

GRANT COUNTY, NEW MEXICO

RESOLUTION NO. R-11-19

DECLARING THE INTENT OF THE BOARD OF COUNTY COMMISSIONERS OF GRANT COUNTY, NEW MEXICO TO CONSIDER FOR ADOPTION AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND GRANT COUNTY (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF EIGHTY-EIGHT THOUSAND DOLLARS (\$88,000), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE PLANNING, DESIGN AND ENGINEERING TO STABILIZE THE GILA RIVER DOWNSTREAM FROM THE U.S. HIGHWAY 180 CROSSING, TO PROTECT RIPARIAN HABITAT AND ADJACENT PROPERTY AND IMPROVEMENTS AGAINST FURTHER DAMAGE FROM FLOODING, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

WHEREAS, the Board of Commissioners of Grant County, New Mexico has determined that it is in the best interests of Grant County ("Borrower/Grantee") and the constituent public it serves that the Borrower/Grantee enter into this Agreement with the New Mexico Water Trust Board and the New Mexico Finance Authority ("Lenders/Grantors") to borrow seventeen thousand six hundred dollars (\$17,600) from the Lenders/Grantors and to accept a grant in the amount of seventy thousand four hundred dollars (\$70,400) from the Lenders/Grantors to finance the costs of the planning, design and engineering to stabilize the Gila River downstream from the U.S. Highway 180 bridge crossing, to protect riparian habitat and adjacent property and improvements against further damage from flooding; and

WHEREAS, based upon the NMFA's evaluation of the New Mexico Water Trust Board Application for Financial Assistance dated October 30, 2009, of the Borrower/Grantee and dealing with the Project, the NMFA's Board of Directors has recommended to the Water Trust Board that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant, and has authorized the NMFA to enter into and administer this Agreement; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan; and

WHEREAS, the Pledged Revenues will derive from the first 1/8 percent increment of County Local Option Gross Receipts Tax authorized by Section 7-20E-9, NMSA 1978 and Grant

County Ordinance No. 90-03-01, adopted March 1, 1990, as amended and supplemented, distributed monthly to Grant County pursuant to Section 7-1-6.13, NMSA 1978, equal to 0.125% of the gross receipts of persons engaging in business within Grant County outside the boundaries of any municipality, and the portion of any gross receipts tax distribution to Grant County made pursuant to Section 7-1-6.47, NMSA 1978, representing the amount of the first 1/8 percent increment of County Local Option Gross Receipts Tax that would have been remitted to Grant County but for the deductions provided by Sections 7-9-92 and 7-9-93, NMSA 1978, and any similar distributions made to the Governmental Unit in lieu of the first 1/8 percent increment of County Local Option Gross Receipts Tax revenues; and

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

WHEREAS, Section 4-37-7, NMSA 1978, requires that publication of the title and general summary of the subject matter of any proposed ordinance be made in a newspaper of general circulation within the Governmental Unit at least two weeks prior to the meeting of the Board of County Commissioners at which the Ordinance is proposed for final passage.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF GRANT COUNTY, NEW MEXICO:

Section 1. All action (not inconsistent with this Resolution) heretofore taken by the Board of County Commissioners of the Governmental Unit and the officers, employees and agents of the Governmental Unit thereof directed toward the authorization, execution and delivery of the Water Project Fund Loan/Grant Agreement for such purposes, be and the same is hereby ratified, approved and confirmed.

Section 2. The publication, in accordance with Section 4-37-7, NMSA 1978, as amended, in the *Silver City Daily Press*, a newspaper of general circulation within the Governmental Unit, of the following Notice at least two weeks prior to the meeting at which the Board of County Commissioners will consider the Ordinance, is hereby authorized.

Section 3. The Ordinance shall be filed with the County Clerk, and shall be considered by the County Commission of Grant County, New Mexico at its regular meeting on July 14, 2011, commencing at the hour of 9:00 a.m., or as soon thereafter as the matter may be heard, in the Grant County Administration Center, 1400 E. Highway 180, Silver City, New Mexico.

[Form of Notice]

Grant County, New Mexico
Notice of Meeting and Intent to Adopt Ordinance

Notice is hereby given that at its regular meeting on July 14, 2011, commencing at the hour of 9:00 a.m., the County Commission of Grant County, New Mexico, will conduct a public hearing to consider the approval and adoption of a proposed Ordinance, the title of which appears below. Complete copies of the proposed Ordinance are available for public inspection during normal and regular business hours in the offices of the County Clerk, Grant County Administration Center, 1400 Highway 180 East, Silver City, New Mexico 88061.

The title of the proposed Ordinance is:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND GRANT COUNTY (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF EIGHTY-EIGHT THOUSAND DOLLARS (\$88,000), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE PLANNING, DESIGN AND ENGINEERING TO STABILIZE THE GILA RIVER DOWNSTREAM FROM THE U.S. HIGHWAY 180 CROSSING, TO PROTECT RIPARIAN HABITAT AND ADJACENT PROPERTY AND IMPROVEMENTS AGAINST FURTHER DAMAGE FROM FLOODING, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

The title sets forth a general summary of the subject matter contained in the proposed Ordinance.

This Notice constitutes compliance with Section 4-37-7, NMSA 1978, as amended.

[End of Form of Notice]

(Signature page follows)

PASSED AND ADOPTED THIS 9th day of JUNE 2011.

GRANT COUNTY
BOARD OF COMMISSIONERS:

 *Brett Kasten*
Brett Kasten, Chairman

Christy Miller
Christy Miller, Commissioner

Gabriel Ramos
Gabriel Ramos, Commissioner

Robert Zamarripa [seal]
Robert Zamarripa
Grant County Clerk

Approved as to form:

Abigail E. Robinson,
Grant County Attorney

DRAFT

RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF
ORDINANCE NO. _____ OF THE BOARD OF COUNTY COMMISSIONERS
OF GRANT COUNTY, JULY 14, 2011

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

The Board of County Commissioners (the "Governing Body") of Grant County (the "Borrower/Grantee") met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at the Grant County Administration Center, 1400 Highway 180 East, Silver City, New Mexico, being the meeting place of the Governing Body for the meeting held on the 14th day of July, 2011 at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Present:

Chairman: _____

Commissioners:

Absent:

Also Present:

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

GRANT COUNTY
ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND GRANT COUNTY (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF EIGHTY-EIGHT THOUSAND DOLLARS (\$88,000), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE PLANNING, DESIGN AND ENGINEERING TO STABILIZE THE GILA RIVER DOWNSTREAM FROM THE U.S. HIGHWAY 180 CROSSING, TO PROTECT RIPARIAN HABITAT AND ADJACENT PROPERTY AND IMPROVEMENTS AGAINST FURTHER DAMAGE FROM FLOODING, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

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

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing county under the general laws of the State of New Mexico and more specifically, Section 4-9-1 et seq., NMSA 1978, as supplemented and amended; and

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

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

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the

Borrower/Grantee, the Water Trust Board or the NMFA or a debt or pledge of the faith and credit of the Borrower/Grantee, the Water Trust Board, the NMFA or the State; and

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF GRANT COUNTY, NEW MEXICO:

Section 1. Definitions. As used in this Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

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

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount, is sufficient to complete the Project or to provide matching funds needed to complete the Project. The Additional Funding Amount is eight thousand eight hundred dollars (\$8,800).

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

“Authorized Officers” means the Chairman of the Board of County Commissioners, County Manager and County Clerk of the Borrower/Grantee.

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

“Borrower/Grantee” means Grant County in the State of New Mexico.

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

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

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

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

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

“Governing Body” means the Board of County Commissioners of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is seventy thousand four hundred dollars (\$70,400).

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

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

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is seventeen thousand six hundred dollars (\$17,600).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the

Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project.

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

“NMAC” means the New Mexico Administrative Code.

“NMFA” means the New Mexico Finance Authority.

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

“Ordinance” means this Ordinance as supplemented or amended from time to time.

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

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

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

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

“State” means the State of New Mexico.

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

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

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

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

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

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

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

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

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

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

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

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

F. The Lenders/Grantors shall maintain on behalf of the Borrower/Grantee a separate Project account or Project accounts and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a two-thirds majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the constituent public served by the Borrower/Grantee and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and

deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of seventy thousand four hundred dollars (\$70,400) and borrowing the Loan Amount of seventeen thousand six hundred dollars (\$17,600) to be utilized solely for the purpose of completing the Project and paying Expenses, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which are hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project and to pay Expenses.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Grant shall be in the amount of seventy thousand four hundred dollars (\$70,400) and the Loan shall be in the amount of seventeen thousand six hundred dollars (\$17,600). Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount, and the Administrative Fee shall be one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

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

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

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

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

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

C. Water Trust Board and NMFA Not Responsible. Neither the Water Trust Board nor the NMFA shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds held by or made available to the Borrower/Grantee in connection with the Project.

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

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, which lien shall be subordinate to any lien on the Pledged Revenues existing on the Closing Date and, further, shall be subordinate to all other indebtedness secured or that may in the future be secured by the Pledged Revenues, except, however, that the lien shall be on parity with any other lien, present or future, for the repayment of any other loan provided to the Borrower/Grantee by the Lenders/Grantors pursuant to the Act.

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

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

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

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

Section 15. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This

repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

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

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

[Remainder of page intentionally left blank.]

[Form of Summary of Ordinance for Publication]

**Grant County
Notice of Adoption of Ordinance**

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. _____, duly adopted and approved by the Board of County Commissioners of Grant County on July 14, 2011. A complete copy of the Ordinance is available for public inspection during normal and regular business hours in the office of the County Clerk, at Grant County Administration Center, 1400 Highway 180 East, Silver City, New Mexico 88061.

The title of the Ordinance is:

**GRANT COUNTY
ORDINANCE NO. _____**

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND GRANT COUNTY (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF EIGHTY-EIGHT THOUSAND DOLLARS (\$88,000), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE PLANNING, DESIGN AND ENGINEERING TO STABILIZE THE GILA RIVER DOWNSTREAM FROM THE U.S. HIGHWAY 180 CROSSING, TO PROTECT RIPARIAN HABITAT AND ADJACENT PROPERTY AND IMPROVEMENTS AGAINST FURTHER DAMAGE FROM FLOODING, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

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

[End of Form of Summary for Publication]

PASSED, APPROVED AND ADOPTED THIS 14TH DAY OF JULY, 2011.

GRANT COUNTY

By _____
Brett A. Kasten, Chairman
Board of County Commissioners

ATTEST:

By _____
Robert Zamarripa,
County Clerk

[Remainder of page intentionally left blank.]

Governing Body Member _____ then moved adoption of the foregoing Ordinance, duly seconded by Governing Body Member _____.

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

Those Voting Aye:

Those Voting Nay:

Those Absent:

_____ () Members of the Governing Body having voted in favor of the motion, the Chairman declared the motion carried and the Ordinance adopted, whereupon the Chairman and the County Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

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

GRANT COUNTY

By _____
Brett A. Kasten, Chairman
Board of County Commissioners

ATTEST:

By _____
Robert Zamarripa,
County Clerk

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

I, Robert Zamarripa, the duly qualified and acting County Clerk of Grant County (the "Borrower/Grantee"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of County Commissioners of the Borrower/Grantee (the "Governing Body"), had and taken at a duly called regular meeting held at the Grant County Administration Center, 1400 Highway 180 East, Silver City, New Mexico, on July 14, 2011 at the hour of 9:00 a.m., insofar as the same relate to the adoption of Ordinance No. _____ and the execution and delivery of the proposed Loan/Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August, 2011.

GRANT COUNTY

By Robert Zamarripa,
County Clerk

EXHIBIT "A"

Notice of Meeting

DRAFT

\$88,000

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

Dated

August 19, 2011

By and between the

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

and

**Grant County,
New Mexico,
as Borrower/Grantee.**

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

THIS LOAN/GRANT AGREEMENT (the "Agreement") dated August 19, 2011, is entered into by and between the **NEW MEXICO WATER TRUST BOARD** (the "Water Trust Board") and **THE NEW MEXICO FINANCE AUTHORITY** (the "NMFA") (collectively, the "Lenders/Grantors"), and **GRANT COUNTY**, New Mexico (the "Borrower/Grantee").

W I T N E S S E T H:

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

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

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

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

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

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

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

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing county under the general laws of the State and more specifically, Section 4-9-1 et seq., NMSA 1978, as amended and supplemented, and is a qualifying entity under the Act and is qualified for financial assistance as defined by the Board Rules; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the constituent public it serves that the Borrower/Grantee enter into this Agreement with the Lenders/Grantors to borrow seventeen thousand six hundred dollars (\$17,600) from the Lenders/Grantors and to accept a grant in the amount of seventy thousand four hundred dollars (\$70,400) from the Lenders/Grantors to finance the costs of the planning, design and engineering to stabilize the Gila River downstream from the U.S. Highway 180 bridge crossing, to protect riparian habitat and adjacent property and improvements against further damage from flooding, this project being more particularly described in the Term Sheet; and

WHEREAS, based upon the NMFA's evaluation of the New Mexico Water Trust Board Application for Financial Assistance dated October 30, 2009 of the Borrower/Grantee and dealing with the Project, the NMFA's Board of Directors has recommended to the Water Trust Board that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant, and has authorized the NMFA to enter into and administer this Agreement; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan; and

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I DEFINITIONS

The capitalized terms defined in this Article I shall have the meanings assigned therein, unless the context clearly requires otherwise.

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

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount, is sufficient to complete the Project or to provide matching funds needed to complete the Project. The Additional Funding Amount is eight thousand eight hundred dollars (\$8,800).

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

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

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

“Application” means the New Mexico Water Trust Board Application for Financial Assistance dated October 30, 2009 of the Borrower/Grantee and dealing with the Project.

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

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

“Borrower/Grantee” means Grant County in the State of New Mexico.

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

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

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

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

“Eligible Items” means eligible Project costs for which grants and loans may be made pursuant to Section 72-4A-7(C) of the Act, as amended and supplemented, the Board Rules and applicable Water Trust Board policies, and includes Expenses. Eligible items include (1) matching requirements for federal and local cost shares, (2) engineering feasibility reports, (3) contracted engineering design, (4) inspection of construction, (5) special engineering services, (6) environmental or archaeological surveys, (7) construction, (8) land acquisition, (9) easements and rights of way, (10) Eligible Legal Costs, and (11) Eligible Fiscal Agent Fees.

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

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

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

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

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

“Governing Body” means the Board of County Commissioners of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and equals seventy thousand four hundred dollars (\$70,400).

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

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to this Agreement for the purpose of funding the Project and equals seventeen thousand six hundred dollars (\$17,600).

“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.

“NMAC” means the New Mexico Administrative Code.

“NMFA” means the New Mexico Finance Authority.

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

“Ordinance” means the Borrower/Grantee’s Ordinance No. _____, adopted July 14, 2011, authorizing the execution of this Agreement.

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

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

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

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

“State” means the State of New Mexico.

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

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

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

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

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

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

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

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

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

(d) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the distribution of the proceeds of the Loan/Grant Amount shall be deemed to be a distribution to the Borrower/Grantee first of the Loan Amount and then, once an amount equal to the Loan Amount has been distributed, of the Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to the completion of the Project and the payment of the Expenses, and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant Amount, together with the Additional Funding Amount and other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project in its entirety and to pay the Expenses.

(e) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Amount as provided in this Agreement. The Loan shall be payable solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to pay the Loan from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Completion of Project; Compliance with Laws. The Project will consist of the planning, design and engineering to stabilize the Gila River downstream from the U.S. Highway 180 bridge crossing, to protect riparian habitat and adjacent property and improvements against further damage from flooding. The Project is more particularly described in the Term Sheet. The Project will be completed, operated and maintained so as to comply with all applicable laws, ordinances, resolutions and regulations relating to the acquisition, operation, maintenance and completion of the Project and to the use of the Loan/Grant proceeds.

(g) Necessity of Project. The completion and operation of the Project under the terms and conditions provided in this Agreement are necessary, convenient and in

furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee and the constituent public it serves.

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

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

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

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

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

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

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

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

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

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

(r) Use of Project; Continuing Covenant. The Borrower/Grantee shall not sell, lease, mortgage, pledge, relocate or otherwise dispose of or transfer the Project or any part of the Project during its Useful Life; provided, however, that if the Project is a joint project of the Borrower/Grantee and other qualifying entities (as defined by the Act), the Borrower/Grantee and the other qualifying entities may, with the express written approval of the Lenders/Grantors and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during its Useful Life. Such agreement shall provide that the Lenders/Grantors, or either of them, shall have the power to enforce the terms of this Agreement, without qualification, as to each and every qualifying entity owning or operating any portion of the Project during its Useful Life. If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other qualifying entity to abide by these restrictions with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other qualifying entity that the Lenders/Grantors are third party beneficiaries of such written agreement. The provisions of this Section shall remain effective and enforceable by the Lenders/Grantors for the duration of the Useful Life of the Project.

(s) Maintenance of Separate Project Accounts. The Lenders/Grantors on behalf of the Borrower/Grantee shall maintain a separate Project account or accounts. The Borrower/Grantee shall maintain financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

(t) Title and Rights of Way. The Borrower/Grantee has or, prior to commencing construction, shall obtain title to, easements, rights of way or use permits on the real property upon which the Project is being constructed, located, completed or extended, and if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, such other qualifying entity has title to such real property. If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that such other qualifying entity has proper title to such real property.

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

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

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

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

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

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

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

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

ARTICLE III AGREEMENT TERM

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

ARTICLE IV LOAN/GRAANT AMOUNT DISBURSEMENT CONDITIONS

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

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

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

reasonably acceptable to the Lenders/Grantors of the availability of the Additional Funding Amount; and

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

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

Section 4.2 Determination of Eligibility Is Condition Precedent to Disbursement. No disbursement shall be made from the Project Account except upon a determination by the NMFA that such disbursement is for payment of Eligible Items, and that the disbursement does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and Water Trust Board policies governing the Water Project Fund. The NMFA, as a condition precedent to making any requested disbursement, may require submittal of such documentation as the NMFA deems necessary, in its sole and absolute discretion, for a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and applicable Water Trust Board policies.

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

Section 5.1 Loan and Grant to the Borrower/Grantee.

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

(i) **Subordinate Nature of Loan Amount Obligation.** The obligation of the Borrower/Grantee to repay the Loan shall be subordinate to all other indebtedness secured by the Pledged Revenues existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues; except, however, that the obligation of the Borrower/Grantee to repay the Loan shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the Lenders/Grantors pursuant to the Act.

(ii) **Administrative Fee.** The Borrower/Grantee shall, on an annual basis beginning June 1, 2012, pay to the Lenders/Grantors an administrative fee equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee as provided by this Agreement. Any such Administrative Fee payment shall be due irrespective of whether or not a hardship waiver of

payment is granted to the Borrower/Grantee for the principal payment otherwise due on June 1 of the applicable year or any other year.

(iii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, no later than April 1 of each such year, the Borrower/Grantee may apply in writing to the NMFA for a determination of whether the annual principal payment on the Loan Amount otherwise due on the upcoming June 1 of such year should be forgiven because such payment would cause undue hardship for the Borrower/Grantee. Although such determination shall be made by DFA, the Borrower/Grantee shall submit such application to DFA through the NMFA for determination by DFA and shall submit with such application sufficient documentation of the existence of such undue hardship as is reasonably required by DFA (as determined by the NMFA and DFA) to make such determination, and the Borrower/Grantee shall promptly respond to additional requests for information from DFA or the NMFA. Such application shall be executed by the Authorized Officers of the Borrower/Grantee. For purposes of this Agreement and that determination, an “undue hardship” shall be deemed to exist if DFA determines that the Borrower/Grantee demonstrates economic need and the inability to pay on a timely basis such annual payment on the Loan Amount. DFA shall make such determination no later than May 15 of the applicable year, and the NMFA shall promptly communicate to the Borrower/Grantee in writing the results of such determination. Upon receipt of written notice of such determination, either the principal payment otherwise due on June 1 of such year shall be forgiven (in the event of a determination of undue hardship) or such principal payment shall remain outstanding and due and payable on such date (in the event no undue hardship is determined to exist).

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

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

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

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

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

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

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

ARTICLE VI **LOAN PAYMENTS BY THE BORROWER/GRANTEE**

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

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Effective Date. The Borrower/Grantee and the NMFA acknowledge and agree that obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues; and that this Agreement with respect to the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Borrower/Grantee's moneys other than the Pledged Revenues, nor shall any

provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee's moneys including the Pledged Revenues. In addition, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

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

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

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

Section 6.5 Lenders/Grantors' Release of Lien and Further Assurances. Upon payment in full of the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided the Lenders/Grantors agree to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the Lenders/Grantors no longer hold or maintain any lien or claim against the Pledged Revenues.

ARTICLE VII THE PROJECT

Section 7.1 Agreement to Acquire, 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 and operate the Project lawfully and efficiently. Plans and specifications for the Project shall incorporate available technologies and operational design for water use efficiency. No Loan/Grant funds shall be used for items not constituting Eligible Items.

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

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

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

Section 7.4 Completion of Disbursement of Loan/Grant Funds. Upon completion of disbursement of Loan/Grant funds, an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the NMFA and the Water Trust Board, substantially in the form of Exhibit "D" attached hereto, stating that, to his or her knowledge, the Project has been completed and Loan/Grant funds needed for the Project have been disbursed in accordance with the terms of this Agreement. No Loan/Grant funds shall be disbursed after the date which is three (3) years from the Effective Date or, if the funds from the Water Project Fund utilized to make the Loan/Grant are the proceeds of Severance Tax Bonds issued pursuant to Section 7-27-10.1, NMSA 1978, and received into the Water Project Fund as provided by Section 7-27-10.1, NMSA 1978, the earlier of such date or the date which is three (3) years from the date of issuance of such Severance Tax Bonds.

Section 7.5 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds. Upon the first to occur of either (a) completion of the disbursement of Loan/Grant funds as signified by delivery of the completion certificate contemplated in Section 7.4 hereof; or (b) the earlier of the date which is three (3) years from the Effective Date or, if the funds from the Water Project Fund utilized to make the Loan/Grant are the proceeds of Severance Tax Bonds issued pursuant to Section 7-27-10.1, NMSA 1978, and received into the Water Project Fund as provided by Section 7-27-10.1, NMSA 1978, the date which is three (3) years from the date of issuance of such Severance Tax Bonds, the NMFA shall transfer the amounts remaining on deposit in the Project Account to the Water Project Fund or to such other fund permitted by law as may be established by the Water Trust Board, the NMFA or an agency of the State having authority to establish such fund.

ARTICLE VIII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

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

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

Section 8.3 Requirements of Law. During the Agreement Term, the Borrower/Grantee shall observe and comply promptly with all applicable federal, State and local laws and regulations, and all current and future orders of all courts having jurisdiction over the Borrower/Grantee.

Section 8.4 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, as amended and supplemented, or, if the Borrower/Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Borrower/Grantee.

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

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

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

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

ARTICLE IX INSURANCE; NON-LIABILITY OF LENDERS/GRANTORS

Section 9.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State's risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended and supplemented, shall and hereby agrees to name the Lenders/Grantors as additional insureds with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, 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 Lenders/Grantors are third party beneficiaries of such written agreement.

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

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

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

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

(b) Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period

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

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

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

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

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

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

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

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

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

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lenders/Grantors, collectively or individually, is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Borrower/Grantee or the Lenders/Grantors to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Lenders/Grantors, collectively or individually, may, in the respective discretion of each, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Lenders/Grantors, collectively or individually, in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the NMFA and the Water Trust Board. In case of any such waiver or rescission, or in case any proceeding taken by the Lenders/Grantors, collectively or individually, on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Lenders/Grantors shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

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

ARTICLE XI MISCELLANEOUS

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

If to the Borrower/Grantee, to:

Grant County
Attn.: County Manager
P.O. Box 898
Silver City, New Mexico 88062

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

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

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

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

Section 11.3 Amendments. This Agreement may be amended only with the written consent of all of the parties hereto.

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

Section 11.5 Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 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 11.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 11.8 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 11.9 Application of Act and Board Rules. The Lenders/Grantors and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and

requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and the Board Rules are incorporated into this Agreement by reference.

Section 11.10 Borrower/Grantee Reporting to Lenders/Grantors. The Borrower/Grantee shall provide the Lenders/Grantors with a written report in a form reasonably acceptable to the Lenders/Grantors and executed by the Authorized Officers of the Borrower/Grantee describing the status of the Project as of the report date, uses of Loan/Grant funds during the six (6) month period preceding the report date and anticipated requests for distributions of Loan/Grant funds to occur during the six (6) month period following the report date. The first report date shall be the date which is six (6) months after the Effective Date, the second report date shall be the first anniversary of the Effective date, and subsequent report dates shall be the dates upon which end each succeeding six (6) month period prior to complete distribution of the Loan/Grant funds. No reports shall be required after the report date next following final distribution of the Loan/Grant Funds, unless specifically required by the NMFA or the Water Trust Board. The description of the status of the Project in such reports shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date from those anticipated as of the Closing Date, and (c) a description of the percentage of completion of Project.

[Remainder of page intentionally left blank.]

[Signature pages follow.]

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

LENDERS/GRANTORS:

NEW MEXICO FINANCE AUTHORITY

By _____
Chief Executive Officer or Designee

ATTEST:

By _____

NEW MEXICO WATER TRUST BOARD

By _____
Chairman or Co-Chairman

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

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

By: _____
John L. Appel

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

By: _____
Reynold E. Romero
NMFA General Counsel

BORROWER/GRANTEE:

GRANT COUNTY

By _____
Brett A. Kasten, Chairman
Board of County Commissioners

ATTEST:

By _____
Robert Zamarripa,
County Clerk

EXHIBIT "A"

TERM SHEET

**\$88,000 WATER PROJECT LOAN/GRANT TO THE
GRANT COUNTY**

Project Description: The Project consists of the planning, design and engineering to stabilize the Gila River downstream from the U.S. Highway 180 bridge crossing, for the protection of riparian habitat and adjacent property and improvements against further damage from flooding, all as more specifically described in the Application and in the final plans and specifications for the Project approved by the Water Trust Board and the NMFA as provided by this Agreement.

Grant Amount: \$70,400

Loan Amount: \$17,600

Pledged Revenues: First 1/8 percent increment of County Local Option Gross Receipts Tax authorized by Section 7-20E-9, NMSA 1978 and Grant County Ordinance No. 90-03-01, adopted March 1, 1990, as amended and supplemented, distributed monthly to Grant County pursuant to Section 7-1-6.13, NMSA 1978, equal to 0.125% of the gross receipts of persons engaging in business within Grant County outside the boundaries of any municipality, and the portion of any gross receipts tax distribution to Grant County made pursuant to Section 7-1-6.47, NMSA 1978, representing the amount of the first 1/8 percent increment of County Local Option Gross Receipts Tax that would have been remitted to Grant County but for the deductions provided by Sections 7-9-92 and 7-9-93, NMSA 1978, and any similar distributions made to the Governmental Unit in lieu of the first 1/8 percent increment of County Local Option Gross Receipts Tax revenues.

Authorizing Legislation: Borrower/Grantee Ordinance No. _____, adopted July 14, 2011

Additional Funding Amount: \$8,800

Effective Date: August 19, 2011

Project Account Deposit: \$88,000

Expense Account Deposit: \$0

Conditions to be satisfied prior to first disbursement of Loan/Grant funds: Delivery to NMFA of (i) a copy of the agenda of the meeting of the Governing Body at which the Ordinance was adopted and at which this Agreement, the Ordinance and all other Loan/Grant documents were authorized by the Governing Body (the “Meeting”), certified as a true and correct copy by the County Clerk of the Borrower/Grantee, (ii) a copy of the minutes or record of proceedings of the Meeting, approved and signed by the Chairman of the Board of County Commissioners and attested to by the County Clerk of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee’s Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant: Conditions set forth in the Loan/Grant Agreement.

EXHIBIT "B"

FORM OF REQUISITION

RE: \$88,000 Loan/Grant Agreement by and between the Water Trust Board and the NMFA, as Lenders/Grantors, and Grant County, as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. 193-WTB

Closing Date: August 19, 2011

TO: NEW MEXICO FINANCE AUTHORITY

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

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

WIRING INFORMATION

BANK NAME:	_____
ACCOUNT NUMBER:	_____
ROUTING NUMBER:	_____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

ELIGIBLE ITEM CATEGORY (See below): _____

DATED: _____

By: _____
Authorized Officer

Title: _____

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

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

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

EXHIBIT "C"

PAYMENT PROVISIONS OF THE LOAN

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

EXHIBIT "D"

FORM OF CERTIFICATE OF COMPLETION

RE: \$88,000 Loan/Grant Agreement by and between the Water Trust Board and the NMFA, as Lenders/Grantors, and Grant County, as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. 193-WTB

Closing Date: August 19, 2011

TO: NEW MEXICO FINANCE AUTHORITY

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

Borrower/Grantee, hereby certify as follows:

1. The project described in the Loan/Grant Agreement (the "Project") , or the applicable phase of the project if funding was for a phased Project, was completed and placed in service on _____, 20 ____.
2. The total cost of the Project was \$ _____.
3. Cost of the Project paid from the Loan/Grant Amount was \$ _____.
4. The portion of the Loan/Grant Amount unexpended for the Project is \$ _____.
5. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Loan/Grant Agreement.

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

GRANT COUNTY

By: _____

Its: _____