

STATE OF NEW MEXICO           )  
COUNTY OF GRANT           ) ss.

The County Commission (the "Governing Body") of Grant County, New Mexico, met in regular session in full conformity with 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 regular meeting held on the 26th day of September, 2019, at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Present:

Chris m Ponce  
Gerald w. Billings  
Javier Salas  
Alicia Edwards  
Harry Browne

Absent:

\_\_\_\_\_  
\_\_\_\_\_

Also Present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Thereupon, there was officially filed with the County Clerk a copy of a proposed Resolution in final form, as follows.

GRANT COUNTY, NEW MEXICO

RESOLUTION NO. R-19-63

A RESOLUTION APPROVING THE FORM OF AMENDED AND RESTATED JOINT POWERS AGREEMENT BY AND BETWEEN GRANT COUNTY, THE TOWN OF SILVER CITY, THE TOWN OF HURLEY, THE VILLAGE OF SANTA CLARA AND THE CITY OF BAYARD (COLLECTIVELY, THE "MEMBERS") RELATING TO THE SOUTHWEST SOLID WASTE AUTHORITY ("SOUTHWEST"); AUTHORIZING GRANT COUNTY TO JOIN A LOAN AGREEMENT BY AND BETWEEN SOUTHWEST AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY") WITH RESPECT TO SPECIFIC COVENANTS; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE AMENDED AND RESTATED JOINT POWERS AGREEMENT AND THE LOAN AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Resolution unless the context requires otherwise.

WHEREAS, pursuant to a joint powers agreement dated July 19, 1995, duly authorized and executed by Grant County, Silver City, Hurley, the Village of Central, and Bayard (collectively, the "Original Members"), and designated as the "Grant County Solid Waste Authority Joint Powers Agreement," as subsequently amended (the "Joint Powers Agreement"), all pursuant to Sections 11-1-1 through 11-1-7, NMSA 1978, and as approved by the New Mexico Department of Finance and Administration, the Original Members determined to jointly exercise common powers relating to solid waste disposal and created the Southwest Solid Waste Authority ("Southwest"), formerly known as the Grant County Solid Waste Authority; and

WHEREAS, the current members of Southwest are Grant County, Silver City, Hurley, Santa Clara, and Bayard (the "Members"); and

WHEREAS, Grant County, as one of the Members of Southwest, desires to amend and restate the Joint Powers Agreement in the form of the Amended and Restated Joint Powers Agreement (the "Restated Joint Powers Agreement") presented at this meeting; and

WHEREAS, Southwest is a legally and regularly created, established, organized and existing solid waste authority under the Joint Powers Agreement and the general laws of the State and Southwest owns, operates and maintains a solid waste collection and disposal system (the "System," as further defined in Section 1 of this Resolution) for the benefit of the Members and their residents; and

WHEREAS, Southwest and the Finance Authority have determined to enter into a Loan Agreement to fund the Project, which Loan Agreement shall be joined in part by each of the Members; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the County Clerk this Resolution and the forms of the Restated Joint Powers Agreement and the Loan Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body intends by this Resolution to authorize the execution and delivery of the Restated Joint Powers Agreement and participation in the Loan Agreement by Grant County for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with Grant County's limited participation in (i) the authorization, execution and delivery of the Restated Joint Powers Agreement and (ii) the Loan Agreement, which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

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

Section 1. Definitions. As used in this Resolution, the following capitalized 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 general laws of the State, including Sections 4-62-1 through 4-62-10, Sections 6-21-1 through 6-21-31, and Sections 11-1-1 through 11-1-7, NMSA 1978, as amended, and enactments of the governing bodies of Southwest and the Members relating to the Restated Joint Powers Agreement and the Loan Agreement, including this Resolution.

"Authorized Officers" means the Chairman of the Governing Body, the County Manager and the County Clerk.

"Bayard" means the City of Bayard, New Mexico.

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

"Finance Authority" means the New Mexico Finance Authority.

"Governing Body" means the Board of County Commission of Grant County, New Mexico, or any future successor governing body of Grant County.

"Grant County" means the County of Grant, New Mexico.

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

"Hurley" means the Town of Hurley, New Mexico.

“Joint Powers Agreement” means the Grant County Solid Waste Authority Joint Powers Agreement among Southwest and the Members dated July 19, 1995, as amended and supplemented prior to the date of this Resolution.

“Loan” means the funds in the Loan Agreement Principal Amount to be loaned to Southwest by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date by and between the Finance Authority and Southwest, and joined by each Member, which provides for the financing of the Project and requires payments by or on behalf of Southwest to the Finance Authority and/or its trustee.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on Exhibit “A” to the Loan Agreement.

“Members” means Grant County, Silver City, Hurley, Santa Clara and Bayard, all located within the State.

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

“Pledged Revenues” means the Net Revenues of the System, as defined in the Loan Agreement.

“Resolution” means this Resolution No. R-19-63 adopted by the Governing Body on September 26, 2019 approving the Restated Joint Powers Agreement and the Loan Agreement as amended from time to time.

“Restated Joint Powers Agreement” means the amended and restated joint powers agreement to be executed by each Member, and approved by the New Mexico Department of Finance and Administration, amending and restating the Joint Powers Agreement.

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

“Santa Clara” means the Village of Santa Clara, New Mexico.

“Silver City” means the Town of Silver City, New Mexico.

“Southwest Resolution” means a Resolution adopted by Southwest approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement payments as shown on the Term Sheet.

“State” means the State of New Mexico.

“System” means Southwest’s solid waste facility, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by Southwest through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the solid waste system, and used in connection therewith or relating thereto, and any other related activity or enterprise of Southwest designated by its governing body as part of

the solid waste system, whether situated within or without the jurisdiction or service limits of Southwest.

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

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Governing Body and officers of Grant County directed toward the execution and delivery of the Restated Joint Powers Agreement and the Loan Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Restated Joint Powers Agreement and the Loan Agreement. The restatement and amendment of the Joint Powers Agreement through the execution and delivery of the Restated Joint Powers Agreement are hereby authorized and ordered. The execution and delivery of the Loan Agreement by Grant County and with respect to specific covenants to be identified in the Loan Agreement, is hereby authorized and ordered.

Section 4. Approval of the Restated Joint Powers Agreement and the Loan Agreement. The forms of the Restated Joint Powers Agreement and the Loan Agreement, as presented at the meeting of the Governing Body at which this Resolution was adopted, are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Restated Joint Powers Agreement and the Loan Agreement, with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the County Clerk is hereby authorized to affix the seal of Grant County on the Loan Agreement and attest the same. The execution of the Restated Joint Powers Agreement and the Loan Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 5. 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 Resolution, the Restated Joint Powers Agreement and the Loan 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 Resolution, the Restated Joint Powers Agreement and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution, the Restated Joint Powers Agreement and the Loan Agreement, including but not limited to, the execution and delivery of ancillary documents in connection with the execution and delivery of the Restated Joint Powers Agreement and the Loan Agreement.

Section 6. Amendment of Resolution. Prior to the date of the initial delivery of the Restated Joint Powers Agreement and the Loan Agreement to the Finance Authority, the provisions of this Resolution may be supplemented or amended by resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Resolution.

Section 7. Resolution Irrepealable. After the Loan Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 8. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or

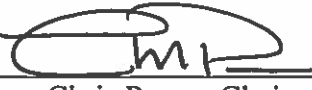
unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 9. Repealer Clause. All bylaws, orders, 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 part thereof, heretofore repealed.

Section 10. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of Grant County kept for that purpose, authenticated by the signatures of the Chairman of the Governing Body and the County Clerk, and the title and general summary of the subject matter contained in this Resolution shall be posted in accordance with law, and said Resolution shall be in full force and effect thereafter, in accordance with law.

PASSED, APPROVED AND ADOPTED THIS 26TH DAY OF SEPTEMBER, 2019.

GRANT COUNTY, NEW MEXICO

By   
Chris Ponce, Chairman  
Board of County Commissioners

ATTEST:  
  
By   
Marisa Castillo, County Clerk

Member Browne then moved adoption of the foregoing Resolution,  
duly seconded by Member Billings.

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

Those Voting Aye: Chris m. Ponce  
Gerald W. Billings  
Javier Sales  
Alicia Edwards  
Harry Browne

Those Voting Nay: \_\_\_\_\_  
\_\_\_\_\_

Those Absent: \_\_\_\_\_  
\_\_\_\_\_

Five (5) members of the Governing Body having voted in favor of said motion, the  
Chairman declared said motion carried and said Resolution adopted, whereupon the Chairman and  
the County Clerk signed the Resolution upon the records of the minutes of the Governing Body.



STATE OF NEW MEXICO                    )  
COUNTY OF GRANT                    ) ss.

I, Marisa Castrillo, the duly qualified and acting County Clerk of Grant County, New Mexico (the "County"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the County Commission constituting the governing body of the County (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 at the hour of 9:00 a.m., insofar as the same relate to the execution and delivery of the proposed Restated Joint Powers Agreement and the Loan Agreement, a copy of each 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 said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the Governing Body's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of September, 2019.


GRANT COUNTY

By: Marisa Castrillo  
Marisa Castrillo  
County Clerk




After consideration of matters not relating to the Resolution, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

GRANT COUNTY, NEW MEXICO

By   
Chris Ponce, Chairman  
Board of County Commissioners

ATTEST:

By   
Marisa Castrillo, County Clerk



**EXHIBIT "A"**

Meeting Agenda  
of the September 26, 2019  
Meeting of the County Commission  
Grant County, New Mexico

(See attached)

# Legal

## REGULAR MEETING – September 26, 2019

The Grant County Board of Commissioners will convene in a Regular Meeting on Thursday, September 26, 2019, at 9:00 a.m. The meeting will take place in the Commission Meeting Room at the Grant County Administration Center located at 1400 Highway 180 East, Silver City, NM 88061. The agenda for this meeting may be altered up to seventy-two (72) hours prior to the meeting; copies can be obtained from the County Manager's Office or viewed online at [www.grantcountynm.com](http://www.grantcountynm.com). If you are an individual with a disability in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aide or service to attend or participate in the hearing or meeting, please contact the Grant County Manager at 1400 Highway 180 East, Silver City, New Mexico at least one (1) week prior to the meeting or as soon as possible. The tentative agenda is as follows:

### I. Call to Order

### II. Pledge of Allegiance & Salute to State Flag

### III. Approval of Regular Meeting Agenda

### IV. Presentations

a. Consideration of Proclamation Declaring the Month of October 2019, as "Farm to School Month", October 1st - 5th, 2019, as "New Mexico Grown Week", October 6th - 12th 2019, as "National 4-H Week" – Commissioner Alicia Edwards and Commissioner Gerald (Billy) W. Billings Jr.

b. Consideration of Proclamation Declaring the Month of October 2019, as "Domestic Violence Awareness Month" – Rachel Sierra

### V. Public Input

• During this portion of our meeting, we welcome your suggestions and want to hear your concerns. This is not a question and answer period; speakers will be limited to five (5) minutes. Any individual who would like to discuss an item in more depth may request to be placed on a future agenda. Request forms are available in the County Manager's

Office.

### VI. Elected Officials' Report

### VII. Approval of Minutes

c. September 10, 2019, Work Session Meeting Minutes

d. September 12, 2019, Regular Meeting Minutes

### VIII. Financial Reports

e. Consideration of September 18, 2019, Expenditure Report

### IX. New Business

f. Consideration of Special Use Permit for the Grant County Shooting Range

g. Discussion and Possible Action Regarding County Investments and Investment Policy

### X. Resolutions

h. Consideration of Resolution No. R-19-63; A Resolution Approving the Form of Amended and Restated Joint Powers Agreement by and between Grant County, the Town of Silver City, the Town of Hurley, the Village of Santa Clara and the City of Bayard (Collectively, the "Members") relating to the Southwest Solid Waste Authority ("Southwest"); Authorizing Grant County to Join a Loan Agreement by and between Southwest and the New Mexico Finance Authority (the "Finance Authority") with Respect to Specific Covenants; Ratifying Actions Heretofore Taken; Repealing all Action Inconsistent with this Resolution; and Authorizing the Taking of Other Actions in Connection with the Execution and Delivery of the Amended and Restated Joint Powers Agreement and the Loan Agreement

### XI. Recess as the Grant County Board of Commissioners and Convene as the Grant County Health Care Claims Board

i. Approve or Deny August 2019, Health Claims in the amount of \$54,112.89

### XII. Adjourn as the Grant County Health Care Claims Board and Reconvene as the Grant County Board of Commissioners

### XIII. Commissioners Reports

### VIX. Adjournment

Chris Ponce,  
Commission Chairman

By: (s) Bernadette L. Coleman,  
Executive Assistant

**AMENDED AND RESTATED  
SOUTHWEST SOLID WASTE AUTHORITY  
JOINT POWERS AGREEMENT**

This Amended and Restated Joint Powers Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the County of Grant ("Grant County"), the Town of Silver City ("Silver City"), the Town of Hurley ("Hurley"), the Village of Santa Clara ("Santa Clara") and the City of Bayard ("Bayard"), pursuant to the Joint Powers Agreement Act, Sections 11-1-1 through 11-1-7, NMSA 1978, and the Solid Waste Act, Section 74-9-1 through 74-9-42, NMSA 1978.

**Recitals:**

WHEREAS, Grant County, Silver City, Hurley, Santa Clara, and Bayard, entered into a Joint Powers Agreement ("JPA" or "Agreement") dated July 19, 1995 to form a regional solid waste disposal authority now known as the Southwest Solid Waste Authority ("Authority"); and

WHEREAS, the current members of the Authority are Grant County, Silver City, Hurley, Santa Clara, and Bayard ("Members"); and

WHEREAS, the Members are all New Mexico public agencies as defined in the Joint Powers Act, all located in Grant County, New Mexico; and

WHEREAS, it is the desire of the Members to continue the JPA to provide for disposal of solid waste by establishing modern and, where possible, state of the art facilities for recycling, transport and disposal of solid waste and to provide for the general protection of health, welfare and safety of the public, and to provide staff, management assistance, planning and facilities therefore; and

WHEREAS, the Members have agreed to work cooperatively for the purpose of funding the acquisition of land, equipment and transportation necessary for the operation of a regional solid waste disposal system by making contributions through collection and tipping fees and the Environmental Gross Receipts Taxes; and

WHEREAS, it is in the best interests of the citizens of Grant County, Silver City, Hurley, Santa Clara, and Bayard to enter into a Joint Powers Agreement to accomplish the foregoing, and to set forth the rights and responsibilities between the Members, including, but not limited to the issuance of revenue bonds in the name of the Authority for the purposes stated.

NOW, THEREFORE, IT IS MUTUALLY AGREED AND COVENANTED BETWEEN THE MEMBERS AS FOLLOWS:

**1. NAME:**

The Authority created by this JPA shall be known as the "Southwest Solid Waste Authority" ("Authority").

## 2. COMPOSITION OF THE AUTHORITY:

A. **Members and Terms:** The Authority be governed by a Board of Representatives ("Board"), and shall consist of seven (7) board members ("Board Members"). Hurley, Santa Clara, and Bayard shall each appoint one Board Member. Silver City and Grant County shall each appoint two Board Members. Each Board Member shall be an elected or appointed official serving the Member it represents. Each Board Member will serve for a period of two (2) years, provided, however that any Board Member may be replaced by action of the respective governing body at a public meeting.

B. **Alternates:** In addition to the Board Members provided for in Paragraph 2 A above, each Member herein shall also designate one alternate, who shall be an elected or appointed official, and who shall be appointed in the same manner as the regular Board Member selected. In the absence of a regular Board Member, the alternate shall have the same powers and duties as the regular Board Member would have had if present.

C. **Meetings:** The Authority shall meet at least once each month within the boundaries of the Authority at a site to be determined by the Board. All meetings shall be conducted in accordance with the New Mexico Open Meetings Act, Section 10-15-1 et seq. NMSA 1978. Five (5) members of the Board shall constitute a quorum needed to conduct a meeting. The Board shall adopt rules and regulations which must be in accord with State and Federal law.

D. **Voting:** All actions of the Authority shall be taken by a majority vote of the Board at a regularly scheduled meeting of the Authority where a quorum is obtained. The Chairperson of the Board shall have a vote and no Board Member may abstain from voting unless there is a conflict of interest pursuant to New Mexico law. In the event a Board Member is absent, a designated alternate Board Member in attendance may vote for the absent Board Member.

E. **Compensation:** For business conducted on behalf of the Authority, each Board Member shall be entitled to receive mileage reimbursement and per diem expenses in accordance with the "Per Diem and Mileage Act", Section 10-8-1 et seq., NMSA 1978.

F. **New Members:** Local government entities (municipalities, counties, or Indian Tribes) may join the Authority at any time by approval of a majority of the existing Members and under the terms and any conditions, financial or otherwise, set by the Board, provided that a minimum of sixty (60) days' notice is given to the Board Members. A new Member shall have one vote on the Board and have all of the same rights and responsibilities as the existing members. Nothing herein shall be construed to prohibit the Authority from accepting solid waste from non-Member local government entities on a scheduled fee basis.

## 3. POWERS AND DUTIES OF THE AUTHORITY:

The Authority is authorized to exercise the following powers and duties necessary to carry out operations under this JPA.

A. To finance, develop and implement the acquisition of solid waste facilities and assets.

B. To operate and maintain necessary property, equipment and personnel for the Integrated Solid Waste Management System.

C. To acquire financing through the issuance of revenue bonds, and otherwise, in an amount to be determined by the membership of the Authority based on the anticipated revenue generated by tipping fees and other income, less costs of operation.

D. Pursuant to any act of Congress, the Authority may accept or borrow funds from the United States or any of its agencies or instrumentalities for any purpose authorized by this Agreement.

E. To hire and fire personnel for the operations of the Authority, and to set rules and regulations therefor.

F. To hire and fire an Authority Manager, whose responsibility will be to oversee the day-to-day operations of the Authority, and employ such personnel for the proper administration, operation and maintenance of the Authority.

G. To set compensation and benefits for all employees of the Authority.

H. To provide for proper development, management, and distribution of operational and administrative funds of the Authority.

I. To provide for bid processes for the purchase of equipment and construction of facilities pursuant to the "Procurement Code" Section 13-1-1 and 13-4-1 et seq., NMSA 1978; and

J. To provide for the proper supervision of the management, construction and supervision of projects, including securing appropriate warranties and bonds to ensure contract compliance and quality guarantees.

K. On or before June 30<sup>th</sup> of each year, the Authority shall prepare and submit for approval an annual budget to the New Mexico Department of Finance and Administration ("DFA"). The budget will be prepared on a fiscal year basis commencing July 1 through June 30 of each year.

L. To set fees, rates, and charges for the use of the integrated solid waste management system necessary for adequate financing for the operation of the Authority.

M. Negotiate and execute any and all agreements for and on behalf of the Members necessary to carry out the approved policies as called for and provided herein, and any further agreements which may be necessary.

N. To provide for the proper receipt of and disbursement of the funds of the Authority for its administration, maintenance and operation as provided by the Authority budget.

O. To require that all administrative and operational functions of the Authority are in compliance with Federal, State, and local laws.

P. To act in a fiscally responsible manner by not duplicating services which may be otherwise provided.

Q. To carry out such other duties and programs as may later be required.

R. To advocate, lobby or petition the New Mexico State Legislature on proposed legislation that may impact solid waste management issues.

#### 4. FINANCE: Duties, Policies, Liabilities:

A. The Authority shall provide for and be solely responsible for any debts incurred by the Authority for capital improvements and shall not be authorized to obligate the constituent Member governments for repayment of the Authority's debts, or to require additional

contributions from those Members without the express authorization of those Member governments.

B. Funds for the operation, maintenance and construction of facilities may be generated by revenue bonds, federal/state grants, collection and tipping fees and such other revenues as may from time-to-time be identified by the Authority. It is not the intent of the Authority to establish rates and fees for the purpose of generating profit. All collected funds shall be used in furtherance of the construction, maintenance and operation of the integrated solid waste management system.

C. The Authority is designated as the operational manager of the solid waste disposal system and, as such, shall be the responsible party for any deficits incurred in its operations.

D. Each Member's contributions (rates and fees paid, environmental gross receipts taxes, or other proceeds) must be sufficient to cover the Authority's actual costs of operation for Authority services provided to the particular Member.

E. The Members agree that they shall not be obligated to incur any liability for the payment of deficits incurred by the Authority. Anticipated deficits should be identified and included in the annual and five (5) year budgets of the Authority. The Authority shall raise solid waste collection fees to the level needed to eliminate any deficit in the year following the creation of a deficit, or sooner if possible.

#### 5. FINANCE: Budget:

A. The Authority shall prior to the last day of April of each succeeding year, prepare a budget for Authority finances for the ensuing fiscal year. The budget shall show in detail the revenues and expenses from the preceding year and in detail the anticipated revenues and expenses for the succeeding year. The Authority budget shall take effect upon approval of the Authority Board and the Department of Finance and Administration.

B. The expenditures allowed in such approved budget shall control the year's spending program for the Authority. All expenditures shall be done in accordance with State law pertaining to the distribution of public funds.

#### 6. FINANCE: Fiscal Agent:

A. The Authority is designated as fiscal agent for the Members and will provide strict accountability of all funds of the Authority.

B. The Authority Board shall serve without compensation.

C. The Authority Board shall regulate the finances of the Authority and appropriate money for Authority purposes only, and provide for the payment of debts and expenses of the Authority.

D. The Authority Manager shall be the Authority's finance officer, and is charged with receiving all moneys belonging to the Authority, keep its accounts and records in accordance with the generally accepted accounting principles. The Authority Manager shall keep the funds of the Authority separate from any other money in his/her possession, and expend the funds only as directed by the Board.

E. He/she is to supervise the depositing and safe keeping of all funds belonging to the Authority and to designate banks qualified to receive on deposit funds entrusted to his/her



care. He/she is to submit monthly reports to the Board detailing receipts, expenditures, and fund balances. He/she is to submit quarterly reports to each Member, and at year end, an annual financial report, all in a timely manner.

F. No payment of funds shall be made except upon a check issued by the Authority, and shall be signed by the Chairperson, or his/her representative, and co-signed by the Authority Manager. Such signatures may also be executed as prescribed by the Uniform Facsimile Signature of Public Officials Act, Sections 6-9-1 et seq. NMSA 1978.

G. Records of disbursements shall be kept, indicating at the least, the check number and amount, the payee, and the funds from which came the disbursement. Bank accounts shall be separated so that federal and local sources of funds can be isolated.

H. The Authority Manager shall maintain adequate financial records in accordance with the rules and regulations promulgated by New Mexico DFA, and generally accepted accounting principles.

I. No disbursements shall be made from any account unless proper vouchers have been prepared and submitted, with supporting documentation. The Authority shall require annual audits by outside auditors.

J. Upon dissolution of this JPA, any surplus remaining property of the Authority shall be returned to the various Member local governments in proportion to the contribution made by each entity during the period of this JPA.

K. Any employee of the Authority who handles cash funds for the Authority shall be required to be bonded in an amount to be determined by the Board.

L. The financial records of the Authority are subject to public inspection and copying pursuant to the New Mexico Inspection of Public Records Act, Sections 14-2-1 et seq. NMSA 1978.

## 7. LIABILITY:

The Members to this JPA understand that they shall be responsible for all cost and any liability issues (including closure and post-closure costs) consequential to their respective existing landfills and as such, hold the Authority harmless from such costs and all liability.

## 8. REPORTING REQUIREMENTS:

The Authority shall make a written quarterly report of its activities to the respective Members of this JPA and to the Local Government Division of DFA.

## 9. STATUTORY AUTHORITY

The Southwest Solid Waste Authority is created pursuant to the Joint Powers Agreement Act, Sections 11-1-1 through 11-1-7, NMSA 1978, and the Solid Waste Act, Section 74-9-1 et seq., NMSA 1978.

## 10. TERMINATION AND WITHDRAWAL

A. The term of this JPA shall be indefinite. All amendments of this Agreement must be approved by all Members at the time that such amendments are proposed. All amendments of this Agreement shall be subject to DFA approval. Except as provided for in Section 10 B. following, the Authority may terminate this Agreement by sending a notice to the respective governing bodies of the Members ninety (90) days in advance of the meeting date where the Board will take action on terminating this Agreement. The notice shall state the date, time, and

place of the meeting. Except as provided for in Section 10 B. following, any Member may voluntarily withdraw from this Agreement after giving one (1) year's notice of its decision to withdraw.

B. This Agreement shall not be terminated and no Member may voluntarily withdraw so long as any revenue bonds or other obligations of the Authority are outstanding or unpaid, including but not limited to any loan made now or in the future by the New Mexico Finance Authority to the Authority. Additionally, the Authority will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of the facilities and assets required for solid waste disposal services, or any part thereof, including any and all extensions and additions that may be made thereto, until Authority revenue bonds shall have been paid in full, except that the Authority may sell any portion of said facilities and assets which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient provision of solid waste services, but in no manner nor to such extent as might prejudice the security of the payment of said revenue bonds, provided however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as net revenues of the Authority. Any withdrawal or termination of this Agreement in violation of this Section 10 B. by a Member or the Authority shall not affect the obligations, financial or otherwise, previously incurred by the Authority or a Member thereof.

**EFFECTIVE DATE OF RESTATED AND AMENDED JOINT POWERS AGREEMENT:**

This Agreement shall become effective upon execution of the Agreement by all parties, and by the approval of the New Mexico DFA.

Signatures:

  
\_\_\_\_\_

County of Grant

Date: September 26, 2019

Date:

\_\_\_\_\_  
Town of Silver City

Date:

\_\_\_\_\_  
City of Bayard

Date:

\_\_\_\_\_  
Town of Hurley

Date:

\_\_\_\_\_  
Village of Santa Clara

Approved by New Mexico Department of Finance and Administration:

By:

\_\_\_\_\_

Date:

\$929,972

LOAN AGREEMENT

dated

November 27, 2019

by and between

NEW MEXICO FINANCE AUTHORITY

and

SOUTHWEST SOLID WASTE AUTHORITY

And joined in part by  
GRANT COUNTY, NEW MEXICO  
TOWN OF SILVER CITY  
TOWN OF HURLEY  
VILLAGE OF SANTA CLARA  
CITY OF BAYARD

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to the BOKF, NA, as trustee under an Indenture, as defined in Article I of this Loan Agreement.

## LOAN AGREEMENT

THIS LOAN AGREEMENT dated November 27, 2019 is entered into by and among the NEW MEXICO FINANCE AUTHORITY ("Finance Authority"), and the SOUTHWEST SOLID WASTE AUTHORITY ("Southwest"), a joint powers authority duly organized and existing pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7, NMSA 1978, as amended, and joined in part by GRANT COUNTY, NEW MEXICO ("Grant County"), the TOWN OF SILVER CITY, NEW MEXICO ("Silver City"), the TOWN OF HURLEY, NEW MEXICO ("Hurley"), the VILLAGE OF SANTA CLARA, NEW MEXICO ("Santa Clara"), and the CITY OF BAYARD, NEW MEXICO ("Bayard") (collectively, the "Members"), each of which are political subdivisions duly organized and existing under the laws of the State of New Mexico (the "State").

### WITNESSETH:

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

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as Southwest, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, pursuant to a joint powers agreement dated July 19, 1995, duly authorized and executed by Grant County, Silver City, Hurley, the Village of Central, and Bayard (collectively, the "Original Members"), and designated as the "Grant County Solid Waste Authority Joint Powers Agreement," as subsequently amended (the "Joint Powers Agreement"), all pursuant to Sections 11-1-1 through 11-1-7, NMSA 1978, and as approved by the New Mexico Department of Finance and Administration, the Original Members determined to jointly exercise common powers relating to solid waste disposal and created the Southwest Solid Waste Authority ("Southwest"), formerly known as the Grant County Solid Waste Authority; and

WHEREAS, the current members of Southwest are Grant County, Silver City, Hurley, Santa Clara, and Bayard (the "Members"); and

WHEREAS, the Members have amended and restated the Joint Powers Agreement in the form of an Amended and Restated Joint Powers Agreement (the "Restated Joint Powers Agreement"), which has been approved by the New Mexico Department of Finance and Administration as of the Closing Date; and

WHEREAS, Southwest is a qualified entity under the Finance Authority Act; and

WHEREAS, the Members are political subdivisions duly organized and existing under and pursuant to the laws of the State and are qualified entities under the Finance Authority Act; and

WHEREAS, pursuant to the Joint Powers Agreement, Southwest owns, operates and maintains a solid waste disposal system (the "System," as further defined in Article I of this Loan Agreement) for the benefit of the Members and their residents; and

WHEREAS, the respective governing bodies of Southwest and the Members have determined that it is in the best interests of Southwest and the Members to enter into this Loan Agreement with the Finance Authority and for Southwest to accept a loan from the Finance Authority to finance the costs of the Project, as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, in accordance with the Act, Southwest has pledged the Net Revenues to the repayment of the Loan Agreement Payments due under this Loan Agreement; and

WHEREAS, Southwest is permitted and authorized to pay the Loan Agreement Payments through the Pledged Revenues; and

WHEREAS, the Act authorizes Southwest to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, Southwest is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(b) of the Finance Authority's Amended Rules and Regulations Governing the Public Project Revolving Fund Program.

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of Southwest and the Members; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and Southwest desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligations of Southwest hereunder shall constitute special, limited obligations of Southwest, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of Southwest or the Members or a charge against the general credit or ad valorem taxing power of Southwest, the Members or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Bodies pursuant to the Southwest Resolution and the Member Resolutions; and

WHEREAS, the execution and performance of this Loan Agreement have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

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

## ARTICLE I DEFINITIONS

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

“Act” means the general laws of the State, including Sections 6-21-1 through 6-21-31, Sections 11-1-1 through 11-1-7, NMSA 1978, as amended, and enactments of the Governing Bodies of Southwest and the Members relating to this Loan Agreement, including the Southwest Resolution and the Member Resolutions.

“Additional Payment Obligations” mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required to replenish the Loan Agreement Reserve Account and payments required pursuant to the provisions of Article IX and Article X hereof.

“Aggregate Annual Debt Service Requirement” means the total principal, interest and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means, in the case of Southwest, the Chairman, Secretary and Business Operations/Personnel Officer, in the case of the Members means each officer authorized by the Member Resolutions, and, in the case of the Finance Authority means the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Bayard” means the City of Bayard, New Mexico.

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

“Bond Counsel” means nationally recognized bond counsel experienced in matters of municipal law, satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semiannually by The Bond Buyer’s Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse this Loan Agreement.

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

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

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

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

“Finance Authority Debt Service Account” means the debt service account established in the name of Southwest within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

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

“Governing Bodies” or “Governing Body” means the duly organized governing bodies of Southwest and the Members, as the context requires, and any successor governing body of Southwest or the Members.

“Grant County” means the County of Grant, New Mexico.

“Gross Revenues” means all income and revenues directly or indirectly derived by Southwest from the operation and use of the System, or any part of the System, and includes, without limitation, Member contributions, all revenues received by Southwest, or any municipal corporation or agency succeeding to the rights of Southwest, from the System and from the sale and use of solid waste services or facilities, or any other service, commodity or facility or any combination thereof furnished to the inhabitants in the Service Area.

Gross Revenues do not include:

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

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

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption, and except as provided in Section 2.1(cc) of this Loan Agreement.

“Hurley” means the Town of Hurley, New Mexico.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, or successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

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

“Joint Powers Agreement” means the Grant County Solid Waste Authority Joint Powers Agreement dated July 19, 1995 among Southwest (formerly known as the Grant County Solid Waste Authority), Grant County, Silver City, Hurley, Santa Clara and Bayard.

“Loan” means the funds in the Loan Agreement Principal Amount to be loaned to Southwest by the Finance Authority pursuant to this Loan Agreement.

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

“Loan Agreement Balance” means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

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

“Loan Agreement Payment Date” means each date a payment is due on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Principal Amount” means the original principal amount of this Loan Agreement as shown on the Term Sheet.

“Loan Agreement Reserve Account” means the loan agreement reserve account established in the name of Southwest funded from the proceeds of this Loan Agreement and administered by the Trustee pursuant to the Indenture.]

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does



not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

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

“Member Resolutions” means Resolutions adopted by each Member approving the Restated Joint Powers Agreement and each Member’s limited participation in the Loan Agreement.

“Members” means Grant County, Silver City, Hurley, Santa Clara and Bayard, all located within the State.

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

“Net Revenues” means the Gross Revenues after deducting Operation and Maintenance Expenses.

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

(a) Legal and overhead expenses of Southwest that are directly related and reasonably allocable to the administration of the System;

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

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

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

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

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

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

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

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

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

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

"Pledged Revenues" means the Net Revenues of Southwest pledged to payment of the Loan Agreement Payments pursuant to the Southwest Resolution and described on the Term Sheet.

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

"Processing Fee" means the processing fee to be paid on the Closing Date by Southwest to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet.

"Program Account" means the account in the name of Southwest established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursement to Southwest for payment of the costs of the Project.

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

"Restated Joint Powers Agreement" means the amended and restated joint powers agreement to be executed by each Member, and approved by the New Mexico Department of Finance and Administration, amending and restating the Joint Powers Agreement.

“Santa Clara” means the Village of Santa Clara, New Mexico.

“Service Area” means the area served by the System.

“Silver City” means the Town of Silver City, New Mexico.

“Southwest Resolution” means Southwest Resolution No. 19-4 adopted on October 8, 2019 by the Southwest Governing Body approving this Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“System” means the Southwest solid waste facility, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by Southwest through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the solid waste system, and used in connection therewith or relating thereto, and any other related activity or enterprise of Southwest designated by its Governing Body as part of the solid waste system, whether situated within or without the jurisdictional or service limits of Southwest.

“Term Sheet” means Exhibit “A” attached hereto.

“Trustee” means the BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

“Unassigned Rights” means the rights of the Finance Authority to receive payment of the Processing Fee, administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of Southwest. Southwest represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of Southwest contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of Southwest to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon Southwest and the Members (with respect to covenants joined by the Members), their successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon Southwest by the provisions of this Loan Agreement, the Southwest Resolution and the Member Resolutions shall be exercised or performed by

Southwest or by such members, officers, or officials of Southwest as may be required by law to exercise such powers and to perform such duties.

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

(c) Authorization of Loan Agreement. Southwest is comprised of political subdivisions of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, Southwest is authorized to enter into the transactions contemplated by this Loan Agreement and to carry out all obligations hereunder. Southwest has duly authorized and approved the execution and delivery of this Loan Agreement and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. Southwest shall proceed without delay in applying the proceeds of this Loan Agreement (less the deposits to the Loan Agreement Reserve Account, if any, the Finance Authority Debt Service Account and the Processing Fee) to the financing of the Project.

(e) Payment of Loan Agreement. Southwest shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which Southwest may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating Southwest to pay Loan Agreement Payments from any general or other fund of Southwest other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting Southwest 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) Financing of Project. The Project will consist of purchasing heavy equipment to be used solid waste services. The Project will be financed so as to comply with all applicable Resolutions, resolutions and regulations, if any, and any and all applicable laws relating to the financing of the Project and to the use of the Pledged Revenues.

(g) Necessity of Project. The financing of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of Southwest and is in the best interests of Southwest, the Members and their residents.

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

(i) Loan Agreement Term. The weighted average maturity of 3.039 years does not exceed 120% of the reasonably expected useful life of the Project, which is at least \_\_\_\_ years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting Southwest and the Members.

(k) No Private Activity. Southwest is a “governmental unit” within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a “governmental unit” within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to Southwest under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve Requirement and (iii) an amount necessary to pay the Processing Fee and the costs related to the issuance of the Bonds, if any.

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

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

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of Southwest which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of Southwest payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding.

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

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

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of Southwest.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred thirty percent (130%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. Southwest will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Southwest's Existence. Southwest will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of Southwest without adversely affecting to any substantial degree the privileges and rights of the Finance Authority. No action will be taken by Southwest to terminate the Restated Joint Powers Agreement or by any Member to withdraw from the Restated Joint Powers Agreement while the Loan is outstanding.

(v) Continuing Disclosure. Southwest covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. Southwest covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. Southwest covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. Southwest covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of Southwest which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to

be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Pursuant to this covenant, Southwest obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. Southwest further represents and covenants that no bonds or other evidence of indebtedness of Southwest payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) Use Charges. Southwest has established and will continue to charge reasonable rates for services rendered by Southwest for use of the System taking into account the cost and value of the System, Operation and Maintenance Expenses, proper allowances for depreciation, and the amounts necessary to make debt services payments from Net Revenues of the System. There shall be charged against users, rates and amounts which shall be increased from time to time, if necessary, and which shall produce Gross Revenues sufficient to pay the annual Operation and Maintenance Expenses and one hundred thirty percent (130%) of the Aggregate Annual Debt Service Requirement payable during the then current Fiscal Year.

(y) Member Contributions. Pursuant to the terms of the Restated Joint Powers Agreement and consistent with the fiscal needs of Southwest, contributions may be sought by Southwest from the Members to cover the costs of operation, which contributions will be sought in proportion to the services provided to each respective Member, and the Members agree to continue to provide such contributions while the Loan is outstanding.

(z) Efficient Operation. Southwest will operate the System so long as this Loan Agreement is outstanding, will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and sufficient to supply reasonable public and private demands for System services within the Service Area.

(aa) Records. So long as the Loan Agreement remains outstanding, proper books of record and account will be kept by Southwest, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of customers; (ii) the revenues separately received from charges by classes of customers; and (iii) a detailed statement of the expenses of the System.

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

(cc) Audits. Southwest further agrees that, except where the State Auditor of the State performs the audit or where the due date for the audit has been postponed as may otherwise be required by the State Auditor or any other State office or agency with appropriate authority, Southwest will, within one hundred eighty (180) days following the close of each Fiscal Year, cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant. Each audit will be available for inspection by the

Finance Authority. Southwest will provide the Finance Authority with a copy of each audit promptly upon the request of the Finance Authority. All expenses incurred in the making of the audits and reports required by this Section shall be regarded and paid as an Operation and Maintenance Expense.

(dd) Billing Procedure. Bills shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable Resolution of Southwest. If permitted by law, if a bill is not paid within the period of time required by such Resolution, solid waste services shall be discontinued as required by such Resolution, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection.

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

(ff) Insurance. Southwest will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance in such amounts and against such risks as are, in the judgment of the Southwest Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self insured programs provided by authorities which operate solid waste systems. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which Southwest may have a material interest and of which Southwest may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which Southwest determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, any remainder may be used to redeem Parity Obligations or be treated as Gross Revenues.

(gg) Alienating System. Southwest will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the System, or any part thereof, including any and all extensions and additions that may be made thereto, until this Loan Agreement shall have been paid in full, including the Principal Component and the Interest Component, except that Southwest may sell any portion of said property which shall have been



replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of this Loan Agreement, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues of the System as provided herein.

(hh) Competent Management. Southwest shall employ or contract for experienced and competent personnel to manage the System.

(ii) Performing Duties. Southwest and the Members (with respect to the covenants joined by the Members) will faithfully and punctually perform all duties with respect to the System required by the Constitution and the laws of the State and the Resolutions and resolutions of Southwest and the Members, relating to the System and this Loan Agreement, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as hereinabove provided.

(jj) Other Liens. Other than as provided in the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the System or the revenues derived or to be derived from the operation of the same.

(kk) Restated Joint Powers Agreement. The Restated Joint Powers Agreement has been approved and adopted by Southwest, the Members, and the New Mexico Department of Finance and Administration.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of Southwest as follows:

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

(i) Southwest is a disadvantaged qualified entity in that its median household income is \$35,247, which is less than eighty percent (80%) of the State median household income of \$44,963; and

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the residents of the Southwest and the Members.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement or except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and

conditions of this Loan Agreement, nor the consummation of the transactions contemplated in this Loan Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

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

(e) Legal, Valid and Binding Obligations. This Loan Agreement constitute legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

### ARTICLE III LOAN AGREEMENT TERM

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

### ARTICLE IV LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into Southwest's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of Southwest for the Project; and

(b) To the Trustee, the amount shown on the Term Sheet as the Loan Agreement Reserve Account deposit shall be deposited into Southwest's account maintained in the Loan Agreement Reserve Fund by the Trustee pursuant to the Indenture; and

(c) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited in the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof; and

(d) To the Finance Authority, payment in the amount shown on the Term Sheet as the Processing Fee.

## ARTICLE V LOAN TO SOUTHWEST; PAYMENTS BY SOUTHWEST

Section 5.1 Loan to Southwest; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to Southwest and Southwest hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. Southwest promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. Southwest does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of Southwest in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account and the Loan Agreement Reserve Account, such accounts being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of Southwest's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if Southwest, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, or shall provide as permitted by Article VIII of this Loan Agreement for the payment thereof and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions, then, upon such final payment or provision for payment by Southwest, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and the Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. Southwest and the Finance Authority acknowledge and agree that the Loan Agreement Payments of Southwest hereunder are limited to the Pledged Revenues; and that this Loan Agreement shall constitute a special, limited obligation of Southwest. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of Southwest within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Southwest moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Southwest moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of Southwest hereunder, the Pledged Revenues may be utilized by Southwest for any other purposes permitted by law.

Section 5.2 Payment Obligations of Southwest. Southwest shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections 5.2(a)(i) and 5.2(a)(ii) of this Agreement for deposit into the Finance Authority Debt Service Account, the amount provided in subsection 5.2(c) of this Agreement for deposit into the Loan Agreement Reserve Account. The Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee, each on behalf of Southwest. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien on the Pledged Revenues, but not an exclusive first charge and lien, Southwest shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the Pledged Revenues received directly from Southwest, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture in the following amounts:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is May 1, 2020), and (B) on the first day of each month thereafter, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is May 1, 2020), and (B) on the first day of each month thereafter, one-twelfth (1/12) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) As a second charge and lien on the Pledged Revenues received from Southwest after the deposits in Sections 5.2(a) and 5.2(b) of this Agreement have been made, the Finance Authority shall, following each maturing Principal Component payment date, transfer amounts remaining in the Finance Authority Debt Service Account, if any, to the Trustee for deposit into the Loan Agreement Reserve Account as necessary to replenish the Loan Agreement Reserve Account to the Loan Agreement Reserve Requirement. Moneys in the Loan Agreement Reserve Account shall be held and administered by the Trustee and shall be used only to prevent deficiencies in the payment of the Principal Component and Interest Component of the Loan Agreement Payments resulting from a failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay debt service requirements on the Loan; provided, that the final two Interest Components and the final Principal Component on the Loan shall be payable from

the Loan Agreement Reserve Account. If funds are withdrawn from the Loan Agreement Reserve Account to pay debt service on the Loan, at the direction of the Finance Authority or the Trustee, Southwest shall pay to the Trustee additional Pledged Revenues which shall be deposited into the Loan Agreement Reserve Account in amounts in equal monthly installments sufficient to restore the amount on deposit therein to the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided, that no additional Pledged Revenues shall be deposited to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Component.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement, and any moneys in the Loan Agreement Reserve Account may, at the written direction of the Finance Authority, be applied to the Finance Authority Debt Service Account or released to Southwest for the Project or used for any other purposes provided by law. If amounts in the Loan Agreement Reserve Account are released by the Finance Authority, the references in this Loan Agreement to the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement shall be of no further force and effect.

(d) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of Southwest: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to Southwest for any purpose permitted by law.

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

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by Southwest of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations

which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) Southwest is then current in all of the accumulations required to be made into the Finance Authority Debt Service Account and the Loan Agreement Reserve Account as provided herein.

(b) No default shall exist in connection with any of the covenants or requirements of the Southwest Resolution, the Member Resolutions or this Loan Agreement.

(c) The Pledged Revenues received by or credited to Southwest for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred thirty percent (130%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by Southwest of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

(f) Southwest shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, Southwest shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at Southwest's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

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

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

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

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

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

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

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

**Section 5.7 Investment of Southwest Funds.** Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in the respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Southwest May Budget for Payments. Southwest may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, Southwest has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

## ARTICLE VI THE PROJECT

Section 6.1 Agreement To Finance the Project. Southwest hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the financing of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to finance the Project. Southwest agrees to finance the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of Southwest.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse Southwest's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of Southwest; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement

Section 6.3 Completion of the Project. Upon completion of the Project, an Authorized Officer of Southwest shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or her knowledge, the Project has been financed by Southwest, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof, or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date, the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.



ARTICLE VII  
COMPLIANCE WITH LAWS  
AND RULES; OTHER COVENANTS

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

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

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

Section 7.4 First Lien: Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. Southwest covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of Southwest that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. Southwest shall complete the Project with all practical dispatch.

Section 7.6 Bank Designation of Loan Agreement. For purposes of and in accordance with Section 265 of the Code, the Governmental Unit hereby designates this Loan Agreement as an issue qualifying for the exception for certain qualified tax-exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax-exempt interest. The Governmental Unit reasonably anticipates that the total amount of tax exempt obligations (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by the Governmental Unit and by any aggregated issuer during the current calendar year will not exceed \$10,000,000. For purposes of this Section 7.6, "aggregated issuer" means any entity which: (i) issues obligations on behalf of the Governmental Unit; (ii) derives its issuing authority from the Governmental Unit; or (iii) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit hereby represents that (a) it has not created and does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 265(b)(3)(C) or (D) of the Code and (b) the total amount of obligations so

designated by the Governmental Unit, and all aggregated issuers for the current calendar year does not exceed \$10,000,000.

**Section 7.7    Arbitrage Rebate Exemption.** The Governmental Unit hereby certifies and warrants, for the purpose of qualifying for the exception contained in Section 148(f)(4)(D) of the Code, to the requirement to rebate arbitrage earnings from investments of the proceeds of the Loan Agreement (the “Rebate Exemption”), that (i) this Loan Agreement is issued by the Governmental Unit which has general taxing powers, (ii) neither this Loan Agreement nor any portion thereof is a private activity bond as defined in Section 141 of the Code (“Private Activity Bond”), (iii) all of the net proceeds of this Loan Agreement are to be used for local government activities of the Governmental Unit (or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Governmental Unit) and (iv) neither the Governmental Unit nor any aggregated issuer has issued or is reasonably expected to issue any Tax-Exempt Bonds other than (A) Private Activity Bonds (as those terms are used in Section 148(f)(4)(D) of the Code) and (B) issued to refund (other than to advance refund (as used in the Code)) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, during the current calendar year, which would in the aggregate amount exceed \$5,000,000. For purposes of this paragraph, “aggregated issuer” means any entity which (a) issues obligations on behalf of the Governmental Unit, (b) derives its issuing authority from the Governmental Unit, or (c) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit hereby represents that it has not created, does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D) of the Code.

Accordingly, with respect to the Loan Agreement, the Governmental Unit will qualify for the rebate exemption granted under Section 148(f)(4)(D) of the Code and the Governmental Unit shall be treated as meeting the requirements of paragraphs (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States.

The Governmental Unit hereby further represents and covenants that if it is determined that rebatable arbitrage, as that term is defined under Section 148 of the Code and related regulations, is required to be paid to the United States, that it will pay such rebatable arbitrage.

## ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

**Section 8.1    Prepayment.** There is no option to prepay this Loan Agreement in whole or in part.

**Section 8.2    Defeasance.** Should Southwest pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, Southwest’s payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when Southwest has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Governmental Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper

expenses of the Finance Authority have been paid or provided for. In the event Southwest makes provisions for defeasance of this Loan Agreement, Southwest shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Governmental Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

## ARTICLE IX INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, Southwest shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from any act of negligence or other misconduct of Southwest or breach of any covenant or warranty by Southwest hereunder. Southwest shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of available Pledged Revenues, from any such claim arising as aforesaid above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

## ARTICLE X EVENTS OF DEFAULT AND REMEDIES

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

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

(b) Failure by Southwest to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Southwest by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by Southwest within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure Southwest is unable to carry out the agreements on its part herein contained, Southwest

shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

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

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

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

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

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of Southwest in this Loan Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement against Southwest, and compel Southwest 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 to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

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

(d) Cause Southwest to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

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

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of Southwest under this Loan Agreement.

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

**Section 10.4 No Remedy Exclusive.** Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

**Section 10.5 Waivers of Events of Default.** The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee 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.

**Section 10.7 Agreement to Pay Attorneys' Fees and Expenses.** In the event that Southwest shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of Southwest herein contained, Southwest agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of Southwest under

this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division; and if to Southwest:

Southwest Solid Waste Authority  
P.O. Box 2617  
318 Ridge Road  
Silver City, NM 88061  
Attention: Business Operations/Personnel Officer

Grant County  
1400 Highway 180 East  
Silver City, NM 88061  
Attention: County Manager

Town of Silver City  
101 West Broadway  
Silver City, NM 88061  
Attention: Finance Director

Town of Hurley  
P.O. Box 65  
Hurley, NM 88043  
Attention: Town Clerk

Village of Santa Clara  
P.O. Box 316  
105 N. Bayard Street  
Santa Clara, NM 88026  
Attention: Clerk/Treasurer

Village of Bayard  
P.O. Box 278  
800 Central  
Bayard, NM 88023  
Attention: Clerk/Treasurer

Southwest, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, Southwest and their respective successors and assigns, if any.

Section 11.3 Amendments. Southwest agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and Southwest, pursuant to the Indenture.

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

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

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by Southwest.

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

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

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

[Signature pages follow]  
[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on March 28, 2019, has executed this Loan Agreement, in its corporate name by its duly authorized officer; and Southwest and the Members have caused this Loan Agreement to be executed in their corporate names and their seals affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS OF THE  
NEW MEXICO FINANCE AUTHORITY:  
Sutin, Thayer & Browne A Professional Corporation  
As Loan Counsel

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

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

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

SOUTHWEST SOLID WASTE AUTHORITY

[SEAL]

By: \_\_\_\_\_  
Alex C. Brown, Chairman

ATTEST:

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

JOINED AS TO SECTIONS 2.1(a), (b), (n), (q), (u), (y), (ii), (kk), and 5.5(b):

GRANT COUNTY, NEW MEXICO

[SEAL]

By: 

Chairman

ATTEST:

By: 

County Clerk



JOINED AS TO SECTIONS 2.1(a), (b), (n), (q), (u), (y), (ii), (kk), and 5.5(b):

TOWN OF SILVER CITY, NEW MEXICO

[SEAL]

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

JOINED AS TO SECTIONS 2.1(a), (b), (n), (q), (u), (y), (ii), (kk), and 5.5(b):

TOWN OF HURLEY, NEW MEXICO

[SEAL]

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

JOINED AS TO SECTIONS 2.1(a), (b), (n), (q), (u), (y), (ii), (kk), and 5.5(b):

VILLAGE OF SANTA CLARA, NEW MEXICO

[SEAL]

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

ATTEST:

By: \_\_\_\_\_  
Village Clerk

JOINED AS TO SECTIONS 2.1(a), (b), (n), (q), (u), (y), (ii), (kk), and 5.5(b):

CITY OF BAYARD, NEW MEXICO

[SEAL]

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

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**EXHIBIT "A"**

**TERM SHEET**

**New Mexico Finance Authority Loan No. PPRF-4940**

<b>Borrower:</b>	Southwest Solid Waste Authority, joined in part by: Grant County, New Mexico Town of Silver City, New Mexico Town of Hurley, New Mexico Village of Santa Clara, New Mexico City of Bayard, New Mexico
<b>Project Description:</b>	Purchasing equipment to be used at the Southwest landfill
<b>Loan Agreement Principal Amount:</b>	\$929,972
<b>Disadvantaged Funding Amount:</b>	\$150,000
<b>Pledged Revenues:</b>	Net Revenues of Southwest
<b>Coverage Ratio:</b>	130%
<b>Currently Outstanding Parity Obligations:</b>	Finance Authority Loan No. PPRF-3469 maturing in 2021; Capital Lease – Indian Ink Inc. maturing in 2022
<b>Additional Parity Bonds Test:</b>	130%
<b>Authorizing Legislation:</b>	Southwest Resolution No. 19-4 adopted October 8, 2019 Grant County Resolution No. R-19-63 adopted September 26, 2019 Silver City Resolution No. 2019-37 adopted September 24, 2019 Hurley Resolution No. _____ adopted October 8, 2019 Santa Clara Resolution No. _____ adopted October 10, 2019 Bayard Resolution No. 25-2019 adopted September 23, 2019
<b>Closing Date:</b>	November 27, 2019
<b>Blended Interest Rate:</b>	0.997081%
<b>Program Account Deposit:</b>	\$830,000
<b>Loan Agreement Reserve Account Deposit:</b>	\$92,997.20
<b>Finance Authority Debt Service Account Deposit:</b>	\$0.01



Processing Fee:	\$6,974.79
First Interest Payment Date:	May 1, 2020
First Principal Payment Date:	May 1, 2020
Final Payment Date:	May 1, 2025

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A  
THE FINANCE AUTHORITY APPROVES A LONGER PERIOD IN WRITING

**EXHIBIT "B"**

**DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT**

**[SEE ATTACHED]**

**EXHIBIT "C"**

**FORM OF REQUISITION**

**RE:** \$929,972 Loan Agreement by and between the Southwest Solid Waste Authority, and joined by Grant County, the Town of Silver City, the Town of Hurley, the Village of Santa Clara, the City of Bayard, and the New Mexico Finance Authority (the "Loan Agreement").

**TO:** BOKF, NA  
c/o New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
Attn: Accounting

You are hereby authorized to disburse from the Program Account – Southwest Solid Waste Authority (2019 Landfill Loan), with regard to the above-referenced Loan Agreement the following:

**LOAN NO.** PPRF-4940

**CLOSING DATE:** November 27, 2019

**REQUISITION NUMBER:** \_\_\_\_\_

**NAME AND ADDRESS OF PAYEE:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**AMOUNT OF PAYMENT:** \$ \_\_\_\_\_

**PURPOSE OF PAYMENT:** \_\_\_\_\_

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – Southwest Solid Waste Authority (2019 Landfill Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and Southwest Solid Waste Authority is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, Southwest Solid Waste Authority shall, and understands its obligation to, complete the financing of the Project from other legally available funds.

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

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

**By:** \_\_\_\_\_  
Authorized Officer

**Title:** \_\_\_\_\_  
(Print Name and Title)

**EXHIBIT "D"**

**CERTIFICATE OF COMPLETION**

**RE:** \$929,972 Loan Agreement by and between the Southwest Solid Waste Authority, and joined by Grant County, the Town of Silver City, the Town of Hurley, the Village of Santa Clara, the City of Bayard, and the New Mexico Finance Authority (the "Loan Agreement").

**TO:** New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
Attn: Accounting

Susen Ellis  
Vice President, Corporate Trust  
BOKF, NA  
100 Sun Avenue NE, Suite 500  
Albuquerque, New Mexico 87109

**LOAN NO.:** PPRF-4940

**CLOSING DATE:** November 27, 2019

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the financing of the Project has been completed and accepted by Southwest, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

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

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

**By:** \_\_\_\_\_  
Authorized Officer of Southwest

**Title:** \_\_\_\_\_  
Print Name and Title