
29 the Joint Water and Sewer Fund as a separate, distinct and segregated fund. As long
30 as the Loan/Grant Agreement is outstanding, all Gross Revenues shall continue to be
31 set aside and credited to the Joint Water and Sewer Fund.

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

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

9 Section 14. Amendment of Resolution. Prior to the Closing Date, the provisions
10 of this Resolution may be supplemented or amended by resolution of the Governing
11 Body with respect to any changes which are not inconsistent with the substantive
12 provisions of this Resolution. After the Closing Date, this Resolution may be amended
13 without receipt by the Water Authority of any additional consideration, but only with the
14 prior written consent of the Finance Authority.

15 Section 15. Resolution Irrepealable. After the Closing Date, this Resolution
16 shall be and remain irrepealable until all obligations due under the Loan/Grant
17 Agreement shall be fully discharged, as herein provided.

18 Section 16. Severability Clause. If any section, paragraph, clause or provision
19 of this Resolution shall for any reason be held to be invalid or unenforceable, the
20 invalidity or unenforceability of such section, paragraph, clause or provision shall not
21 affect any of the remaining provisions of this Resolution.

22 Section 17. Repealer Clause. All bylaws, orders, ordinances, resolutions, or
23 parts thereof, inconsistent herewith are hereby repealed to the extent only of such
24 inconsistency. This repealer shall not be construed to revive any bylaw, order,
25 resolution or ordinance, or part thereof, heretofore repealed.

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

29
30 *[Remainder of page intentionally left blank.]*
31

1 *[Form of Notice of Adoption of Resolution for Publication]*

2 **Albuquerque Bernalillo County Water Utility Authority**

3 **Notice of Adoption of Resolution**

4 Notice is hereby given of the title and of a general summary of the subject matter
5 contained in a resolution duly adopted and approved by the Board of the Albuquerque
6 Bernalillo County Water Utility Authority (the "Water Authority") on November __, 2021.

7 The title of the Resolution is:

8 **RESOLUTION**

9 **AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT**
10 **FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO**
11 **FINANCE AUTHORITY ("FINANCE AUTHORITY") AND THE ALBUQUERQUE**
12 **BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE "WATER**
13 **AUTHORITY"), IN THE TOTAL AMOUNT OF \$2,000,000 (\$1,200,000 GRANT**
14 **AMOUNT/\$800,000 LOAN AMOUNT), EVIDENCING A SPECIAL LIMITED**
15 **OBLIGATION OF THE WATER AUTHORITY TO UTILIZE THE LOAN/GRANT**
16 **AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE**
17 **WATER AUTHORITY'S PHASE 6 ADVANCED METER INFRASTRUCTURE**
18 **PROJECT IN THE MANNER DESCRIBED IN THE LOAN/GRANT**
19 **AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE**
20 **LOAN AMOUNT AND AN ADMINISTRATIVE FEE SOLELY FROM NET**
21 **REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER**
22 **WITH OTHER FUNDS AVAILABLE TO THE WATER AUTHORITY, IS**
23 **SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF**
24 **AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT;**
25 **RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION**
26 **INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE**
27 **TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND**
28 **DELIVERY OF THE LOAN/GRANT AGREEMENT.**

29 A general summary of the subject matter of the Resolution is contained in its title.
30 This notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

31
32 *[End of Form of Notice of Adoption for Publication]*

PASSED AND ADOPTED THIS ____ DAY OF NOVEMBER 2021.
BY A VOTE OF ____ FOR AND ____ AGAINST.

Chair

ATTEST:

Executive Director

1
2
3

Exhibit A
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY
OUTSTANDING SYSTEM OBLIGATIONS

	Senior Obligations <u>Authorizing Legislation</u>	Original Principal <u>Amount (\$)</u>	Principal <u>Amount Outstanding</u> <u>(\$)</u>
<u>Senior Obligations</u>			
New Mexico Finance Authority Drinking Water Revolving Fund Loan Agreement (2009)	O-09-9 & R-09-24	1,010,000	524,858
Joint Water and Sewer System Improvement and Refunding Revenue Bonds Series 2013A	O-13-2 & R-13-13	62,950,000	9,775,000
Joint Water and Sewer System Improvement and Refunding Revenue Bonds Series 2013B	O-13-2 & R-13-13	55,265,000	11,540,000
Senior Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014A	O-14-2 and R-14-10	97,270,000	52,915,000
Senior Lien Joint Water and Sewer System Refunding and Improvement Revenue Bonds, Series 2015	O-15-2 & R-15-6	211,940,000	150,500,000
Senior Lien Joint Water and Sewer System Refunding and Improvement Revenue Bonds, Series 2017	O-16-2 & R-16-13	87,970,000	71,350,000
Senior Lien Joint Water and Sewer System Improvement Revenue Bonds, Series 2018	O-18-7 & R-18-20	75,085,000	64,250,000
New Mexico Finance Authority Drinking Water Revolving Fund Loan Agreement DW-4877 (2019)	O-19-1 & R-19-4	3,430,081	2,607,551
Senior Lien Joint Water and Sewer System Improvement Revenue Bonds, Series 2020	O-19-3 & R-19-26	69,440,000	69,440,000
Drinking Water State Revolving Fund Loan Agreement DW-5028 (2020)	O-20-1 & R-20-3	1,515,000	1,515,000
Senior Lien Joint Water and Sewer System Refunding Revenue Bonds, Taxable Series 2020A	O-20-2 & R-19-26	47,800,000	46,630,000
Senior Lien Joint Water and Sewer System Improvement Revenue Bonds, Taxable Series 2021	R-21-21	73,255,000	73,255,000
<u>Subordinate Obligations</u>	<u>Subordinate Obligations</u> <u>Authorizing Legislation</u>	<u>Original Principal Amount (\$)</u>	<u>Principal Amount Outstanding (\$)</u>
2008 NMFA Drinking Water Loan	O-08-4 & R-08-13 as amended by F/S O-14-2	12,000,000	5,315,115
Subordinate Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014B	O-14-2 & R-14-10	87,005,000	34,145,000
Water Project Fund Loan/Grant Agreement No. WPF-5103 (2021)	R-20-26	800,000	800,000
<u>Super Subordinate Obligations</u>	<u>Super Subordinate Obligations</u> <u>Authorizing Legislation</u>	<u>Original Principal Amount(\$)</u>	<u>Principal Amount Outstanding(\$)</u>
None	None	0	0

4

\$2,000,000

WATER PROJECT FUND
LOAN/GRANT AGREEMENT

dated

[Closing Date]

by and between the

NEW MEXICO FINANCE AUTHORITY
as Lender/Grantor,

and

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY,
BERNALILLO COUNTY, NEW MEXICO,
as Borrower/Grantee.

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

THIS LOAN/GRANT AGREEMENT (the “Agreement” or “Loan/Grant Agreement”) dated **[Closing Date]**, is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the “Finance Authority” or “Lender/Grantor”), and the **ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY** in BERNALILLO COUNTY, NEW MEXICO (the “Borrower/Grantee”).

W I T N E S S E T H:

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1 through 6-21-31, as amended (the “Finance Authority Act”); and

WHEREAS, the Finance Authority Act provides that the Finance Authority may make loans and grants from the Water Project Fund to qualifying entities for Qualifying Water Projects; and

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

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

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, duly organized and existing public body politic and corporate, separate and apart from the City of Albuquerque, New Mexico 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 NMSA 1978, § 72-1-10, as amended, and is a qualifying entity under the Water Project Finance Act and is qualified for financial assistance as determined by the Finance Authority and approved by the Water Trust Board pursuant to the Board Rules and the Policies and the Act; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the public it serves that the Borrower/Grantee enter into this Agreement with the Lender/Grantor to borrow eight hundred thousand dollars (\$800,000) from the Lender/Grantor and to accept a grant in the amount of one million two hundred thousand dollars (\$1,200,000) from the Lender/Grantor to finance the costs of the Project, this Project being more particularly described in the Term Sheet; and

WHEREAS, the Borrower/Grantee submitted an Application dated October 5, 2020 and January 26, 2021 for the Project; and

WHEREAS, pursuant to the Board Rules the Water Trust Board recommended the Project for funding as a Qualifying Water Project to the Legislature; and

WHEREAS, 2021 N.M. Laws Ch. 48, being Senate Bill 137 of the 2021 Regular New Mexico Legislative Session, authorized the funding of the Project from the Water Project Fund; and

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

WHEREAS, the Finance Authority approved on May 27, 2021 that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan and Administrative Fee, with a subordinate lien (but not an exclusive subordinate lien) on the Pledged Revenues on a parity with the Parity Obligations and subordinate to the lien on the Pledged Revenues of the Senior Obligations (provided that the lien on the Pledged Revenues of any future loans from the Lender/Grantor to the Borrower/Grantee pursuant to the Water Project Finance Act or the Colonias Infrastructure Act, secured by the Pledged Revenues shall be on a parity with this Agreement); and

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

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

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

ARTICLE I DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Agreement including the foregoing recitals, unless the context clearly requires otherwise.

“Act” means the general laws of the State, particularly the Water Project Finance Act, and enactments of the Governing Body relating to this Agreement, including the Resolution, all as amended and supplemented.

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which includes the total value of the Soft Match or Hard Match (each as defined in Section 4.2 of the Policies) which, in combination with the Loan/Grant Amount and other moneys available to the Borrower/Grantee, is sufficient to complete the Project or to provide matching funds needed to complete the Project. The Additional Funding Amount is one million two hundred thousand dollars (\$1,200,000).

“Administrative Fee” or “Administrative Fee Component” means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee pursuant to Section 5.1(a)(iii) of this Agreement.

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

“Application” means the New Mexico Water Trust Board Application dated October 5, 2020 and the New Mexico Water Trust Board Readiness Application dated January 26, 2021 of the Borrower/Grantee and pursuant to which the Borrower/Grantee requested funding for the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the Chair and Executive Director thereof; with respect to the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

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

“Closing Date” means the date of execution and delivery of this Agreement by the Borrower/Grantee and the Finance Authority.

“Colonias Infrastructure Act” means NMSA 1978, §§ 6-30-1 through 6-30-8, as amended.

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

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

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as

required by this Agreement, in an amount not exceeding five (5) percent of the Loan/Grant Amount. The total amount of the combined Eligible Fiscal Agent Fees and Eligible Legal Fees may not exceed ten (10) percent of the total Water Project Fund Financial Assistance.

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

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project, in an amount not exceeding ten (10) percent of the Loan/Grant Amount, but does not include adjudication services. The total amount of the combined Eligible Fiscal Agent Fees and Eligible Legal Fees may not exceed ten (10) percent of the total Loan/Grant Amount.

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

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

“Final Requisition” means the final requisition of moneys to be submitted by the Borrower/Grantee, which shall be submitted by the Borrower/Grantee on or before the expiration of the Interim Period as provided in Section 4.1(b) of this Agreement.

“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 of the Borrower/Grantee may hereafter establish for the Borrower/Grantee as its fiscal year.

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

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

“Governing Body” means the duly organized Board of Directors of the Borrower/Grantee, or any successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and shall not equal more than one million two hundred thousand dollars (\$1,200,000).

“Gross Revenues” means all income and revenues directly or indirectly derived by the Borrower/Grantee 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 Borrower/Grantee, or any municipal corporation or agency succeeding to the rights of the Borrower/Grantee, from the System and from the sale and use of water and sanitary sewer or other 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 Borrower/Grantee, 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 therefor 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 Borrower/Grantee 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.

“Hardship Waiver” means a determination by the Finance Authority pursuant to Section 5.1(a)(iii) herein that the annual principal payment by the Borrower/Grantee should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves.

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

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

“Interim Debt Service Schedule” means the anticipated schedule of Loan Payments due on this Agreement following the Final Requisition, assuming disbursement of the entire Loan Amount within twenty four (24) months of the Closing Date. The Interim Debt Service Schedule is attached hereto as Exhibit “B”.

“Interim Period” means the period no greater than twenty four (24) months, unless a longer period is approved by the Finance Authority as provided in Section 5.3 of this Agreement, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Borrower/Grantee to pay costs of the Project.

“Lender/Grantor” means the Finance Authority.

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to this Agreement for the purpose of funding the Project and shall not equal more than eight hundred thousand dollars (\$800,000).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project and shall not equal more than two million dollars (\$2,000,000).

“Loan Payments” means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Borrower/Grantee as payment of this Agreement as shown on Exhibit “B” hereto.

“Net System Revenues” means the Gross Revenues of the System minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacements and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the System.

“NMAC” means the New Mexico Administrative Code.

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

“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 Borrower/Grantee directly related and reasonably allocable to the administration of the System;

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

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

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

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

(f) Amounts required to be deposited in any rebate fund;

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

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

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Borrower/Grantee's general fund, liabilities incurred by the Borrower/Grantee 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. In the event there is a conflicting description of Operation and Maintenance Expenses in any ordinance or resolution of the Borrower/Grantee, the language of such ordinance or resolution shall control.

"Parity Obligations" means this Agreement, the outstanding Parity Obligations set forth in the Term Sheet and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with Parity Obligations and subordinate to the lien on the Pledged Revenues of any Senior Obligations.

"Pledged Revenues" means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount and Administrative Fees pursuant to the Resolution and this Agreement and described in the Term Sheet.

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

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

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

"Project Account" means the book account established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

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

“Resolution” means the Borrower/Grantee Resolution No. R-21-_____ adopted by the Governing Body on December ___, 2021 authorizing the acceptance of the Loan/Grant, approving this Agreement and pledging the Pledged Revenues to the payment of the Loan Payments as shown on the Term Sheet.

“Senior Obligations” means the outstanding “senior” obligations set forth in the Term Sheet; and any other obligations hereafter issued with a senior lien on the Pledged Revenues.

“State” means the State of New Mexico.

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

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

“System” means the public utility owned by the Borrower/Grantee and designated as the water system and sanitary sewer system (continued as a joint utility system in the Resolution) consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Borrower/Grantee, through purchase, construction or otherwise, including all extensions, enlargements and improvements of or to the water and sanitary sewer system and used in connection therewith or relating thereto, and any other related activity or enterprise of the Borrower/Grantee designated by the Governing Body as part of the water and sanitary sewer system, whether situated within or without the geographical limits of the Borrower/Grantee .

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

“Useful Life” means the structural and material design life of the Project including planning and design features, which shall not be less than twenty (20) years as required by the Act and the Board Rules.

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

“Water Project Finance Act” means NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended.

“Water Project Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

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

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

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

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

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

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

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

Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee, in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(e) Scope of Project; Completion of Project; Compliance with Laws. The Project is for water conservation or recycling, treatment or reuse of water as provided by law. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. The Project is more particularly described in the Term Sheet. The Project will be completed with all practical dispatch and will be completed, operated and maintained so as to comply with all applicable federal, state and local laws, ordinances, resolutions and regulations and all current and future orders of all courts having jurisdiction over the Borrower/Grantee relating to the acquisition, operation, maintenance and completion of the Project and to the use of the Loan/Grant proceeds.

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

(g) Lien. The Loan Payments constitute an irrevocable subordinate lien (but not an exclusive lien) on the Pledged Revenues on a parity with the Parity Obligations and subordinate to the lien on the Pledged Revenues of the Senior Obligations, the priority of which is consistent with that shown on the Term Sheet.

(h) Agreement Term Not Less than Useful Life. The Agreement Term is not less than the Useful Life of the Project, which is not less than twenty (20) years, as required by NMSA 1978, § 72-4A-7, as amended, of the Act.

(i) Amount of Agreement. The sum of the Grant Amount, the Loan Amount, and the Additional Funding Amount (and as set forth on the Term Sheet) does not exceed the cost of the Project.

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

(k) Irrevocable Enactments. While this Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Agreement, including the Resolution shall be irrevocable until the Project has been fully acquired and completed, and the Loan Amount, including all principal and interest has been repaid, or provision made for payment thereof, and shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this

Agreement in a manner not permitted or contemplated by the terms hereof. Unless permitted by the ordinances and resolutions authorizing the outstanding bonds and obligations of the Borrower/Grantee, the Borrower/Grantee shall not impair the rights of the Finance Authority or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding; provided that the Borrower/Grantee will maintain the expected coverage ratio established in Section 2.1(o) of this Agreement during the term of this Agreement

(l) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute or deliver this Agreement and the other documents related to the transaction or to comply with its obligations under this Agreement and the other documents related to the transaction. Neither the execution and delivery of this Agreement and the other documents related to the transaction by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations under this Agreement and the other documents related to the transaction, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(m) No Event of Default. No event has occurred and no condition exists which, with the giving of notice or the passage of time or upon the execution and delivery of this Agreement and the other documents related to the transaction, would constitute an Event of Default on the part of the Borrower/Grantee under this Agreement and the other documents related to the transaction.

(n) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Payments, as and when due, is not needed or budgeted to pay current or anticipated Operation and Maintenance Expenses or other expenses of the Borrower/Grantee.

(o) Expected Coverage Ratio. The Pledged Revenues are reasonably expected to equal or exceed—from the Fiscal Year in which the Closing Date occurs and, on an ongoing basis during each Fiscal Year of the Agreement Term—one hundred percent (100%) of the maximum annual principal and interest due on all outstanding obligations of the Borrower/Grantee payable from the Pledged Revenues.

(p) Right to Inspect. The Finance Authority shall have the right to inspect at all reasonable times all records, accounts and data relating to the Project and to inspect the System.

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

(r) Rate Covenant. The Borrower/Grantee 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 percent (100%) of the

maximum annual principal and interest payments due on all outstanding obligations payable from the Pledged Revenues.

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

(t) Use of Project; Continuing Covenant. During the Agreement Term, the Borrower/Grantee will at all times use the Project for the benefit of the Borrower/Grantee and the public it serves. The Borrower/Grantee will operate and maintain the Project, so that it will function properly over its Useful Life.

(u) Title and Rights of Way. As required by NMSA 1978, § 72-4A-7(A)(3) of the Act, as amended, and the Board Rules, the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that the Borrower/Grantee has proper title to, easements, rights of way or use permits on the real property upon or through which the Project is being constructed, located, completed or extended, and if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, such other qualifying entity has title to such real property, and the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that such other qualifying entity has proper title to such real property.

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

(w) Audit Requirement. During the Agreement Term the Borrower/Grantee shall comply with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended. Upon request by the Finance Authority, the Borrower/Grantee shall provide the Finance Authority a copy of any review or audit, report of agreed upon procedures, or any other document prepared pursuant to or required by the State Audit Act.

(x) Conservation Plan. The Borrower/Grantee has submitted a water conservation plan or one is on file with the State engineer, as required by NMSA 1978, § 72-4A-7, as amended.

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

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

(aa) 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, resolution or regulation of the Borrower/Grantee. If permitted by law, if a bill is not paid within the period of time required by such ordinance, resolution or regulation, water and sanitary sewer utility services shall be discontinued as required by such ordinance, resolution or regulation, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Water and sanitary sewer services may be billed jointly with each other, provided that each such joint bill shall show separately the water and sanitary sewer utility charges.

(bb) Charges and Liens Upon System. The Borrower/Grantee 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 Borrower/Grantee 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 Borrower/Grantee 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.

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

(dd) Competent Management. The Borrower/Grantee shall employ or contract for experienced and competent personnel to manage the System.

(ee) Performing Duties. The Borrower/Grantee 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 Borrower/Grantee relating to the System and this 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 Agreement and the proper segregation and application of the Gross Revenues.

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

(gg) Other Liens. Except for the 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 Agreement. The Borrower/Grantee may incur additional Senior Obligations or Parity Obligations upon the satisfaction of the additional bonds test set forth in the ordinances and resolutions authorizing additional Senior Obligations or Parity Obligations. The additional bonds tests contained in the Borrower/Grantee's existing debt control the issuance of additional bonds and so long as they satisfy the additional bonds tests, there are no other limitations on the issuance of such debt (no consent and no notice requirements). The Borrower/Grantee shall identify any additional Obligations issued by the Borrower/Grantee after the Closing Date in any future application for financing submitted to the Finance Authority.

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

(a) Authorization of Agreement. The Finance Authority is a public body politic and corporate separate and apart from the State, constituting a governmental instrumentality, and has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Agreement and, by proper action, has duly authorized the execution and delivery of this Agreement.

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

ARTICLE III AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate at the end of the Useful Life of the Project, which in no event shall be less than twenty (20) years, as required by NMSA 1978, § 72-4A-7, as amended, of the Act.

ARTICLE IV LOAN/GRANT AGREEMENT CONDITIONS

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

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

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

(c) If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney (or shall have provided a title insurance policy) that such other qualifying entity has proper title to such real property; and

(d) Prior to the disbursement of any portion of the Loan/Grant Amount for purposes of construction of the Project, the plans and specifications funded with the proceeds of this Agreement will be approved on behalf of the Finance Authority as required by NMSA 1978, § 72-4A-7(B), as amended, by the New Mexico Environment Department and the Office of the State of Engineer, and the Borrower/Grantee shall have provided written evidence of such approval to the Finance Authority; and

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

(f) The Borrower/Grantee shall be in compliance with the provisions of this Agreement.

(g) Notwithstanding anything in this Agreement to the contrary, the Finance Authority shall not be obligated to execute the Agreement and may not make the Loan/Grant until the Borrower/Grantee has provided to the Finance Authority the documents listed on Exhibit "F" attached hereto, all of which must be in form and content acceptable to the Finance Authority.

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

any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.

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

Section 5.1 Loan and Grant to the Borrower/Grantee.

(a) Loan to the Borrower/Grantee. The Lender/Grantor hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the Lender/Grantor, without interest, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit “B” of this Agreement.

(i) Subordinate Nature of Loan Amount and Administrative Fee Obligation. The obligation of the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee shall be subordinate to all other Senior Obligations, shall be on a parity with all other Parity Obligations and shall be superior to any Subordinated Obligations. The obligation of the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the Lender/Grantor pursuant to the Water Project Finance Act or the Colonias Infrastructure Act.

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

(iii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, no later than April 1 of each such year, the Borrower/Grantee may apply in writing to the Finance Authority for a determination of whether the annual principal payment on the Loan Amount otherwise due on the upcoming June 1 of such year should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves. The Borrower/Grantee shall submit such application to the Finance Authority for determination with sufficient documentation of the existence of such undue hardship as is reasonably required by the Finance Authority to make a determination, and the Borrower/Grantee shall promptly respond to additional requests for information from the Finance Authority. Such application for Hardship Waiver shall be executed by the Authorized Officers of the Borrower/Grantee. An “undue hardship” exists if the Finance Authority determines that the Borrower/Grantee is facing unforeseen events or an emergency that has caused the Borrower/Grantee to be unable to pay on a timely basis the annual principal payment on the Loan

Amount. The Finance Authority may consult the Department of Finance and Administration in determining whether to grant the Hardship Waiver. The Finance Authority shall make a determination no later than May 15 of the applicable year, and the Finance Authority shall promptly communicate to the Borrower/Grantee in writing the results of its determination. Upon receipt of written notice of the determination, either the principal payment otherwise due on June 1 of such year shall be forgiven (in the event of a determination of undue hardship) or the principal payment shall remain outstanding and due and payable on June 1 (in the event no undue hardship is determined to exist).

(b) Grant to the Borrower/Grantee. The Lender/Grantor hereby grants to the Borrower/Grantee and the Borrower/Grantee hereby accepts from the Lender/Grantor an amount equal to the Grant Amount.

(c) Project Account. The Finance Authority shall establish and maintain the Project Account as a book account only, on behalf of the Borrower/Grantee, which account shall be kept separate and apart from all other accounts of the Finance Authority.

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

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

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

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

ARTICLE VI LOAN PAYMENTS BY THE BORROWER/GRANTEE

Section 6.1 Loan to the Borrower/Grantee; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the

Borrower/Grantee and the Borrower/Grantee hereby borrows from the Finance Authority an amount not to exceed the Loan Amount. The Borrower/Grantee promises to pay, but solely from the sources pledged herein, the Loan Payments and the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Borrower/Grantee 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 Borrower/Grantee in and to (i) the Pledged Revenues on a parity with the Parity Obligations and subordinate to the Senior Obligations, to the extent required to pay the Loan Payments, and to pay the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided (provided that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligations issued by the Lender/Grantor pursuant to the Water Project Finance Act or the Colonias Infrastructure Act); (ii) the Loan/Grant Amount including the Project Account; and (iii) all other rights hereinafter granted, for the securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Payments, Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided, however, that if the Borrower/Grantee, its successors or assigns, shall pay, or cause to be paid, all Loan Payments and Administrative Fees at the time and in the manner contemplated by this Agreement, or shall provide as permitted by Section 6.5 of this Agreement for the payment thereof, and shall pay all other amounts due or to become due under this Agreement in accordance with its terms and provisions then, upon such final payment, this Agreement and the rights created thereby shall terminate; otherwise, this Agreement shall remain in full force and effect.

The schedule of Loan Payments, assuming the disbursement of the entire Loan/Grant Amount within twenty-four (24) months after the Closing Date, identified as the Interim Debt Service Schedule, is attached to this Agreement as Exhibit "B". Within thirty (30) days after the Final Requisition is made, the Finance Authority shall provide a Final Debt Service Schedule, reflecting the amount of the Loan/Grant Amount actually disbursed to the Borrower/Grantee pursuant to this Agreement. Such Final Debt Service Schedule shall supersede the schedule attached hereto as Exhibit "B". The Finance Authority shall additionally calculate the amount of the Administrative Fee that has accumulated during that twenty-four (24) month period from the Closing Date, and shall include such amount in the first Loan Payment due from the Borrower/Grantee on the Final Debt Service Schedule.

The pledge of the Pledged Revenues and the subordinate lien thereon shall be effective upon the Closing Date. The Borrower/Grantee and the Finance Authority acknowledge and agree that the obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues; and that this Agreement with respect to the Loan Amount, the Administrative Fee and other amounts owed by the Borrower/Grantee as herein provided, and that the Agreement shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Borrower/Grantee or the State within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Borrower/Grantee moneys other than the Pledged Revenues, nor shall any provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee moneys other than the Pledged Revenues. In addition, to the extent

not required for the payment of obligations of the Borrower/Grantee hereunder, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

Section 6.2 Deposit of Payments of Loan Amount to Water Project Fund. All Loan Payments made by the Borrower/Grantee to the Finance Authority to repay the Loan Amount and interest thereon, if any, shall be deposited into the Water Project Fund.

Section 6.3 Manner of Payment. The Loan Amount and Administrative Fee shall be payable by the Borrower/Grantee to the Lender/Grantor in annual installments on June 1 beginning after expiration of the Interim Period and continuing through the expiration of the last Loan Payment due as outlined in the Final Debt Service Schedule. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 of this Agreement. The obligation of the Borrower/Grantee to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder. Notwithstanding any dispute between the Borrower/Grantee and the Finance Authority, any vendor or any other person, the Borrower/Grantee shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 6.4 Borrower/Grantee May Budget for Payments. The Borrower/Grantee may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to make the Loan Payments and other amounts owed by the Borrower/Grantee hereunder; provided, however, the Borrower/Grantee has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

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

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

ARTICLE VII THE PROJECT

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

(a) The Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire, complete, operate and maintain the Project lawfully and efficiently.

The Project shall be constructed and completed substantially in accordance with the approved plans and specifications, and shall fully incorporate the available technologies and operational design for water use efficiency described in the approved plans and specifications. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(b) As provided by NMSA 1978, § 72-4A-7(A)(1), as amended, of the Act, the Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, which shall in no event be less than twenty (20) years, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, located, completed, installed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other qualifying entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall be subject to approval by the Lender/Grantor and shall include an express statement by such other qualifying entity that the Lender/Grantor is a third party beneficiary of such written agreement.

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

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

Section 7.4 Borrower/Grantee Reporting to Lender/Grantor. During the acquisition implementation, installation and construction of the Project, the Borrower/Grantee shall provide the Lender/Grantor with a quarterly written report executed by an Authorized Officer of the Borrower/Grantee, in the form attached as Exhibit "D" hereto or in another form reasonably acceptable to the Lender/Grantor, describing the status of the Project as of the report date, uses of Loan/Grant funds during the quarterly period ending on the report date, and requests for

distributions of Loan/Grant funds anticipated to occur during the quarterly period immediately following the report date. The first quarterly report shall be due on March 31, 2022, and subsequent reports shall be due on each March 31, June 30, September 30 and December 31 thereafter until the report date next following final distribution of the Loan/Grant funds. No reports shall be required after the report date next following final distribution of the Loan/Grant Funds, unless specifically required by the Finance Authority or the Water Trust Board. The description of the status of the Project in each quarterly report shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, (c) a description of the percentage of completion of the Project; and (d) a timeline of projected milestones.

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

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

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

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

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

ARTICLE VIII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 8.1 Further Assurances and Corrective Instruments. The Lender/Grantor and the Borrower/Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues and for carrying out the intention hereof.

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

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

Section 8.4 Non-Discrimination in Employment. Except as otherwise specifically provided in the laws, statutes, ordinances or regulations of the Borrower/Grantee, the Borrower/Grantee shall require in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

Section 8.5 Little Miller Act. To the extent NMSA 1978, § 13-4-1 et seq., (the “Little Miller Act”) is applicable to the Project, the Borrower/Grantee shall comply with the requirements of the “Little Miller Act”. If bonding requirements of the Little Miller Act are not applicable to the Project, the Borrower/Grantee will require that the contractor to whom is given any contract for construction appertaining to the Project supply a performance bond or bonds satisfactory to the Borrower/Grantee. Any sum or sums derived from said performance bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

Section 8.6 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin; and

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

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

Section 8.7 Application of Act and Board Rules. While this Agreement is outstanding, the Lender/Grantor and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and Board Rules are incorporated into this Agreement by reference.

Section 8.8 Continuing Disclosure. The Borrower/Grantee shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits and notification of any event deemed material by the Finance Authority. For purposes of this Agreement, a material event may include, without limitation, any event which may or does affect the Pledged Revenues, the ability of the Borrower/Grantee to repay the loan, and the default of the Borrower/Grantee in performance or observance of any covenant, term, or condition contained in any other loan agreement with the Finance Authority.

ARTICLE IX INSURANCE; NON-LIABILITY OF LENDER/GRANTOR

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

Section 9.2 Non-Liability of Lender/Grantor.

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

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

(c) From and to the extent of the Pledged Revenues, and to the extent permitted by law, the Borrower/Grantee shall and hereby agrees to indemnify and save the Finance Authority 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 Agreement Term, from: (i) any act of negligence or other misconduct of the Borrower/Grantee, or breach of any covenant or warranty by the Borrower/Grantee 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/Grant Agreement proceeds and interest on the investment thereof. The Borrower/Grantee shall indemnify and save the Finance Authority harmless, from and to the extent of the available Pledged Revenues, and to the extent permitted by applicable law, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority, shall defend the Finance Authority 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 Agreement:

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

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

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

(d) A petition is filed against the Borrower/Grantee 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 prior to the expiration of such thirty (30) days to protect their interests;

(e) The Borrower/Grantee 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 Borrower/Grantee 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 Borrower/Grantee 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 prior to the expiration of such thirty (30) days to protect their interests.

(g) Default by the Borrower/Grantee in performance or observance of any covenant contained in any other loan agreement, document or instrument of any type whatsoever evidencing or securing obligations of the Borrower/Grantee to the Finance Authority.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.2 hereof, the Lender/Grantor may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any obligations of the Borrower/Grantee in this Agreement:

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

(b) Terminate this Agreement;

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

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

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

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

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

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

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

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

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lender/Grantor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Borrower/Grantee or the Lender/Grantor 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 Lender/Grantor may, in its sole discretion, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Lender/Grantor in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Lender/Grantor, on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Lender/Grantor 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. In the event that the Borrower/Grantee shall default under any of the provisions hereof and the Finance Authority shall employ attorneys or incur 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 Borrower/Grantee herein contained, the Borrower/Grantee 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 such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Borrower/Grantee 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 Borrower/Grantee, to:

Albuquerque Bernalillo County Water Utility Authority
Attn.: Executive Director
P.O. Box 568
Albuquerque, NM 87103-0568

If to the Finance Authority, then to:

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

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

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

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

Section 11.4 Amendments. This Agreement may be amended only with the written consent of both of the parties hereto. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this 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 Agreement.

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

Section 11.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to make the Loan Payments and the Administrative Fee 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 11.7 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

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

Section 11.10 Further Assurances and Corrective Instruments. The Finance Authority and the Borrower/Grantee 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.

Section 11.11 Finance Authority and Borrower/Grantee Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Borrower/Grantee is required, or the Borrower/Grantee 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 Borrower/Grantee by an Authorized Officer of the Finance Authority or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 11.12 CONSENT TO JURISDICTION. THE BORROWER/GRANTEE IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DOCUMENTS SIGNED IN CONNECTION WITH THIS TRANSACTION WILL BE LITIGATED IN THE FIRST JUDICIAL DISTRICT COURT, SANTA FE COUNTY, NEW MEXICO, PURSUANT TO NMSA 1978, § 6-21-26.

[Signature pages follow.]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, has executed this Agreement, which was approved by the Water Trust Board on May 14, 2021 and by the Finance Authority's Board of Directors on May 27, 2021, in its corporate name by its duly authorized officer; and the Borrower/Grantee has caused this Agreement to be executed in its corporate name and the seal of the Borrower/Grantee affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

LENDER/GRANTOR:

NEW MEXICO FINANCE AUTHORITY

By: _____
Marquita D. Russel, Chief Executive Officer

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

VIRTUE & NAJJAR, PC
As Loan/Grant Counsel

By: _____
Richard L. C. Virtue

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

Daniel C. Opperman, Chief Legal Officer
New Mexico Finance Authority Legal and Compliance Department

BORROWER/GRANTEE:

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

By: _____
Steven Michael Quezada, Chair

[SEAL]

ATTEST:

By: _____
Mark Sanchez, Executive Director

EXHIBIT “A”

TERM SHEET

**\$2,000,000 WATER PROJECT FUND LOAN/GRANT TO THE
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY,
BERNALILLO COUNTY, NEW MEXICO**

Project Description:	The Project is for water conservation or recycling, treatment or reuse of water as provided by law. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. In particular, the Project will consist of replacing approximately 18,000 existing water meters with Advanced Metering Infrastructure (AMI) meters and devices, and shall include such other related work and revisions necessary to complete the Project. The Project may be further described in the Application and in the final plans and specifications for the Project approved by the Water Trust Board and the Finance Authority as provided by this Agreement. However, in the event of any inconsistency, the description of the Project as stated in this Term Sheet shall control.
Grant Amount:	\$1,200,000
Loan Amount:	\$800,000
Pledged Revenues:	A subordinate lien (but not an exclusive subordinate lien) on the Net System Revenues of the System designated as the City of Albuquerque, New Mexico, Joint Water and Sewer Fund originally established in Section 16 of the City of Albuquerque Ordinance No. 18-1984 and continued in Section 13 of the Resolution as the Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer Fund.
Outstanding Senior Obligations:	2009 NMFA DW Loan 2316-ADW; Series 2013A Revenue Bonds; Series 2013B Joint Water and Sewer System Improvement Revenue Bonds; Series 2014A Joint Water and Sewer System Refunding Revenue Bonds; Series 2015 Joint Water and Wastewater System Refunding and Improvement Revenue Bonds; Series 2017 Joint Water and Sewer System Refunding and Improvement Revenue Bonds; Series 2018; Joint Water and Sewer System Improvement Revenue Bonds; NMFA DW Loan 4877-DW; 2020 NMFA DW Loan DW-5028; Series 2020 Joint Water and Sewer

System Improvement Revenue Bonds; Series 2020A Joint Water and Sewer System Refunding Revenue Bonds (Taxable); Series 2021 Senior Lien Joint Water and Sewer System Improvement Revenue Bonds.

Outstanding Parity
Obligations:

2008 NMFA DW Loan 1727-DW, Series 2014B Refunding Revenue Bonds; 2021 WTB Loan/Grant No. WPF-5103.

Outstanding Subordinated
Obligations:

None.

Authorizing Legislation:

Borrower/Grantee Resolution No. R-21-_____,
adopted December ____, 2021

Additional Funding Amount:

\$1,200,000

Closing Date:

[Closing Date]

Project Account Amount:

\$2,000,000

Expense Account Deposit:

\$0

Administrative Fee:

0.25%

Conditions to be satisfied prior to first disbursement of Loan/Grant funds: Delivery to Finance Authority of (i) a copy of the agenda of the meeting of the Governing Body at which the Resolution was adopted and at which this Agreement, the Resolution and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the Chair of the Borrower/Grantee, (ii) a copy of the minutes or record of proceedings of the Meeting, approved and signed by the Executive Director and attested to by the Chair of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant: All Conditions defined in the Agreement.

EXHIBIT “B”

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount and Administrative Fee shall be payable by the Borrower/Grantee to the Lender/Grantor in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2024 and ending June 1, 2043. The Loan Amount shall be pre-payable upon expiration of the Interim Period without penalty. The Administrative Fee shall be due and payable annually on June 1 of each year while the Loan, or any portion thereof, remains outstanding.

[ATTACH DEBT SERVICE SCHEDULE OR INTERIM DEBT SERVICE SCHEDULE]

EXHIBIT "C"

**FORM OF REQUISITION
(Water Project Fund)**

RE: \$2,000,000 Loan/Grant Agreement by and between the New Mexico Finance Authority, as Lender/Grantor, and the Albuquerque Bernalillo County Water Utility Authority, New Mexico as Borrower/Grantee (the "Agreement" or "Loan/Grant Agreement")

Loan/Grant No. WPF-5401 Closing Date: **[Closing Date]**

TO: NEW MEXICO FINANCE AUTHORITY

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

I. PAYMENT INFORMATION

REQUISITION NO. _____ PAYMENT AMOUNT: \$ _____

PAYEE'S NAME: _____

PAYEE'S ADDRESS: _____

II. REQUISITION INFORMATION (complete for all payments)

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

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

III. WIRING INFORMATION:

BANK NAME:	
ROUTING NUMBER:	
ACCOUNT NUMBER:	

IV. MATCH INFORMATION

AMOUNT OF LOCAL MATCH EXPENDED SINCE LAST REQUISITION: \$_____

Attach proof of expenditures for hard match (detailed invoices, cancelled checks, wire transfer receipt, bank statement, etc.) and written certification of type and value of any soft match.

AMOUNT OF LOCAL MATCH EXPENDED TO DATE: \$_____

TOTAL REQUIRED MATCH: \$_____

V. VERIFICATION AND AUTHORIZATION

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

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

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

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

DATE: _____

AUTHORIZED OFFICER

(As Provided in the Loan/Grant Agreement)

Print Name: _____

Print Title: _____

EXHIBIT "D"

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

Fund Recipient: Albuquerque Bernalillo County Water Utility Authority Contact Name: _____ Title: _____ Email Address: _____	Project Number: WPF-5401 Project Name: Phase 6 Advanced Meter Infrastructure Project Type: Water Conservation or Treatment, Recycling or Reuse Project
Reporting Period: From _____ To _____ <input type="checkbox"/> Quarterly Project Report: <input type="checkbox"/> 1 st <input type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input type="checkbox"/> 4 th <input type="checkbox"/> Final Project Report <input type="checkbox"/> Other _____	
WPF Funding Expiration: _____ Total WPF Award: <u>\$2,000,000</u> Current Balance: \$ _____ Loan 40% Grant 60% Match \$1,200,000 Expected WPF Award Expenditure Next Quarter: \$ _____ Local Match Expenditure: To Date \$ _____ Next Quarter \$ _____	
Project Phase: <input type="checkbox"/> Planning <input type="checkbox"/> Design <input type="checkbox"/> Construction	
PROJECT COMPLETION: Original Date _____ Current Date _____ _____ % Complete Days Remaining to Complete _____ On Schedule? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Briefly Describe Project Progress During This Reporting Period: 	
Issues Addressed During This Reporting Period, including any current or anticipated issues that remain unresolved: 	
Goals/Milestones, With Timeline or Dates, For The Next Reporting Period: 	
Authorized Officer PRINT NAME: _____ PRINT TITLE: _____	
SIGNATURE: _____	Date: _____

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

EXHIBIT "E"
FORM OF CERTIFICATE OF COMPLETION

RE: \$2,000,000 Loan/Grant Agreement by and between the Finance Authority, as Lender/Grantor, and the Albuquerque Bernalillo County Water Utility Authority, New Mexico as Borrower/Grantee (the "Agreement" or "Loan/Grant Agreement")

Loan/Grant No. WPF-5401

Closing Date: **[Closing Date]**

TO: NEW MEXICO FINANCE AUTHORITY

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

Borrower/Grantee, hereby certify as follows:

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

2. The total cost of the Project was \$ _____.

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

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

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

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

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

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

By: _____

Its: _____

EXHIBIT “F”

DOCUMENTS

1. Open Meetings Act Resolution Nos. R-21-1 adopted by the Borrower/Grantee on January 27, 2021
2. Resolution No. R-21-____ adopted on December ____, 2021, Notice of Meeting, Meeting Agenda, Minutes and Affidavit of Publication of Notice of Adoption of Resolution in the *Albuquerque Journal*
3. Loan/Grant Agreement
4. General and No Litigation Certificate of the Borrower/Grantee
5. Delivery, Deposit and Cross-Receipt Certificate
6. Right of Way Certificate
7. Borrower’s Counsel Opinion
8. Approving Opinion of Virtue & Najjar, PC, Loan/Grant Counsel to the Finance Authority
9. Finance Authority Application and Project Approval (informational only)