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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 6 Ordinance/Resolution# 12-209

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of June 18, 2012
 (Adoption Date)

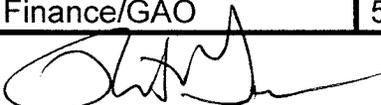
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND THE CITY OF LAS CRUCES (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF ONE HUNDRED ELEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$111,800) EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF PLANNING AND DESIGN OF (1) PUMPS AND REGULATING AND MEASURING EQUIPMENT TO ENABLE BURN LAKE, OWNED BY THE CITY OF LAS CRUCES, TO BE USED AS A REGULATING RESERVOIR BY ELEPHANT BUTTE IRRIGATION DISTRICT, AND (2) EROSION CONTROL MEASURES, SLOPE PROTECTION, SOLAR POWERED AERATORS AND RECREATIONAL AMENITIES INCLUDING A MULTI-USE TRAIL, ADA COMPLIANT WATER ACCESS, PARKING FACILITIES AND PICNICKING FACILITIES IN AND AROUND BURN LAKE, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

PURPOSE(S) OF ACTION:

To accept the grant/loan from the New Mexico Water Trust Board.

COUNCIL DISTRICT: 1		
Drafter/Staff Contact: Auguie Henry III	Department/Section: Finance/GAO	Phone: 541-2281
City Manager Signature:		

(Continue on additional sheets as required)

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The New Mexico Water Trust Board and the New Mexico Finance Authority has made available an obligation of the borrower/grantee to utilize the loan/grant amount solely for the purpose of financing the costs of planning and design of (1) pumps, and regulating and measuring equipment to enable Burn Lake, owned by the City of Las Cruces, to be used as a regulating reservoir by Elephant Butte Irrigation District; and (2) erosion control measures, slope protection, solar powered aerators and recreational amenities including a multi-use trail, ADA compliant water access, parking facilities and picnicking facilities in and around Burn Lake, as prescribed in the loan/grant agreement. Per the loan/grant agreement, the City is required to provide for payment of the loan amount solely from pledged revenues. Additionally, this action by City Council will certify that the loan/grant amount, together with other funds available to the City, will be sufficient to complete the planning and design project for Burn Lake. There is no construction in this project, it is strictly for planning and design. City funds identified under the 2005 Gross Receipts Tax Revenue Bond are sufficient to complete the Burn Lake planning and design project.

This loan/grant amount is divided into the following categories: 1) grant from the Water Trust Board and New Mexico Finance Authority in the amount of \$100,620.00; 2) loan from the Water Trust Board and New Mexico Finance Authority in the amount of \$11,180.00; and 3) a City match in the amount of \$11,180.00. Interest on the loan amount shall be zero percent (0%) per annum of the unpaid balance of the loan amount, and the Administrative Fee shall be one-quarter of one percent (0.25%) per annum on the unpaid principle balance of the loan amount. There is no penalty for early payment of the loan amount.

Upon approval, City staff will proceed with obtaining contracts for the planning and design of the Burn Lake recreational area as prescribed under the loan/grant agreement.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", \$111,800.00 Water Project Fund Loan/Grant Agreement, Dated August 3, 2012.
3. Exhibit "B", Record of Proceedings Relating to the Adoption of Resolution No. 12-078 of the City Council of the City of Las Cruces, New Mexico, June 18, 2012.
4. Exhibit "C", General and No Litigation Certificate.
5. Exhibit "D", Right-of-Way Certificate.
6. Exhibit "E", Final Opinion of Council.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the ____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

The awarded loan/grant from the New Mexico Water Trust Board and the New Mexico Finance Authority will be utilized for the planning and design of the (1) pumps and regulating and measuring equipment to enable Burn Lake, owned by the City of Las Cruces, to be used as a regulating reservoir by Elephant Butte Irrigation District, and (2) erosion control measures, slope protection, solar powered aerators and recreational amenities including a multi-use trail, ADA compliant water access, parking facilities and picnicking facilities in and around Burn Lake. These funds will be distributed between a grant (\$100,620.00); a Loan (\$11,180.00); and a City Match of (\$11,180.00).

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
State Operating Grant Fund (Grant Portion)	27226210-722190-60306	\$100,620.00	\$100,620.00	0.00	N/A
State Operating Grant Fund (Loan Portion)	27226210-722190-60306	\$11,180.00	\$11,180.00	0.00	N/A
05 Public Improvement (Match Funds)	40123040-854222-61R02	\$11,180.00	\$304,890.00	\$293,710.00	Burn Lake Project Completion

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will allow the City to accept the loan/grant from the New Mexico Water Trust Board and the New Mexico Finance Authority and proceed with the planning and development of Burn Lake project to be used as a regulating reservoir for Elephant Butte

(Continue on additional sheets as required)

Irrigation District and to develop a recreational area in and around Burn Lake for the public use.

2. Vote "No"; this will result in declining the funds and the City will not proceed with the planning and design of the Burn Lake project.
3. Vote to "Amend"; this could delay this project or even terminate the award. All documents have been reviewed and approved by respective legal councils.
4. Vote to "Table"; this will effectively be the same as a "No" vote to accept the award.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 12-078.
2. Resolution No. 12-103.

RESOLUTION NO. 12-209

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND THE CITY OF LAS CRUCES (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF ONE HUNDRED ELEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$111,800) EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF PLANNING AND DESIGN OF (1) PUMPS AND REGULATING AND MEASURING EQUIPMENT TO ENABLE BURN LAKE, OWNED BY THE CITY OF LAS CRUCES, TO BE USED AS A REGULATING RESERVOIR BY ELEPHANT BUTTE IRRIGATION DISTRICT, AND (2) EROSION CONTROL MEASURES, SLOPE PROTECTION, SOLAR POWERED AERATORS AND RECREATIONAL AMENITIES INCLUDING A MULTI-USE TRAIL, ADA COMPLIANT WATER ACCESS, PARKING FACILITIES AND PICNICKING FACILITIES IN AND AROUND BURN LAKE, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

The City Council is informed that:

WHEREAS, capitalized terms used in the following preambles have the same meaning as defined in this Resolution unless the context requires otherwise; and

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing municipality in good standing under the general laws of the State and more specifically the Municipal Code, Sections 3-1-1, et seq., NMSA 1978, as amended and supplemented, and is a qualifying entity under the Act and is qualified for financial assistance as defined by the Board Rules; and

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

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

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the WTB or the Finance Authority or a debt or pledge of the faith and credit of the Borrower/Grantee, the WTB, the Finance Authority or the State; and

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

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

WHEREAS, the Borrower/Grantee acknowledges that, in the event that it is unable to provide the Additional Funding Amount within six (6) months after the Closing

Date, the Loan/Grant Agreement shall, at the option of the WTB and the Finance Authority, terminate and be of no further force or effect; and

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

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

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

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

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount, is sufficient to complete the Project or to provide matching funds needed to complete the Project. The Additional Funding Amount is Eleven Thousand One Hundred Eighty Dollars (\$11,180).

“Administrative Fee” means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into

account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

“Authorized Officers” means the Mayor, City Engineer, Public Works Director and City Clerk of the Borrower/Grantee.

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

“Borrower/Grantee” means the City of Las Cruces, Dona Ana County, New Mexico.

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

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

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

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

“Finance Authority” means the New Mexico Finance Authority.

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

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

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is One Hundred Thousand Six Hundred Twenty Dollars (\$100,620)

“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.

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

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is Eleven Thousand One Hundred Eighty Dollars (\$11,180).

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

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

“Net System Revenues” means the gross revenues of the water utility system owned and operated by the Borrower/Grantee minus operation and maintenance expenses, indirect charges, amounts expended for capital replacement and repairs,

required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the water utility system.

“NMAC” means the New Mexico Administrative Code.

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

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

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

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

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

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

“State” means the State of New Mexico.

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

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

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

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

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

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

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

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

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

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

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

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

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

G. If proceeds of the Loan/Grant are used for construction the Borrower/Grantee has or will acquire title to or easements or rights of way on the real property upon which the Project is constructed or located.

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

Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the constituent public served by the Borrower/Grantee and by the other qualifying entities involved in the Project and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of One Hundred Thousand Six Hundred Twenty Dollars (\$100,620) and borrowing the Loan Amount of Eleven Thousand One Hundred Eighty Dollars (\$11,180) to be utilized solely for the purpose of completing the Project and paying Expenses, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which are hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project and to pay Expenses.

Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of One Hundred Thousand Six Hundred Twenty Dollars (\$100,620) and the Loan shall be in the amount of Eleven Thousand One Hundred Eighty Dollars (\$11,180). Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount, and the Administrative Fee shall be one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made

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

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

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

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

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

Completion of the Project. The Borrower/Grantee shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. Following the Completion Date, any balance remaining in the Project

Account shall be transferred and deposited into the Water Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

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

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

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

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all

acts and things necessary or proper for carrying out this Resolution, the Loan/Grant Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

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

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

Section 14. Severability Clause. If any section, paragraph, clause or provision of this 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 15. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such

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

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

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

[Remainder of page intentionally left blank.]

[Form of Summary of Resolution for Publication]

**CITY OF LAS CRUCES
Notice of Adoption of Resolution**

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. _____, duly adopted and approved by the City Council of the City of Las Cruces on June 18, 2012. A complete copy of the Resolution is available for public inspection during normal and regular business hours in the office of the City Clerk, at 700 Main Street, Las Cruces, New Mexico

The title of the Resolution is:

**CITY OF LAS CRUCES
RESOLUTION NO. _____**

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS") AND THE CITY OF LAS CRUCES (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF ONE HUNDRED ELEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$111,800) EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF PLANNING AND DESIGN OF (1) PUMPS AND REGULATING AND MEASURING EQUIPMENT TO ENABLE BURN LAKE, OWNED BY THE CITY OF LAS CRUCES, TO BE USED AS A REGULATING RESERVOIR BY ELEPHANT BUTTE IRRIGATION DISTRICT, AND (2) EROSION CONTROL MEASURES, SLOPE PROTECTION, SOLAR POWERED AERATORS AND RECREATIONAL AMENITIES INCLUDING A MULTI-USE TRAIL, ADA COMPLIANT WATER ACCESS, PARKING FACILITIES AND PICNICKING FACILITIES IN AND AROUND BURN LAKE, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

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

[End of Form of Summary for Publication]

PASSED, APPROVED AND ADOPTED THIS 18th DAY OF JUNE, 2012.

CITY OF LAS CRUCES

By _____
Ken Miyagishima, Mayor

ATTEST:

APPROVED AS TO FORM:
A. S. Pedemonte
City Attorney

Esther Martinez, City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

APPROVED AS TO FORM:

A. S. Pedemonte

City Attorney

[Remainder of page intentionally left blank.]

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

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

Those Voting Aye:

Those Voting Nay:

Those Absent:

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

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

CITY OF LAS CRUCES

By _____
Ken Miyagishima, Mayor

ATTEST:

By _____
Esther Martinez, City Clerk

APPROVED AS TO FORM:
[Signature]
City Attorney

(SEAL)

APPROVED AS TO FORM:

By *[Signature]*
City Attorney

[Remainder of page intentionally left blank.]

\$111,800

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

Dated

August 3, 2012

By and between the

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

and the

**CITY OF LAS CRUCES,
Dona Ana County, New Mexico,
as Borrower/Grantee.**

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

THIS LOAN/GRANT AGREEMENT (the "Agreement") dated August 3, 2012, is entered into by and between the **NEW MEXICO WATER TRUST BOARD** (the "Water Trust Board") and **THE NEW MEXICO FINANCE AUTHORITY** (the "FINANCE AUTHORITY") (collectively, the "Lenders/Grantors"), and the **CITY OF LAS CRUCES**, Dona Ana County, New Mexico (the "Borrower/Grantee").

WITNESSETH:

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

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

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

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

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

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

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

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing municipality in good standing under the general laws of the State and more specifically the Municipal Code, Sections 3-1-1, et seq., NMSA 1978, as amended and

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

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the constituent public it serves that the Borrower/Grantee enter into this Agreement with the Lenders/Grantors to borrow Eleven Thousand One Hundred Eighty Dollars (\$11,180) from the Lenders/Grantors and to accept a grant in the amount of One Hundred Thousand Six Hundred Twenty Dollars (\$100,620) from the Lenders/Grantors to finance the costs of planning and design for regulating the reservoir of the Elephant Butte Irrigation District's water distribution system, this project being more particularly described in the Term Sheet; and

WHEREAS, based upon the Finance Authority's evaluation of the New Mexico Water Trust Board Application for Financial Assistance dated September 22, 2010 of the Borrower/Grantee and dealing with the Project, the Finance Authority's Board of Directors has recommended to the Water Trust Board that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant, and has authorized the Finance Authority to enter into and administer this Agreement; and

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

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

WHEREAS, Laws of N.M. 2011, Ch. 24, being House Bill 143 of the 2011 Regular New Mexico Legislative Session authorized the funding of the Project from the Water Project Fund; and

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

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

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

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

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

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

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

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

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

ARTICLE I DEFINITIONS

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

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

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount, is sufficient to complete the Project or to provide matching funds needed to complete the Project. The Additional Funding Amount is Eleven Thousand One Hundred Eighty Dollars (\$11,180).

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

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

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

“Application” means the New Mexico Water Trust Board Application for Financial

Assistance dated September 22, 2010 of the Borrower/Grantee and dealing with the Project.

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

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

“Borrower/Grantee” means the City of Las Cruces in Dona Ana County, New Mexico.

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

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

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

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

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

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

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

“Expense Account” means the account established pursuant to the Resolution and held by the Finance Authority to pay the Expenses incurred by the Lenders/Grantors in connection with

the Loan/Grant Agreement and the Loan/Grant.

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

“Finance Authority” means the New Mexico Finance Authority.

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

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

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and equals One Hundred Thousand Six Hundred Twenty Dollars (\$100,620).

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

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to this Agreement for the purpose of funding the Project and equals Eleven Thousand One Hundred Eighty Dollars (\$11,180).

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

“NMAC” means the New Mexico Administrative Code.

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

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

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

“Project Account” means the auditable book account in the name of the Borrower/Grantee established pursuant to the Resolution and held by the Finance Authority for

deposit of the Loan/Grant Amount, as shown in the Term Sheet, for disbursement to the Borrower/Grantee to pay the costs of the Project.

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

“Resolution” means the Borrower/Grantee’s Resolution No. _____, adopted June 18, 2012, authorizing the execution of this Agreement.

“State” means the State of New Mexico.

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

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

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

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

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

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

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

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

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

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

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

(f) Completion of Project; Compliance with Laws. The Project will consist of planning and design for regulating the reservoir of the Elephant Butte Irrigation District's water distribution system. The Project is more particularly described in the Term Sheet. The Project will be completed, operated and maintained so as to comply with all applicable laws, ordinances, resolutions and regulations relating to the acquisition, operation, maintenance and completion of the Project and to the use of the Loan/Grant proceeds.

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

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

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

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

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

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

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

(n) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting

the right of the Borrower/Grantee to execute this Agreement or to comply with its obligations hereunder. Neither the execution of this Agreement by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations hereunder requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

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

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

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

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

(s) Maintenance of Separate Project Accounts. The Lenders/Grantors on behalf of the Borrower/Grantee shall maintain a separate Project account or accounts. The

Borrower/Grantee shall maintain financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

(t) Title and Rights of Way. The Borrower/Grantee has or, prior to commencing construction, shall obtain title to, easements, rights of way or use permits on the real property upon which the Project is being constructed, located, completed or extended, and if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, such other qualifying entity has title to such real property. As required by Section 72-4A-7(A)(3) of the Act, as amended and supplemented, as a condition to any disbursement of the Loan/Grant Amount the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that the Borrower/Grantee has proper title to, easements, rights of way or use permits on the real property upon or through which the Project is to be constructed, located, completed or extended. If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that such other qualifying entity has proper title to such real property.

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

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

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

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

either, and which conflict or violation will have a material adverse effect on the Water Trust Board, the Finance Authority or the financing of the Project.

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

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

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

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

ARTICLE III AGREEMENT TERM

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

ARTICLE IV LOAN/GRANT AMOUNT DISBURSEMENT CONDITIONS

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

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

(b) Except as otherwise expressly provided in the Conditions, the Borrower/Grantee shall have certified to the Lenders/Grantors that the Additional Funding

Amount is available for the Project, and, in addition, shall have provided additional evidence reasonably acceptable to the Lenders/Grantors of the availability of the Additional Funding Amount; and

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

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

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

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

Section 5.1 Loan and Grant to the Borrower/Grantee.

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

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

(ii) Administrative Fee. The Borrower/Grantee shall, on an annual basis beginning June 1, 2013, pay to the Lenders/Grantors an administrative fee equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of

payments granted to the Borrower/Grantee as provided by this Agreement. Any such Administrative Fee payment shall be due irrespective of whether or not a hardship waiver of payment is granted to the Borrower/Grantee for the principal payment otherwise due on June 1 of the applicable year or any other year.

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

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

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

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

Section 5.2 Application of Loan/Grant Amount. Following the determination by the Water Trust Board and/or the Finance Authority, as applicable, that the conditions precedent to

the disbursement of the Loan/Grant Amount have been satisfied, the Finance Authority shall transfer the Loan/Grant Amount shown on the Term Sheet for deposit as follows:

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

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

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

ARTICLE VI LOAN PAYMENTS BY THE BORROWER/GRANTEE

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

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Effective Date. The Borrower/Grantee and the Finance Authority acknowledge and agree that obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues; and that this Agreement with respect to the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or

other indebtedness of the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Borrower/Grantee's moneys other than the Pledged Revenues, nor shall any provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee's moneys including the Pledged Revenues. In addition, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

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

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

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

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

ARTICLE VII THE PROJECT

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

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

Plans and specifications for the Project shall incorporate available technologies and operational design for water use efficiency. No Loan/Grant funds shall be used for items not constituting Eligible Items.

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

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

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

Section 7.4 Borrower/Grantee Reporting to Lenders/Grantors. During the acquisition of the Project, the Borrower/Grantee shall provide the Lenders/Grantors with a quarterly written report executed by an Authorized Officer of the Borrower/Grantee, in the form attached as Exhibit "D" hereto or in another form reasonably acceptable to the Lenders/Grantors, describing the status of the Project as of the report date, uses of Loan/Grant funds during the quarterly period ending on the report date, and requests for distributions of Loan/Grant funds anticipated to occur during the quarterly period immediately following the report date. The first quarterly

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

Section 7.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of disbursement of Loan/Grant funds, an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the Finance Authority and the Water Trust Board, substantially in the form of Exhibit "E" attached hereto, stating that, to his or her knowledge, the Project has been completed and Loan/Grant funds needed for the Project have been disbursed in accordance with the terms of this Agreement. No Loan/Grant funds shall be disbursed after the date which is three (3) years from the Effective Date or, if the funds from the Water Project Fund utilized to make the Loan/Grant are the proceeds of Severance Tax Bonds issued pursuant to Section 7-27-10.1, NMSA 1978, and received into the Water Project Fund as provided by Section 7-27-10.1, NMSA 1978, the earlier of such date or the date which is three (3) years from the date of issuance of such Severance Tax Bonds.

Section 7.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds. Upon the first to occur of either (a) completion of the disbursement of Loan/Grant funds as signified by delivery of the completion certificate contemplated in Section 7.5 hereof; or (b) the earlier of the date which is three (3) years from the Effective Date or, if the funds from the Water Project Fund utilized to make the Loan/Grant are the proceeds of Severance Tax Bonds issued pursuant to Section 7-27-10.1, NMSA 1978, and received into the Water Project Fund as provided by Section 7-27-10.1, NMSA 1978, the date which is three (3) years from the date of issuance of such Severance Tax Bonds, the Finance Authority shall transfer the amounts remaining on deposit in the Project Account to the Water Project Fund or to such other fund permitted by law as may be established by the Water Trust Board, the Finance Authority or an agency of the State having authority to establish such fund.

ARTICLE VIII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

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

Section 8.2 Representatives of Lenders/Grantors or of Borrower/Grantee. Whenever under the provisions hereof the approval of the Lenders/Grantors, collectively or individually, or

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

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

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

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

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

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

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

ARTICLE IX INSURANCE; NON-LIABILITY OF LENDERS/GRANTORS

Section 9.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State's risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-30, NMSA 1978, as amended and supplemented, shall and hereby agrees to name the Lenders/Grantors as additional insureds with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act)

other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other qualifying entity to perform these insurance/risk-management program requirements for Borrower/Grantee with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other qualifying entity that the Lenders/Grantors are third party beneficiaries of such written agreement.

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

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

Section 10.3 Remedies on Default. Whenever any Event of Default has occurred and is

continuing and subject to Section 10.2 hereof, the Lenders/Grantors, collectively or individually, may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Borrower/Grantee in this Agreement:

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

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

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

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

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

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

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

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

ARTICLE XI MISCELLANEOUS

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

If to the Borrower/Grantee, to:

City of Las Cruces
Attn: Augie Henry III, Grants Administrator
700 N. Main Street
Las Cruces, NM 88001

If to the Water Trust Board or to the Finance Authority, then to:

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

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

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

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

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

Section 11.5 No Liability of Individual Officers, Directors or Trustees. No recourse

under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Lenders/Grantors, either directly or through the Finance Authority or the Water Trust Board, or against any officer, employee, director or member of the Borrower/Grantee, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Borrower/Grantee, the Water Trust Board or of the Finance Authority is hereby expressly waived and released by the Borrower/Grantee, the Water Trust Board and the Finance Authority as a condition of and in consideration for the execution of this Agreement.

Section 11.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to pay the Loan Amount and the Administrative Fee hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.7 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

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

Section 11.10 Application of Act and Board Rules. The Lenders/Grantors and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and the Board Rules are incorporated into this Agreement by reference.

[Remainder of page intentionally left blank.]

[Signature pages follow.]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and the Water Trust Board, on behalf of itself, each have executed this Agreement, which was approved by the Water Trust Board on September 28, 2011 and by the Finance Authority 's Board of Directors on, October 27, 2011 in their respective corporate names with their corporate seals affixed hereto and attested by their duly authorized officers; and the Borrower/Grantee has caused this Agreement to be executed and attested by duly authorized officers thereof. All of the above are effective as of the date first above written.

LENDERS/GRANTORS:

NEW MEXICO FINANCE AUTHORITY

By _____
Chief Executive Officer or Designee

ATTEST:

By _____

NEW MEXICO WATER TRUST BOARD

By _____
Chairman or Co-Chairman

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

VIRTUE NAJJAR & BROWN, PC
As Loan/Grant Counsel

By: _____
Richard L.C. Virtue

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

By: _____
Reynold E. Romero
Finance Authority General Counsel

BORROWER/GRANTEE:

CITY OF LAS CRUCES

By _____
Ken Miyagishima, Mayor

ATTEST:

By _____
Esther Martinez, City Clerk

Asst
APPROVED AS TO FORM:
[Signature]
City Attorney

EXHIBIT "A"**TERM SHEET****\$111,800 WATER PROJECT LOAN/GRANT
TO THE CITY OF LAS CRUCES**

Project Description: The Project is solely for the purposes of financing the costs of planning and design of (1) pumps and regulating and measuring equipment to enable Burn Lake, owned by the city of Las Cruces, to be used as a regulating reservoir by Elephant Butte Irrigation District, and (2) erosion control measures, slope protection, solar powered aerators and recreational amenities including a multi-use trail, ADA compliant water access, parking facilities and picnicking facilities in and around Burn Lake. The project may be further described in the Application and in the final plans and specifications for the Project approved by the Water Trust Board and the Finance Authority as provided by this Agreement. However, in the event of any inconsistency, the description of the Project as stated in this Term Sheet shall control.

Grant Amount: \$100,620

Loan Amount: \$11,180

Pledged Revenues: Net System Revenues of the Borrower/Grantee's water utility system, as defined in the Authorizing Legislation.

Authorizing Legislation: Borrower/Grantee Resolution No. _____, adopted June 18, 2012

Additional Funding Amount: \$11,180

Effective Date: August 3, 2012

Project Account Deposit: \$111,800

Expense Account Deposit: 0%

Conditions to be satisfied prior to first disbursement of Loan/Grant funds: Delivery to Finance Authority of (i) a copy of the agenda of the meeting of the Governing Body at which the Resolution was adopted and at which this Agreement, the Resolution and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the City Clerk of the Borrower/Grantee, (ii) a copy of the minutes or record of

proceedings of the Meeting, approved and signed by the Mayor and attested to by the City Clerk of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

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

EXHIBIT "B"

FORM OF REQUISITION

RE: \$111,800 Loan/Grant Agreement by and between the Water Trust Board and the Finance Authority, as Lenders/Grantors, and the City of Las Cruces as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. 235-WTB

Closing Date: August 3, 2012

TO: NEW MEXICO FINANCE AUTHORITY

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

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

WIRING INFORMATION

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

ELIGIBLE ITEM CATEGORY (See below): _____

DATED: _____

By: _____
Authorized Officer

Title: _____

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

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

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

EXHIBIT "C"**PAYMENT PROVISIONS OF THE LOAN**

The Loan Amount shall be payable by the Borrower/Grantee to the Lenders/Grantors in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2013 and ending June 1, 2032. The Loan Amount shall be prepayable at any time without penalty. The Administrative Fee shall be due and payable annually on June 1 of each year while the Loan, or any portion thereof, remains outstanding.

EXHIBIT "D"

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

Fund Recipient Names: City of Las Cruces Recipient Contact: _____ Phone Number: _____	WTB Project Number: 235-WTB WTB Project Name: Elephant Butte Irrigation District flood prevention. Project Type: Flood Prevention
Quarterly Project Report <input type="checkbox"/> Final <input type="checkbox"/> Other <input type="checkbox"/> _____ Report Period: From - ____ / ____ / ____ To - ____ / ____ / ____	
Contract Expiration: _____ Total WTB Award: \$111,800 Current Balance: \$ _____ Loan % 90 Grant % 10 Match % 10 Expected WTB Award Expenditure Next Quarter: \$ _____ Project Phase: Planning <input type="checkbox"/> Design <input type="checkbox"/> Construction <input type="checkbox"/>	
PROJECT TIME: Original Completion Date: _____ Current Completion Date: _____ Days Remaining for Completion _____	
Percent Project is Complete _____% On Schedule? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Briefly Describe Project Progress During This Reporting Period:	
Issues Addressed During This Period (Indicate any current and/or anticipated issues that remain unresolved):	
Goals/Milestones With Timeline or Dates For The Next Reporting Period:	
Name and Title of Authorized Representative: _____ (<i>Print</i>) Date: _____	Authorized Representative Signature: _____

EXHIBIT "E"

FORM OF CERTIFICATE OF COMPLETION

RE: \$111,800 Loan/Grant Agreement by and between the Water Trust Board and the Finance Authority, as Lenders/Grantors, and the City of Las Cruces, as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. 235-WTB

Closing Date: August 3, 2012

TO: NEW MEXICO FINANCE AUTHORITY

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

Borrower/Grantee, hereby certify as follows:

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

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

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

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

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

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

CITY OF LAS CRUCES

By: _____

Its: _____

**RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF
RESOLUTION NO. _____ OF THE CITY COUNCIL
OF THE CITY OF LAS CRUCES, NEW MEXICO
JUNE 18, 2012**

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

The City Council (the "Governing Body") of the City of Las Cruces, Dona Ana County, New Mexico (the "Borrower/Grantee") met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at City Council Chamber, Council Chambers 700 N. Main St., Las Cruces, New Mexico being the meeting place of the Governing Body for the meeting held on the 18th day of June, 2012 at the hour of 1:00 p.m. Upon roll call, the following members were found to be present:

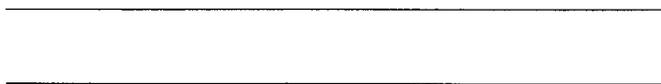
Present:

Mayor:

City Council:

Absent:

Also Present:



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

[Remainder of page intentionally left blank.]

6. No material adverse change has occurred, nor has any development occurred involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects, or properties of the Borrower/Grantee since the date of the Resolution.

7. To our knowledge, none of the events of default referred to in Article X of the Loan/Grant Agreement has occurred.

8. There is no threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to our knowledge is there any basis therefor, affecting the existence of the Borrower/Grantee or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of the Pledged Revenues to pay the principal, interest or administrative fees on the Loan/Grant Agreement, or in any way materially adversely affecting or questioning (a) the use of the proceeds of the Loan/Grant Agreement for the Project and to pay certain expenses as described therein, (b) the validity or enforceability of the Loan/Grant Agreement or any proceedings of the Borrower/Grantee taken with respect to the Resolution or the Loan/Grant Agreement, (c) the execution and delivery of the Loan/Grant Agreement, or (d) the power of the Borrower/Grantee to carry out the transactions contemplated by the Resolution and the Loan/Grant Agreement.

9. The Borrower/Grantee has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof, and the representations and warranties of the Borrower/Grantee contained in the Loan/Grant Agreement and in the Resolution are true and correct as of the date hereof.

10. The Borrower/Grantee is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest.

11. To our knowledge, neither the Mayor, the City Clerk, any member of the Governing Body of the Borrower/Grantee, nor any other officer, employee or other agent of the Borrower/Grantee is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

12. Regular meetings of the Borrower/Grantee's Governing Body and the meeting at which the Resolution was adopted have been held at 700 Main Street, Las Cruces, New Mexico the principal meeting place of the Borrower/Grantee.

13. The Borrower/Grantee's Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Borrower/Grantee's Governing Body in connection with the Loan/Grant Agreement. The Open Meetings Act Resolution adopted and approved by the Governing Body on December 5, 2011 establishes notice standards for meetings of the Governing Body. The Open Meetings Act Resolution has not been amended or repealed. All action of the Governing Body with respect to the Resolution

and the Loan/Grant Agreement was taken at meetings held in compliance with the Open Meetings Act Resolution then in effect.

14. The Mayor and the City Clerk, on the date of the signing of the Loan/Grant Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Borrower/Grantee authorized to execute the Loan/Grant Agreement.

15. This Certificate is for the benefit of the Finance Authority and the Water Trust Board.

16. This Certificate may be executed in counterparts.

WITNESS our signatures and the seal of the Borrower/Grantee this 3rd day of August, 2012.

CITY OF LAS CRUCES

(SEAL)

By _____
Ken Miyagishima, Mayor

By _____
Esther Martinez, City Clerk

Asst
APPROVED AS TO FORM:
[Signature]
City Attorney

\$111,800
CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO
WATER PROJECT FUND LOAN/GRANT
No. 235-WTB

RIGHT-OF-WAY CERTIFICATE

The undersigned on behalf of the City of Las Cruces (the "Borrower/Grantee"), a Municipality in the County of Dona Ana and the State of New Mexico, hereby certifies except as noted in item 4 below:

1. That the Borrower/Grantee is the owner in fee simple of the lands needed for the construction, operation, and maintenance of the facilities to be planned and designed with the proceeds of the above-referenced Loan/Grant made by the New Mexico Finance Authority and the New Mexico Water Trust Board (the "Project"), or that the Borrower/Grantee has acquired and presently holds continuous and adequate rights-of-way on lands owned by others that are needed for the Project, whether public or private, and such omissions, defects, or restrictions as may exist will in no substantial way or manner endanger the value or the operation of the Project.
2. That the Borrower/Grantee has acquired all necessary permits, franchises, and authorizations or other instruments by whatsoever name designated, for the planning and design of the facilities from public utilities and public bodies, commissions, or agencies upon, along or across streets, roads, highways, and utility corridors.
3. That the attached map or plat shows the location of all lands and rights-of-way needed for the Project, which lands and rights-of-way the Borrower/Grantee has acquired and now holds by purchase or dedication, by right of use or adverse possession, or by legal conveyances such as right-of-way or easement deeds, permits, or other instruments.
4. Exceptions: Borrower/Grantee has sufficient right of way and right of way use to conduct planning and design. Right of way necessary for construction will be obtained prior to construction as required by the Loan/Grant Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate on behalf of the City of Las Cruces as of this 3rd day of August, 2012.



Harry S. (Pete) Connelly
City of Las Cruces
700 N. Main Street
Las Cruces, New Mexico 88001
Phone: (575) 541-2128

Attorney for Borrower/Grantee,
City of Las Cruces, Dona Ana County, New Mexico

CITY OF LAS CRUCES
BURN LAKE PHASE II
PROPOSED IMPROVEMENTS

2011

ING
SECTION

MULTI-USE
PATH

PHASE II
PICNIC AREA

PUMP
LOCATION

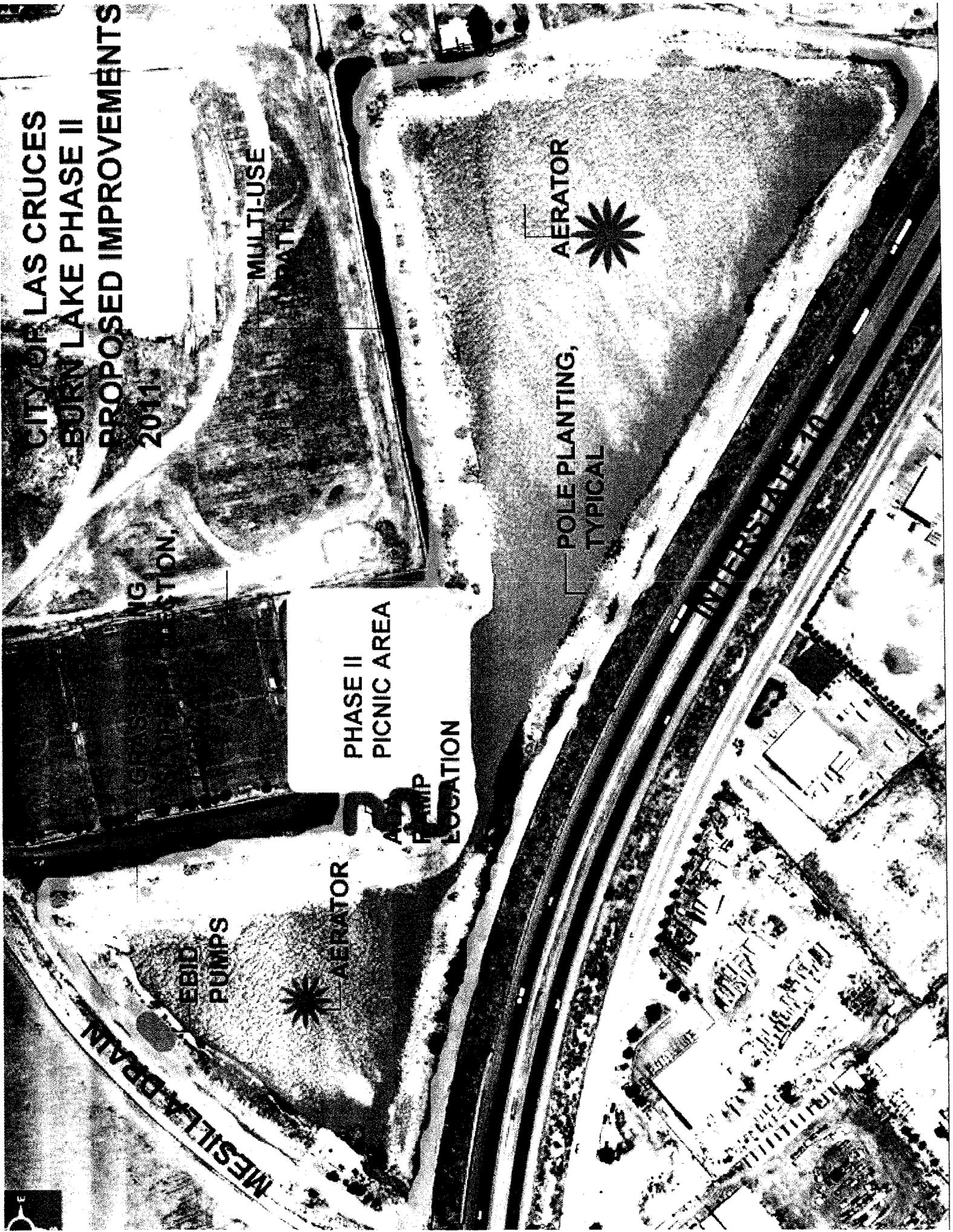
AERATOR

EBID
PUMPS

AERATOR

POLE PLANTING,
TYPICAL

INTERSTATE 70



NEW MEXICO FINANCE AUTHORITY**FINAL OPINION OF COUNSEL**

To: New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501

Re: City of Las Cruces, Dona Ana County, New Mexico
\$111,800 Loan/Grant No. 235-WTB

Ladies and Gentlemen:

I am an attorney representing the City of Las Cruces, Dona Ana County, New Mexico (the "Borrower/Grantee") in connection with the above-referenced Loan/Grant. I am licensed to practice law and in good standing in the State of New Mexico. I provide this opinion in my role as counsel to the Borrower/Grantee, understanding that the New Mexico Finance Authority and the New Mexico Water Trust Board (the "Lenders/Grantors") are relying on all representations herein made by me on behalf of my client and but for these representations, the Loan/Grant would not be approved.

Capitalized terms used in this Opinion have the same meaning as defined in Resolution No. _____ adopted by the Governing Body of the Borrower/Grantee on June 18, 2012 (the "Resolution") unless otherwise defined in this Opinion or the context requires otherwise.

I hereby certify that I have examined:

- (1) The City of Las Cruces Water Project Fund Application dated September 22, 2010 and the New Mexico Water Trust Board Approval dated September 28, 2011 for Loan/Grant No. 235-WTB (the "Application" and the "Approval," respectively), relating to the Project.
- (2) The incorporation documents creating the Borrower/Grantee.
- (3) The Annual Open Meetings Act Resolution or resolutions of the Borrower/Grantee adopted on December 5, 2011 and in effect on June 18, 2012 and on August 3, 2012.
- (4) The proceedings of the Governing Body (including all agendas, minutes, resolutions, ordinances and publications) which authorize the Loan/Grant application, the Project development, the budget for the Project, and the contracts with the various Project professionals including but not limited to architects, engineers, planners and contractors.

- (5) Corporate proceedings of the Borrower/Grantee from the date of the Application to the date of this Opinion, including, without limiting the generality of the foregoing, the corporate action of the Borrower/Grantee relating to (a) the selection of its Mayor, City Council, and Clerk; (b) the adoption of the Borrower/Grantee's Annual Open Meetings Act Resolution or resolutions; (c) the adoption of ordinances or resolutions governing the operation of the Project; (d) the plans and specifications for the Project; (e) cost estimates for the Project; (f) the adoption of ordinances, resolutions and regulations for the furnishing of service to customers; (g) the proposed operating budget for services to be provided, in whole or in part, by means of the Project; (h) the proposal to finance the Project, in whole or in part, with a Loan/Grant made by the Water Trust Board, acting through the Finance Authority; (i) the Resolution authorizing the Mayor to execute necessary documents to obtain the Loan/Grant for the Project; (j) all necessary approvals for the Project from federal, State or local authorities; and (k) the execution and delivery of the Loan/Grant Agreement evidencing such Loan/Grant.
- (6) The Resolution and the Loan/Grant Agreement providing that Loan/Grant funds will be deposited to the Project Account held by the Finance Authority on behalf of the Borrower/Grantee and drawdowns out of the Project Account will only be on written authorization of the Borrower/Grantee's Authorized Officers after certification of completion of the work in a satisfactory manner by a licensed professional engineer, architect or other authorized representative contractually obligated to the Borrower/Grantee, and only to pay Eligible Items (as defined in the Loan/Grant Agreement).
- (7) The records and files of all offices in which there might be recorded, filed, or indexed, any liens of any nature whatsoever, affecting the title to any real property to be acquired with the Loan/Grant proceeds, or on which will be located any Project property to be acquired with the Loan/Grant proceeds.

Based upon my examination of the foregoing, it is my opinion that:

- A. The Borrower/Grantee is a legally and regularly created, established, organized and existing municipality under the general laws of the State and more specifically, the Municipal Code, Sections 3-1-1, et seq., NMSA 1978, as amended and supplemented, and is a qualifying entity under the Act and is qualified for financial assistance as defined by the Board Rules; and
- B. The ordinances, resolutions, rules and regulations governing the operation of the Project have been duly adopted and are now in full force and effect.
- C. The Authorized Officers of the Borrower/Grantee were duly and validly elected or appointed and are empowered to act for the Borrower/Grantee.
- D. The Borrower/Grantee has corporate power:

- (1) to acquire, construct and complete the Project;
 - (2) to execute and deliver Loan/Grant documents including those identified above;
 - (3) to perform all acts required by such Loan/Grant documents to be done by it; and
 - (4) to own, operate and maintain the Project during its Useful Life.
- E. All proceedings of the Borrower/Grantee, its elected and appointed officers, and employees, required or necessary to be taken in connection with the authorization of the actions specified above have been duly taken and all such authorizations are presently in full force and effect.
- F. The Resolution has been duly signed and adopted in accordance with all applicable laws and has not been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Resolution. The Resolution constitutes valid and sufficient legal authority for the Borrower/Grantee to carry out and enforce the provisions of the Loan/Grant Agreement.
- G. To my knowledge, no event will result from the execution and delivery of the Loan/Grant Agreement that constitutes a default or an event of default under either the Loan/Grant Agreement or the Resolution, and no event of default and no default under the Loan/Grant Agreement or the Resolution has occurred and is continuing on the date of this Opinion.
- H. The Borrower/Grantee has duly authorized and approved the consummation by it of all transactions, and has complied with all requirements and satisfied all conditions, which are required by the Loan/Grant Agreement to have been authorized, approved, performed or consummated by the Borrower/Grantee at or prior to the date of this Opinion. The Borrower/Grantee has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution and the Loan/Grant Agreement.
- I. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the enforceability of the Loan/Grant Agreement or any of the actions required to be taken by the Resolution or the Loan/Grant Agreement to the date of this Opinion have been obtained and are in full force and effect.
- J. To my knowledge, neither the Borrower/Grantee's adoption of the Resolution nor any action contemplated by or pursuant to the Resolution or the Loan/Grant Agreement does or will conflict with, or constitutes a breach by the Borrower/Grantee of, or default by the Borrower/Grantee under any law, court decree or order, governmental regulation, rule or order, ordinance, resolution, agreement, indenture, mortgage or other instrument to which the Borrower/Grantee is subject or by which it is bound.

- K. There is no actual or threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to my knowledge is there any basis therefore, affecting the existence of the Borrower/Grantee or the titles of its officials to their respective offices, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Borrower/Grantee, (b) the use of the proceeds of the Loan/Grant Agreement for the Project and to pay certain costs of the Finance Authority and the Water Trust Board associated with the administration of the Water Project Fund, (c) the validity or enforceability of the Loan/Grant Agreement or any proceedings of the Borrower/Grantee with respect to the Resolution or the Loan/Grant Agreement, (d) the execution and delivery of the Loan/Grant Agreement, (e) the authority of the Borrower/Grantee to repay the Loan Amount, or (f) the power of the Borrower/Grantee to carry out the transactions contemplated by the Resolution and the Loan/Grant Agreement.
- L. To my knowledge there are no recorded liens of any nature whatsoever affecting the title to any real property upon which the Project will be located.
- M. No legal proceedings have been instituted or are pending, and to my knowledge none are threatened, whether or not the Borrower/Grantee is named as a party in such proceedings, which would affect the Borrower/Grantee's interest in the real property upon which the Project will be located, and there are no judgments against the Borrower/Grantee or liens against any property of the Borrower/Grantee that would impair the Borrower/Grantee's ability to complete the Project.
- N. The Borrower/Grantee has acquired all of the necessary land rights, easements and rights-of-way for the Project and the Borrower/Grantee now has sufficient, adequate and continuous rights-of-way to permit the implementation of the Project.

Dated this 3rd day of August, 2012.



Harry S. (Pete) Connelly
 City of Las Cruces
 700 N. Main Street
 Las Cruces, New Mexico 88001
 Phone: (575) 541-2128

Attorney for Borrower/Grantee,
 City of Las Cruces, Dona Ana County, New Mexico