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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 4 Ordinance/Resolution# 13-041

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of September 17, 2012
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING THE FIRST AMENDMENT TO \$3,535,000 AMENDED AND RESTATED DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT SOLELY TO EXTEND THE EXPENDITURE AND REPORTING DEADLINE FROM JUNE 30, 2012 TO OCTOBER 29, 2012 OR SUCH LATER DATE AS APPROVED BY THE NEW MEXICO FINANCE AUTHORITY.

PURPOSE(S) OF ACTION:

To approve amendments to a loan agreement.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Marcia B. Driggers	<u>Department/Section:</u> City Attorney/Legal	<u>Phone:</u> (575) 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In 2007 the City Council and the County Commission approved ordinances approving loan documents with the New Mexico Finance Authority ("NMFA") for up to \$3,535,000 each to fund the cleanup of the Griggs-Walnut Super Fund site. The City's and the County's identical loan agreements were each amended in 2011 to extend the deadline for the drawdown of loan funds by eighteen (18) months from January 18, 2011 to June 30, 2012. The Amended and Restated Loan Agreements provided that June 30, 2012 was the deadline for various disbursement and reporting requirements concerning the design and construction of the Griggs-Walnut Super Fund site treatment facility.

The treatment facility has been fully designed and constructed, and accepted by the Environmental Protection Agency and to insure that all expenditures related to the design and construction of the treatment facility have been fully accounted for, the City and the County have requested an extension of the disbursement and reporting requirement deadline from June 30, 2012 to October 29, 2012. NMFA has authorized the deadline extension from June 30, 2012 to October 29, 2012.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", titled "First Amendment to \$3,535,000 Amended and Restated Drinking Water State Revolving Fund Loan Agreement".
3. Attachment "A", Amended and Restated Drinking Water State Revolving Fund Loan Agreement dated May 20, 2011.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input 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? N/A	Yes	<input type="checkbox"/>	Funds will be deposited: _____
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the First Amendment to \$3,535,000 Amended and Restated Drinking Water State Revolving Fund Loan Agreement.
2. Vote "No"; this will not approve the First Amendment to \$3,535,000 Amended and Restated Drinking Water State Revolving Fund Loan Agreement, thereby making the City non-compliant with the disbursement and reporting requirement deadlines.

(Continue on additional sheets as required)

3. Vote to "Amend"; this would allow Council to propose modifications to the First Amendment to \$3,535,000 Amended and Restated Drinking Water State Revolving Fund Loan Agreement as it deems appropriate, which modifications would have to be approved by the New Mexico Finance Authority.
4. Vote to "Table"; this would allow Council to postpone consideration of the resolution to approve the First Amendment to \$3,535,000 Amended and Restated Drinking Water State Revolving Fund Loan Agreement, and direct staff accordingly.

REFERENCE INFORMATION:

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

N/A.

(Continue on additional sheets as required)

RESOLUTION NO. 13-041

A RESOLUTION APPROVING THE FIRST AMENDMENT TO \$3,535,000 AMENDED AND RESTATED DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT SOLELY TO EXTEND THE EXPENDITURE AND REPORTING DEADLINE FROM JUNE 30, 2012 TO OCTOBER 29, 2012 OR SUCH LATER DATE AS APPROVED BY THE NEW MEXICO FINANCE AUTHORITY.

The City Council is informed that:

WHEREAS, in 2007 the City Council and the County Commission approved ordinances approving loan documents with the New Mexico Finance Authority ("NMFA") for up to \$3,535,000 each to fund the cleanup of the Griggs-Walnut Super Fund site; and

WHEREAS, the City's and the County's identical loan agreements were each amended in 2011 to extend the deadline for the drawdown of loan funds by eighteen (18) months from January 18, 2011 to June 30, 2012; and

WHEREAS, the Amended and Restated Loan Agreements provided that June 30, 2012 was the deadline for various disbursement and reporting requirements concerning the design and construction of the Griggs-Walnut Super Fund site treatment facility; and

WHEREAS, the treatment facility has been fully designed and constructed, and accepted by the Environmental Protection Agency; and

WHEREAS, to insure that all expenditures related to the design and construction of the treatment facility have been fully accounted for, the City and the County have requested an extension of the disbursement and reporting requirement deadline from June 30, 2012 to October 29, 2012; and

WHEREAS, NMFA has authorized the deadline extension from June 30, 2012 to October 29, 2012.

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

(I)

THAT the First Amendment to \$3,535,000 Amended and Restated Drinking Water State Revolving Fund Loan Agreement, attached hereto as Exhibit "A", dated May 20, 2011, by and between the New Mexico Finance Authority as lender, and the City of Las Cruces, Doña Ana County, New Mexico, as governmental unit, Finance Authority Loan No. 1974-DW is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2012.

APPROVED:

ATTEST:

Mayor

City Clerk

(SEAL)

VOTE:

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

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:


City Attorney

FIRST AMENDMENT

to

\$3,535,000

**AMENDED AND RESTATED
DRINKING WATER STATE REVOLVING FUND
LOAN AGREEMENT**

Dated

May 20, 2011

By and between the

**NEW MEXICO FINANCE AUTHORITY,
as Lender,**

and the

**CITY OF LAS CRUCES,
Doña Ana County, New Mexico,
as Governmental Unit.**

Finance Authority Loan No. 1974-DW

**Date of Amendment:
September 17, 2012**

**FIRST AMENDMENT TO AMENDED AND RESTATED DRINKING WATER STATE
REVOLVING FUND LOAN AGREEMENT**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT (the "First Amendment") dated September 17, 2012, is made and entered into by and between the **NEW MEXICO FINANCE AUTHORITY** as lender (the "Finance Authority"), and the **CITY OF LAS CRUCES**, Doña Ana County, New Mexico (the "Governmental Unit").

WITNESSETH:

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 (the "Finance Authority Act"); and

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing incorporated home-rule municipality and is a political subdivision of the State and is 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 Finance Authority Act; and

WHEREAS, on January 18, 2008, the Finance Authority and the Governmental Unit entered into a Loan Agreement (the "Original Loan Agreement") and on May 20, 2011, the Finance Authority and the Governmental Unit entered into an Amended and Restated Loan Agreement (the "Loan Agreement") under which the Finance Authority granted to the Governmental Unit and the Governmental Unit accepted from the Finance Authority a loan in the amount of Three Million Five Hundred and Thirty-Five Thousand dollars (\$3,535,000) (the "Loan Amount"), subject to the terms and conditions set forth in the Loan Agreement; and

WHEREAS, under the terms of the Loan Agreement, the Loan Amount was to be used by the Governmental Unit for a project described as remediation of perchloroethylene (the "Original Project"); and

WHEREAS, the Governmental Unit by all necessary and appropriate action of its officers and Governing Body has authorized the amendment of the Loan Agreement as provided in this First Amendment; and

WHEREAS, at its duly called regular meeting on May 24, 2012, the Finance Authority authorized the amendment of the Loan Agreement as provided in this First Amendment.

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

Section 1. Defined Terms. Capitalized terms in this First Amendment shall have the same meaning as those terms have in the Loan Agreement, unless a different meaning is

expressly stated in this First Amendment, or is clearly required by the Board Rules or is clearly required by the context.

Section 2. Representations, Covenants and Warranties. The Governmental Unit represents, covenants and warrants that with the exception of the amendment to Section 2.1(d) (ii), set out below, the representations, covenants and warranties contained in Section 2.1 of the Loan Agreement, remain true and correct as of the date hereof. The Finance Authority represents, covenants and warrants that the representations, covenants and warranties contained in Section 2.2 of the Loan Agreement, remain true and correct as of the date hereof.

Section 3. Amendment. The parties agree that the Loan Agreement shall be, and upon execution of this First Amendment is, amended as follows:

The WHEREAS clauses

The eighth WHEREAS shall be deleted in its entirety including all amendments and shall be replaced by the following:

WHEREAS, due to circumstances beyond the control of the Governmental Unit and the County of Doña Ana, New Mexico the funding made available under the Loan Agreement has not been entirely expended for the Project, but it is reasonably expected that the funding, or such portion of it as is needed to complete the Project, will be entirely expended no later than October 29, 2012; and

The ninth WHEREAS shall be deleted in its entirety including all amendments and shall be replaced by the following:

WHEREAS, the Board of Directors of the Finance Authority has authorized an extension of the Interim Period during which funds may be drawn down for the Project until October 29, 2012, in accordance with the terms set forth in this Loan Agreement; and

ARTICLE I DEFINITIONS

The definition of "Final Disbursement" shall be deleted in its entirety including all amendments and shall be replaced by the following:

"Final Disbursement" means the final disbursement of moneys from the Program Account to the Governmental Unit, which shall occur no later than October 29, 2012, except as otherwise provided in Section 4.1(b) of this Loan Agreement.

The definition of "Final Loan Agreement Payment Schedule" shall be deleted in its entirety including all amendments and shall be replaced by the following:

"Final Loan Agreement Payment Schedule" means the schedule of Loan Agreement Payments due on this Loan Agreement following the Final Disbursement; the Final Loan

Agreement Payment Schedule, assuming the disbursement of the Aggregate Program Amount by October 29, 2012, is attached as Exhibit "B" to this First Amendment.

The definition of "Interim Period" shall be deleted in its entirety including all amendments and shall be replaced by the following:

"Interim Period" means the period, beginning on January 18, 2008 and ending no later than October 29, 2012, during which the Finance Authority will disburse moneys from the Program Account to the Governmental Unit to pay costs of the Project.

The definition of "Principal Component" shall be deleted in its entirety including all amendments and shall be replaced by the following:

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement, based upon the Aggregate Disbursements; the Principal Component of each Loan Agreement Payment, assuming the disbursal of the Aggregate Program Amount by October 29, 2012, is shown on Exhibit "B" attached to this First Amendment.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Article II, Section 2.1(d) (ii) shall be deleted in its entirety including all amendments and shall be replaced by the following:

(ii) The Governmental Unit, no later than October 29, 2012, shall have requisitioned the Aggregate Program Amount, or such portion thereof as shall be necessary to complete the Project.

ARTICLE IV LOAN; APPLICATION OF MONEYS

Article IV, Section 4.1(b) shall be deleted in its entirety including all amendments and shall be replaced by the following:

(b) The Final Disbursement shall occur no later than October 29, 2012, except only as otherwise approved in writing by an Authorized Officer of the Finance Authority with the approval of the EPA, based on the Governmental Unit's demonstration, to the reasonable satisfaction of the Authorized Officer of the Finance Authority, that unanticipated circumstances beyond the control of the Governmental Unit resulted in delaying the Governmental Unit's request for the Final Disbursement.

ARTICLE V LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT

Article V, Section 5.1 paragraph 2 shall be deleted in its entirety including all amendments and shall be replaced by the following:

Within thirty (30) days after each disbursement of moneys from the Program Account during the Interim Period, the Finance Authority shall recalculate the Loan Agreement Payments next coming due and shall provide written notice to the Governmental Unit of the recalculated Loan Agreement Payments. Within thirty (30) days after the Final Disbursement, the Finance Authority shall provide the Final Loan Agreement Payment Schedule. The schedule of Loan Agreement Payments, assuming the disbursement of the Maximum Principal Amount as of October 29, 2012, is attached to this First Amendment as Exhibit "B". Exhibit "B" to the Loan Agreement is deleted in its entirety and shall be replaced by Exhibit "B" attached to this First Amendment. The Finance Authority shall provide a revised Final Loan Agreement Payment Schedule following Final Disbursement, which shall supersede the schedule attached as Exhibit "B".

ARTICLE VI
THE PROJECT SHALL BE AMENDED AS FOLLOWS

Article VI, Section 6.4 shall be deleted in its entirety including all amendments and shall be replaced by the following:

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof or in the event that the Finance Authority shall not have received a certificate of completion as required by Section 6.3 hereof by October 29, 2012 (or such later date as is approved in writing by an Authorized Officer of the Finance Authority as described in Section 4.1(b) hereof), the Finance Authority or its designee shall withdraw any amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) and such amounts shall be transferred to the Debt Service Account and the Expense Fund to be used for the payment of debt service on this Loan Agreement and to pay Expenses.

Section 4. The Loan Agreement Remains Effective and Binding. Except as specifically amended herein, the Loan Agreement and all provisions thereof shall remain fully effective, and the Loan Agreement as amended by this First Amendment shall be binding upon the parties hereto and their respective successors and assigns, if any.

Section 5. Severability. In the event that any provision of this First Amendment or any provision of the Loan Agreement as hereby amended should be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or of the Loan Agreement as amended by this First Amendment.

Section 6. Execution in Counterparts. This First Amendment 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 7. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 8. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this First Amendment.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself has executed this First Amendment, which was approved by the Finance Authority on May 24, 2012, in its respective corporate name with its corporate seal affixed hereto and attested by the duly authorized officers; and the Governmental Unit 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.

LENDER:

NEW MEXICO FINANCE AUTHORITY

By _____
Chief Executive Officer or Designee

ATTEST:

By _____
_____, Authorized Officer

Prepared for Execution by Officers of the
New Mexico Finance Authority:

VIRTUE NAJJAR & BROWN, PC
As Loan Counsel

By: _____
Richard L. C. Virtue

Approved for Execution by Officers of the
New Mexico Finance Authority:

By: _____
Reynold E. Romero
Finance Authority General Counsel

GOVERNMENTAL UNIT:

CITY OF LAS CRUCES, NEW MEXICO

By _____
Ken Miyagishima, Mayor

ATTEST:

Esther Martinez-Carrillo, City Clerk

Governing Body Member _____ then moved adoption of the City Council Resolution approving the foregoing First Amendment, duly seconded by Governing Body Member _____.

The motion to adopt the City Council Resolution approving the First Amendment, 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 City Council Resolution approving the First Amendment adopted. Thereafter, the Mayor and City Clerk signed the First Amendment.

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

EXHIBIT "A"

Notice of Meeting

EXHIBIT "B"

TO THE FIRST AMENDMENT TO AMENDED AND RESTATED LOAN AGREEMENT
FINAL LOAN AGREEMENT PAYMENT SCHEDULE

LOAN NO. 1974-DW
AMENDED AND RESTATED

(to be provided)

New Mexico Finance Authority Loan Amount = 3,535,000
 Dona Ana County Average Loan Life = 15.53
 Blended Interest Rate = 2.000%
 Arbitrage Yield = 1.7496%
 Loan Life = 24

Gross Receipts Tax - ESGRT

Fiscal Year	Ending June 30	Principal Amount	Interest Amount	Total New FY Debt Service	Total Calendar Year Debt Serv	Principal Outstanding	Exempt Rate*	Arb Yield @ 1.7496%	Coverage @ 1.15	Revenue @ 0.00%	Projected Coverage
2009	Dec	61,469.72	35,350.00	96,819.72	61,469.72	3,535,000	2.000%	60,546	111,343	769,834	7.95
2010	Dec	35,350.00	35,350.00	70,700.00	70,700.00	3,535,000	2.000%	34,517	81,305	769,834	10.89
2011	Dec	35,350.00	35,350.00	70,700.00	70,700.00	3,535,000	2.000%	33,626	81,305	769,834	10.89
2012	Dec	35,350.00	35,350.00	70,700.00	70,700.00	3,535,000	2.000%	33,046	81,305	769,834	10.89
2013	Dec	35,350.00	35,350.00	70,700.00	70,700.00	3,535,000	2.000%	32,475	248,617	769,834	3.56
2014	Dec	145,489	33,895.11	181,384.11	214,734.11	3,389,511	2.000%	30,601	248,618	769,834	3.56
2015	Dec	151,367	32,411.12	183,778.12	214,705.23	3,241,112	2.000%	28,756	248,618	769,834	3.56
2016	Dec	154,394	30,897.45	185,291.45	214,675.57	3,089,745	2.000%	26,939	248,617	769,834	3.56
2017	Dec	157,482	29,353.51	186,835.51	214,644.96	2,935,351	2.000%	25,151	248,617	769,834	3.56
2018	Dec	160,632	27,778.69	188,410.69	214,614.20	2,777,869	2.000%	23,391	248,618	769,834	3.56
2019	Dec	163,844	26,172.37	190,016.37	214,583.06	2,617,237	2.000%	21,658	248,617	769,834	3.56
2020	Dec	167,121	24,533.93	191,654.93	214,550.30	2,453,393	2.000%	19,951	248,617	769,834	3.56
2021	Dec	170,464	22,862.72	193,326.72	214,517.65	2,286,272	2.000%	18,271	248,618	769,834	3.56
2022	Dec	173,873	21,158.08	195,031.08	214,484.80	2,115,808	2.000%	16,617	248,618	769,834	3.56
2023	Dec	177,350	19,419.35	196,769.35	214,450.43	1,941,935	2.000%	14,988	248,618	769,834	3.56
2024	Dec	180,897	17,645.85	198,542.85	214,415.20	1,764,585	2.000%	13,384	248,617	769,834	3.56
2025	Dec	184,515	15,836.88	200,351.88	214,379.73	1,583,688	2.000%	11,804	248,617	769,834	3.56
2026	Dec	188,206	13,991.73	202,197.73	214,343.61	1,399,173	2.000%	10,249	248,618	769,834	3.56
2027	Dec	191,970	12,109.67	204,079.67	214,307.40	1,210,967	2.000%	8,717	248,618	769,834	3.56
2028	Dec	195,809	10,189.97	206,000.00	214,269.64	1,018,997	2.000%	7,209	248,617	769,834	3.56
2029	Dec	199,725	8,231.88	207,493.88	214,230.85	823,188	2.000%	5,723	248,617	769,834	3.56
2030	Dec	203,720	6,234.63	209,458.51	214,191.51	623,463	2.000%	4,259	248,617	769,834	3.56
2031	Dec	207,794	4,197.43	211,991.43	214,152.06	419,743	2.000%	2,818	248,618	769,834	3.56
2032	Dec	211,949	2,119.49	214,068.49	214,110.92	211,949	2.000%	1,398	248,617	769,834	3.56
Total		3,535,000	1,097,699.44	4,632,699.44	4,632,699.44	3,535,000		3,652,734			

*Includes Admin fee of .25%

**AMENDED AND RESTATED
DRINKING WATER STATE REVOLVING FUND
LOAN AGREEMENT**

(\$3,535,000 Maximum Principal Amount)

dated

May 20, 2011

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

**CITY OF LAS CRUCES,
New Mexico**

AMENDED AND RESTATED LOAN AGREEMENT

This AMENDED AND RESTATED LOAN AGREEMENT (the "Loan Agreement"), dated as of May 20, 2011, is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the "NMFA"), and the **CITY OF LAS CRUCES**, New Mexico (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

WITNESSETH:

WHEREAS, capitalized terms used in the following recitals of this Loan Agreement have the same meaning as defined in Article I of this Loan Agreement unless the context requires otherwise.

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

WHEREAS, the NMFA is authorized, pursuant to Section 6-21A-1 et seq., NMSA 1978, as amended (the "Act") to implement a program to permit qualified local authorities, such as the Governmental Unit, to enter into agreements with the NMFA to facilitate financing of necessary drinking water projects; and

WHEREAS, the Governmental Unit is an incorporated home-rule municipality and is a political subdivision of the State duly organized and existing under the laws of the State and in particular Section 3-2-1 et seq. and Section 3-15-1 et seq., NMSA 1978, and is a local authority under the Act; and

WHEREAS, the Governmental Unit is authorized by the laws of the State and in particular Section 3-31-1 et seq., NMSA 1978, as amended and supplemented, to enter into this Loan Agreement and accept a loan for the purpose of financing the Project, being the remediation of perchloroethylene ("PCE") in the Griggs and Walnut area of the Governmental Unit, as more fully described in the Term Sheet; and

WHEREAS, on January 18, 2008, the Governmental Unit entered into the Original Loan Agreement with the NMFA to provide partial funding for the Project and, on the same date, the County of Doña Ana (the "County") entered into the Original County Loan Agreement with the NMFA to provide partial funding for the Project; and

WHEREAS, the Original Loan Agreement and the Original County Loan Agreement provided that funding for the Project would be available for distribution for a period of no longer than three (3) years from January 18, 2008; and

WHEREAS, due to circumstances beyond the control of the Governmental Unit and the County the funding made available under the Original Loan Agreement has not been entirely expended for the Project, but it is reasonably expected that the funding, or such portion of it as is needed to complete the Project, will be entirely expended no later than June 30, 2012; and

WHEREAS, the Board of Directors of the NMFA has authorized an extension of the Interim Period during which funds may be drawn down for the Project until June 30, 2012, in accordance with the terms set forth in this Loan Agreement; and

WHEREAS, the City Council, the Governing Body of the Governmental Unit, has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the NMFA and amend the terms of the Original Loan Agreement with the NMFA to finance the Governmental Unit's portion of the costs of the Project; and

WHEREAS, the Governmental Unit and the County have entered into the Amended MOU (as hereinafter defined), pursuant to which the Governmental Unit and the County have agreed to jointly fund and finance the Project, and to share equally the costs of the Project; and

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

WHEREAS, the Department has determined that the Governmental Unit's Project plans and specifications comply with the provisions of 42 U.S.C. Section 300j-12(a)(1)(A) and (B) and the requirements of the laws and regulations of the State governing the constructions and operation of drinking water supply facilities and has certified that the Project is ready to be funded by the NMFA; and

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

WHEREAS, pursuant to the Preliminary Engineering Report and the Environmental Assessment and Finding of No Significant Impact issued by the NMFA on April 5, 2011, the NMFA has found and determined that the Project meets all applicable requirements of the State Environmental Review Process (SERP) for the State Drinking Water Revolving Loan Fund; and

WHEREAS, for purposes of financing the Project, the Governing Body and the NMFA have determined that it is in the best interests of the Governmental Unit and its residents that the NMFA lend the Loan Agreement Principal Amount to the Governmental Unit and extend the Interim Period as provided in this Loan Agreement; and

WHEREAS, the NMFA has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, pursuant to Section 7-19D-10, NMSA 1978, as amended, and pursuant to Governmental Unit Ordinance No. 1394, adopted September 19, 1994, as amended by Governmental Unit Ordinance No. 1846, adopted December 18, 2000, as amended, the Governmental Unit has imposed an excise tax equal to one-sixteenth of one percent (0.0625%) on the gross receipts of any person engaging in business within the Governmental Unit (the "Pledged Revenues"); and

WHEREAS, the Governmental Unit has entered into an Amended and Restated Intercept Agreement (the "Intercept Agreement") by and between the NMFA and the Governmental Unit, of even date herewith, amending the Original Intercept Agreement dated January 18, 2008 by and between the NMFA and the Governmental Unit, whereby Pledged Revenues due to the Governmental Unit from the Distributing State Agency will, under the circumstances specified in Section 5.2(a) of this Loan Agreement, be intercepted by the NMFA to satisfy payments due under this Loan Agreement; and

WHEREAS, except as described on the Term Sheet attached hereto and as originally represented in the Original Loan Agreement, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement on a parity with the Parity Obligations; and

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

WHEREAS, the NMFA has determined that the Governmental Unit has the financial capability to assure sufficient revenue to operate and maintain the Project for its useful life and to repay the amounts borrowed pursuant to this Loan Agreement; and

WHEREAS, the execution, performance and delivery of this Loan Agreement, amending and restating the Original Loan Agreement, and the Intercept Agreement, amending and restating the Original Intercept Agreement, have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Ordinance; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the NMFA and its officers.

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

ARTICLE I

DEFINITIONS

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

“Act” means the Drinking Water State Revolving Loan Fund Act, Section 6-21A-1 et seq., NMSA 1978, as amended, and the general laws of the State, including Section 3-31-1 et seq., NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement including the Ordinance.

“Administrative Fee” or “Administrative Fee Component” means the 0.25% annual fee payable to the NMFA as 0.125% of the Loan Agreement Balance then outstanding as a part of each semi-annual Loan Agreement Payment for the costs of originating and servicing the Loan, as shown in the Final Loan Agreement Payment Schedule attached to this Loan Agreement as Exhibit “B”.

“Aggregate Disbursements” means, at any time after the Closing Date, the sum of (i) the aggregate disbursed Expense Fund Component and (ii) the aggregate amounts disbursed to the Governmental Unit or the Fiscal Agent from the Program Account for payment of the incurred costs of the Project.

“Aggregate Program Amount” means, with respect to this Loan Agreement, the sum of three million five hundred thousand dollars (\$3,500,000), which amount shall be available for disbursement to the Governmental Unit to pay costs of the Project upon receipt by the NMFA of a properly executed requisition or requisitions in substantially the form attached as Exhibit “C” to this Loan Agreement.

“Amended MOU” means the Amended Joint Superfund Project Memorandum of Understanding dated October 17, 2006, effective October 2, 2006, between the Governmental Unit and the County relating to the Project, including any amendments or supplements thereof.

“Authorized Officers” means, with respect to the Governmental Unit, the Mayor, the City Manager, the Finance Director, the Utilities Director and the City Clerk thereof; and with respect to the NMFA, the Chairman, Vice-Chairman, Secretary and Chief Executive Officer of the NMFA, and any other officer or employee of the NMFA designated in writing by an Authorized Officer thereof.

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

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

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

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

“County” means the County of Doña Ana in the State of New Mexico.

“County Loan Agreement” means the Amended and Restated Drinking Water State Revolving Fund Loan Agreement of even date herewith between the County and the NMFA which provides for partial funding of the Project through disbursements to or on behalf of the County and requires loan payments by or on behalf of the County to the NMFA.

“County Ordinance” means the County’s Ordinance No. 234-07, adopted December 1, 2007, as supplemented from time to time, relating to the Original County Loan Agreement and the County Loan Agreement.

“Debt Service Account” means the debt service account established in the name of the Governmental Unit and administered by the NMFA to pay principal and interest on this Loan Agreement as the same become due.

“Department” means the New Mexico Environment Department.

“Distributing State Agency” means the department or agency of the State, as described in the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

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

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

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

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

“Expense Fund” means the expense fund created herein to be held and administered by the NMFA to pay Expenses.

“Expense Fund Component” means an additional amount equal to one percent (1%) of each disbursement from the Program Account for the Project, simultaneously withdrawn from the Program Account and deposited in the Expense Fund to pay Expenses.

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

“Final Disbursement” means the final disbursement of moneys from the Program Account to the Governmental Unit, which shall occur no later than June 30, 2012, except as otherwise provided in Section 4.1(b) of this Loan Agreement.

“Final Loan Agreement Payment Schedule” means the schedule of Loan Agreement Payments due on this Loan Agreement following the Final Disbursement; the Final Loan Agreement Payment Schedule, assuming the disbursement of the Aggregate Program Amount by June 30, 2012, is attached as Exhibit “B” to this Loan Agreement.

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

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

“Governing Body” means the duly organized City Council of the Governmental Unit, and any successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Las Cruces in Doña Ana County, New Mexico.

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

“Intended Use Plan” means the current plan approved by the NMFA and the Department and submitted by the NMFA and the Department to the Environmental Protection Agency pursuant to 42 U.S.C. Section 300j-12(b) which establishes affordability criteria for disadvantaged communities and procedures for extending drinking water improvements financial assistance to such disadvantaged communities.

“Intercept Agreement” means the Amended and Restated Intercept Agreement dated May 20, 2011, by and between the Governmental Unit and the NMFA providing for the direct payment by the Distributing State Agency to the NMFA of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments under the circumstances specified in Section 5.2(a) of this Loan Agreement, and any amendments or supplements to the Intercept Agreement.

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

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

“Interim Period” means the period, beginning on January 18, 2008 and ending no later than June 30, 2012, during which the NMFA will disburse moneys from the Program Account to the Governmental Unit to pay costs of the Project.

“Loan” means the funds to be loaned to the Governmental Unit in the Loan Agreement Principal Amount by the NMFA pursuant to this Loan Agreement.

“Loan Agreement” means this Amended and Restated Drinking Water State Revolving Fund Loan Agreement and any amendments or supplements hereto, including the exhibits attached to this Loan Agreement.

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

“Loan Agreement Payment” means, collectively, the Principal Component, the Interest Component and the Administrative Fee Component to be paid by the

Governmental Unit as payment on the Aggregate Disbursements under this Loan Agreement, as shown on Exhibit "B" hereto.

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

"Loan Agreement Principal Amount" means, as of any date of calculation, the Aggregate Disbursements, up to the Maximum Principal Amount.

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

"Maximum Principal Amount" means three million five hundred thirty-five thousand dollars (\$3,535,000).

"Memorandum of Understanding" means the current memorandum of understanding by and between the NMFA and the Department pursuant to the Act describing and allocating duties and responsibilities pursuant to the Drinking Water State Revolving Loan Fund.

"Municipal Environmental Services Gross Receipts Tax Act" means Section 7-19D-10, NMSA 1978, as amended.

"NMFA" means the New Mexico Finance Authority.

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

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

"Ordinance" means Ordinance No. 2423 adopted by the Governing Body of the Governmental Unit on December 3, 2007, approving the Original Loan Agreement and this Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet, as supplemented from time to time.

"Original County Loan Agreement" means the Drinking Water State Revolving Fund Loan Agreement dated January 18, 2008, by and between the County and the NMFA, and any amendments or supplements thereto prior to the date of this Loan Agreement, including the exhibits attached to the Original County Loan Agreement.

"Original Intercept Agreement" means the Intercept Agreement dated January 18, 2008, by and between the Governmental Unit and the NMFA providing for the direct payment by the Distributing State Agency to the NMFA of the Pledged Revenues in

amounts sufficient to pay Loan Agreement Payments under the circumstances specified in Section 5.2(a) of the Original Loan Agreement.

“Original Loan Agreement” means the Drinking Water State Revolving Fund Loan Agreement dated January 18, 2008, by and between the Governmental Unit and the NMFA, and any amendments or supplements thereto prior to the date of this Loan Agreement, including the exhibits attached to the Original Loan Agreement.

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

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

“Pledged Revenues” means the distributions of the revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

“Principal Component” means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement, based upon the Aggregate Disbursements; the Principal Component of each Loan Agreement Payment, assuming the disbursal of the Aggregate Program Amount by June 30, 2012, is shown on Exhibit “B” attached to this Loan Agreement.

“Program Account” means the account in the name of the Governmental Unit established and held by the NMFA for deposit of the net proceeds of this Loan Agreement for disbursal to the Governmental Unit or the Fiscal Agent to pay the costs of the Project.

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

“Rate Covenant” means, collectively, the promises and representations of the Government Unit contained in Section 2.1 of this Loan Agreement.

“Senior Obligations” means the City of Las Cruces, New Mexico South Central Solid Waste Authority Environmental Services Gross Receipts Tax/Project Revenue Refunding Bonds, Series 2004, maturing June 1, 2016, in the outstanding principal amount of \$6,375,000 and any other obligations hereafter issued with a superior lien on Pledged Revenues, and meeting the requirements of this Loan Agreement applicable to the issuance of Senior Obligations.

“State” means the State of New Mexico.

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

“Subordinated Obligations” means all bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the lien created by this Loan Agreement and to any other outstanding Parity Obligations having a lien on the Pledged Revenues.

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

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, employees or officials of the Governmental Unit 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 Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the

Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery hereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is an incorporated home-rule municipality, a political subdivision of the State, and is duly organized and existing under the statutes and laws of the State, including specifically Section 3-2-1 et seq. and Section 3-15-1 et seq., NMSA 1978, as amended and supplemented. The Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement (less amounts deposited to the Expense Fund) to the acquisition and completion of the Project and to no other purpose, as follows:

(i) The Governmental Unit shall requisition moneys from the Program Account not less frequently than quarterly; and

(ii) The Governmental Unit, no later than June 30, 2012, shall have requisitioned the Aggregate Program Amount, or such portion thereof as shall be necessary to complete the Project.

(e) Payment of Loan Agreement Payments. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit 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) Acquisition and Completion of the Project; Compliance with Laws. The Project will consist of the remediation of perchloroethylene ("PCE") in the Griggs and Walnut area of the Governmental Unit, and any other projects described in the Term Sheet. The Project will be completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to

the acquisition, construction and completion of the Project and to the use of the Pledged Revenues. The Project complies with Section 7-19D-10, NMSA 1978, as amended.

(g) Necessity of Project. The acquisition and completion of the Project under the terms and conditions provided for in this Loan Agreement are necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and are in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement. This Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

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

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit and the County, individually and collectively.

(k) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; and (ii) an amount necessary to pay costs related to execution and delivery of this Loan Agreement and the costs related to issuance of the Bonds, if any.

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

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

(n) Outstanding Debt. Except for the Senior Obligations and the Parity Obligations described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a lien on the Pledged Revenues superior to or on a parity with the lien of this Loan Agreement.

(o) No Litigation. To the best knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under this Loan Agreement and the Intercept Agreement requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained by the Closing Date.

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

(q) Pledged Revenues Not Budgeted. The portions of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, are not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(r) Expected Coverage Ratio. The Pledged Revenues from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded and, on an ongoing basis during each year of the Loan Agreement Term are reasonably expected to equal or exceed, one hundred fifteen percent (115%) of the maximum annual principal and interest due on all outstanding Senior Obligations and Parity Obligations of the Governmental Unit.

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

(t) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the NMFA.

(u) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the NMFA, as the NMFA may require, that shall

include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used in connection with assignment or securitizing the Loan Agreement or the Loan Agreement Payments by issuance of Bonds by the NMFA, and notification of any event deemed material and specifically identified by the NMFA. For the purposes of this Loan Agreement, a material event shall include, without limitation, any violation or a violation alleged by a state or federal agency of appropriate jurisdiction, of federal law, regulation, or policy which governs or applies to participants in the Drinking Water State Revolving Loan Fund.

(v) Construction Requirements. The Governmental Unit shall require any contractor hired by it in connection with the construction of the Project to post a performance and payment bond as provided by Section 13-4-18, NMSA 1978, as amended. Upon completion of the acquisition and construction of the Project, the Governmental Unit shall provide a written notice of completion of the Project.

(w) Other Liens. Except for those Senior Obligations and Parity Obligations listed in the Term Sheet, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

Section 2.2 Representations, Covenants and Warranties of the NMFA. The NMFA represents, covenants and warrants for the benefit of the Governmental Unit as follows:

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

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

(c) No Litigation. To the knowledge of the NMFA, there is no litigation or proceeding pending or threatened against the NMFA or any other person

affecting the right of the NMFA to execute or deliver this Loan Agreement or the Intercept Agreement, or to comply with its obligations under this Loan Agreement and the Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement by the NMFA, nor compliance by the NMFA with its obligations under this Loan Agreement and the Intercept Agreement requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

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

(e) Compliance with Policies. As related to this Loan Agreement, the NMFA has complied with all policies and procedures as adopted and approved by the NMFA Board of Directors or such policies and procedures have been waived by the NMFA Board of Directors.

(f) Compliance with Securities Laws. The NMFA acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The NMFA is a sophisticated investor regularly making loans and purchasing securities similar to this Loan Agreement and has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit. The NMFA will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of this Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding this Loan Agreement and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable state securities laws and regulations.

ARTICLE III

LOAN AGREEMENT TERM

The Loan Agreement Term, which commenced on January 18, 2008, pursuant to the Original Loan Agreement, shall continue after the Closing Date and shall not terminate until the Governmental Unit's obligations under this Loan Agreement have been paid in full or provision for payment of this Loan Agreement has been made pursuant to Article VIII hereof.

ARTICLE IV

LOAN; APPLICATION OF MONEYS

Section 4.1 Application of Loan Agreement Proceeds.

(a) On the Closing Date, the amount shown on the Term Sheet as the Aggregate Program Amount, less amounts previously disbursed to the Governmental Unit by the NMFA in accordance with the Original Loan Agreement, shall be available for disbursement by the NMFA to the Governmental Unit pursuant to Section 6.2 hereof at the request of the Governmental Unit as needed by the Governmental Unit to implement the Project.

(b) The Final Disbursement shall occur no later than June 30, 2012, except only as otherwise approved in writing by an Authorized Officer of the NMFA with the approval of the EPA, based on the Governmental Unit's demonstration, to the reasonable satisfaction of the Authorized Officer of the NMFA, that unanticipated circumstances beyond the control of the Governmental Unit resulted in delaying the Governmental Unit's request for the Final Disbursement.

Section 4.2 Expense Fund Deposit. The NMFA shall determine the amount of the Expense Fund Component at the time of each disbursement from the Program Account to the Governmental Unit pursuant to Section 6.2 of this Loan Agreement and deposit such amount to the Expense Fund.

Section 4.3 Disbursement from the Program Account; Approval of Payment Requests. The Governmental Unit shall transmit payment requisitions in the form attached to this Loan Agreement as Exhibit "C" and supporting documentation (e.g. a payment request from the contractor or vendor) to the NMFA. The NMFA or its designee shall review each requisition for compliance with (i) the Project's construction plans and specifications and (ii) all applicable state and federal laws, rules and regulations, and shall approve or disapprove the requisition accordingly. If payment is disapproved, written notice shall be given within two (2) days to the Governmental Unit, along with a description of the reason for disapproval, and the Governmental Unit may then pursue remedial action and resubmit the requisition for approval. The NMFA shall arrange for disbursement of funds from the Program Account promptly following approval of each payment requisition.

ARTICLE V

LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The NMFA hereby lends to the

Governmental Unit and the Governmental Unit hereby borrows from the NMFA an amount not to exceed the Maximum Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. Subject to any outstanding Senior Obligations and Parity Obligations, the Governmental Unit does hereby convey, assign and pledge unto the NMFA and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on a parity with the Parity Obligations; (ii) the Debt Service Account, such account being held by the NMFA; and (iii) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments, provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, according to the true intent and meaning hereof, or shall provide as permitted by Article VIII of this Loan Agreement for the payment thereof, and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions then, upon such final payment, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component, the Interest Component and the Administrative Fee Component on the Aggregate Disbursements, the payment schedule of which is attached hereto as Exhibit "B".

Within thirty (30) days after each disbursement of moneys from the Program Account during the Interim Period, the NMFA shall recalculate the Loan Agreement Payments next coming due and shall provide written notice to the Governmental Unit of the recalculated Loan Agreement Payments. Within thirty (30) days after the Final Disbursement, the NMFA shall provide the Final Loan Agreement Payment Schedule. The schedule of Loan Agreement Payments, assuming the disbursement of the Maximum Principal Amount as of June 30, 2012, is attached to this Loan Agreement as Exhibit "B". The NMFA shall provide a revised Final Loan Agreement Payment Schedule following Final Disbursement which shall supersede the schedule attached as Exhibit "B".

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

Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

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

(a) As a subordinate charge and lien, but not an exclusive subordinate charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations and subordinate to the lien on the Pledged Revenues created by any outstanding Senior Obligations), the NMFA shall collect and deposit into the Debt Service Account the Pledged Revenues received directly from the Governmental Unit or, alternatively, the Pledged Revenues received pursuant to the Intercept Agreement.

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

(A) During the Interim Period, Interest shall accrue on the Aggregate Disbursement of moneys from the Program Account, from the date of each disbursement.

(B) During the Interim Period, within five (5) days after each Program Account disbursement, the NMFA shall calculate the Interest Component and Administrative Fee Component on the Loan Agreement Payment next coming due.

(C) During the Interim Period the Governmental Unit shall at least five (5) days prior to each applicable interest payment date, pay to the NMFA for deposit into the Debt Service Account such amount as is necessary to pay the Interest Component and Administrative Fee Component on the Aggregate Disbursements as of each Loan Agreement Payment Date.

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

(A) Interest and Administrative Fee Components. At least five (5) days prior to the applicable interest payment date, the Governmental Unit shall pay to the NMFA for deposit into the Debt Service Account such amount as will be sufficient, together with other moneys, if any, then on deposit therein for such purpose, to

pay the Interest Component and Administrative Fee Component coming due on the next interest payment date as described in the Final Loan Agreement Payment Schedule;

(B) Principal Payments. At least five (5) days prior to the applicable principal payment date, the Governmental Unit shall pay to the NMFA for deposit into the Debt Service Account such amount as will be sufficient, together with other moneys, if any, then on deposit therein for such purpose, to pay the Principal Component coming due on the next principal payment date as described in the Final Loan Agreement Payment Schedule.

(iii) Method of Payment. The Governmental Unit shall timely transfer to the NMFA, from Pledged Revenues, the amounts set forth in Subsections (i)(C), (ii)(A) and (ii)(B) of this Section 5.2(a) during the time that this Loan Agreement is outstanding, and the NMFA shall not intercept such amounts from Pledged Revenues pursuant to the Intercept Agreement unless the Governmental Unit fails to timely transfer each such amount, in which event the NMFA shall intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreement. Such amounts shall be intercepted in approximately equal monthly installments when distributions are made by the Distributing State Agency in accordance with a schedule prepared by the NMFA at the commencement of intercept payments. The monthly intercepted installments will be amounts sufficient, when combined, to meet the payments described in subparagraphs (a)(i) and (ii) above.

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

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the NMFA or its designee at the address designated in Section 11.1 herein. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute among the Governmental Unit, the NMFA or its designee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4. Additional Parity Obligations Payable From Pledged Revenues. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all

or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations or Senior Obligations but including parity refunding bonds and obligations which refund subordinated obligations as provided in Section 5.5 hereof), it must be determined that:

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

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

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred fifteen percent (115%) of the combined maximum annual principal, interest requirement and administrative fees coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and Senior Obligations and on the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

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

(f) The Governmental Unit may issue additional bonds or other obligations, including refunding bonds, payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement as Senior Obligations, so long as the senior lien additional bond test (as it existed on the date of the Original Loan Agreement in Section 22A of Governmental Unit Ordinance No. 2125 approving the City of Las Cruces, New Mexico South Central Solid Waste Authority Environmental Services Gross Receipts Tax/Project Revenue Refunding Bonds, Series 2004) for issuance of Senior Obligations can be met on the date of issuance of such additional bonds or other obligations.

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

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

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

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

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

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

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

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

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

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

Section 5.6 Investment of Governmental Unit Funds. Money on deposit in the Debt Service Account and the Program Account created hereunder may be invested by the NMFA or its designee in Permitted Investments at the written direction of the Governmental Unit or, in the absence of such written direction of the Governmental Unit, at the discretion of the NMFA. Any earnings on the Permitted Investments in any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein for the benefit of the Governmental Unit.

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

ARTICLE VI

THE PROJECT

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

The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements from the Program Account. So long as no Event of Default shall occur, the NMFA or its designee shall disburse moneys from the Program

Account upon receipt and approval (pursuant to Section 4.3 of this Loan Agreement) by the NMFA or its designee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

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

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof or in the event that the NMFA shall not have received a certificate of completion as required by Section 6.3 hereof by June 30, 2012 (or such later date as is approved in writing by an Authorized Officer of the NMFA as described in Section 4.1(b) hereof), the NMFA or its designee shall withdraw any amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) and such amounts shall be transferred to the Debt Service Account and the Expense Fund to be used for the payment of debt service on this Loan Agreement and to pay Expenses.

ARTICLE VII

COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

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

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

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

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

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

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

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

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

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

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

The NMFA or its designee shall have the right to review all contracts, work orders and other documentation related to the Project that it deems necessary to assure compliance with applicable laws, rules and regulations, and may conduct such review as it deems appropriate prior to disbursing funds from the Program Account.

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

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

ARTICLE VIII

PREPAYMENT OF LOAN AGREEMENT PAYMENTS

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

ARTICLE IX

INDEMNIFICATION

From and to the extent of the Pledged Revenues and to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the NMFA harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence of the Governmental

Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition, completion or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the NMFA harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the NMFA, shall defend the NMFA in any such action or proceeding.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and

is not dismissed within thirty (30) days after such filing, but the NMFA shall have the right to intervene in the proceedings to protect the NMFA's interests; or,

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

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

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

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

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

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

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

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

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

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

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the NMFA is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the NMFA 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 NMFA may in its discretion waive any Event of Default hereunder and the consequences of such an Event of Default by written waiver; provided, however, that there shall not be waived (i) any Event of Default in the payment of principal of this Loan Agreement at the date when due as specified herein; (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payment of principal and all expenses of the NMFA, in connection with such Event of Default shall have been paid or provided. Such waiver shall be effective only if made by written statement of waiver issued by the NMFA. In case of any such waiver or rescission, or in case any proceeding taken by the NMFA on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the NMFA shall be restored to its former position and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

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

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

ARTICLE XI

MISCELLANEOUS

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

If to the Governmental Unit, then to:

City of Las Cruces
Attn: Finance Director
700 North Main Street
Las Cruces, New Mexico 88001-1120

If to the NMFA, then to:

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

And if to NMFA's designated servicing agent for this Loan Agreement, if any, at the address to be provided by the servicing agent. The Governmental Unit and the NMFA may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

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

Section 11.3 Integration. This Loan Agreement and any other agreements, certifications and commitments entered into between the NMFA and the Governmental Unit on the Closing Date, including the Intercept Agreement, constitute the entire agreement of the parties regarding the subject matter hereof as of the Closing Date. The Loan provided herein, which was approved by the NMFA Board of Directors on November 9, 2006 and approved as amended on November 18, 2010, and the terms of this Loan Agreement and the Intercept Agreement supersede all prior understandings and agreements between the parties in connection with the Loan, including the Original Loan Agreement and the Original Intercept Agreement, to the extent such prior understandings and agreements are inconsistent with this Loan Agreement or the Intercept Agreement.

Section 11.4 Amendments. This Loan Agreement may be amended only with the written consent of the NMFA and the Governmental Unit.

Section 11.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any elected official, member, employee, director or officer, as such, past, present or future, of the NMFA, either directly or through the NMFA or against any elected official, officer, employee, director or member of the Governmental Unit, 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 Governmental Unit or of the NMFA is hereby expressly waived and released by the Governmental Unit and by the NMFA as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.6 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

Section 11.8 Assignment by the NMFA. This Loan Agreement (except as to the Administrative Fee) and the Intercept Agreement may be assigned and transferred by the NMFA to a trustee, which right to assign and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.9 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.10 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 11.11 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

[Remainder of page intentionally left blank.]

[Signature pages follow.]

IN WITNESS WHEREOF, the NMFA, on behalf of itself has executed this Loan Agreement, which was approved by the NMFA's Board of Directors on November 9, 2006 and approved as amended and restated on November 18, 2010, in its corporate name with its corporate seal affixed hereto and attested by its duly authorized officers; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By 
Chairman

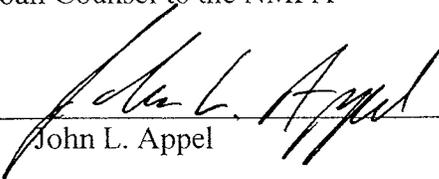
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ATTEST:

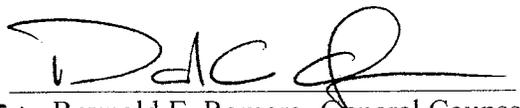
By 
Secretary

Prepared for Execution by Officers of the NMFA:

COPPLER LAW FIRM, P.C.
As Loan Counsel to the NMFA

By: 
John L. Appel

Approved for Execution by Officers of the NMFA:

By: 
Reynold E. Romero, General Counsel

THE CITY OF LAS CRUCES, NEW MEXICO

By 
Ken Miyagishima, Mayor

ATTEST:

By 
Esther Martinez, CMC
City Clerk

APPROVED AS TO FORM:

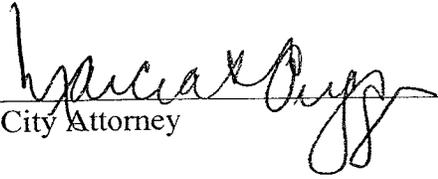

City Attorney

EXHIBIT "A"

TERM SHEET

LOAN NO. 1974-DW
~~AMENDED AND RESTATED~~

Governmental Unit: City of Las Cruces, New Mexico

Project Description: Remediation of perchloroethylene ("PCE"), a volatile organic compound that has been identified by the United States Environmental Protection Agency to be a primary drinking water contaminant, in the vicinity of Griggs and Walnut in the City of Las Cruces and within the County of Doña Ana, New Mexico

Maximum Principal Amount: \$3,535,000

Disadvantaged Funding Amount: \$0

Pledged Revenues: A subordinate pledge of the distribution of the one-sixteenth of one percent increment of Municipal Environmental Services Gross Receipts Tax enacted pursuant to Section 7-19D-10, NMSA 1978, as amended, and City of Las Cruces Ordinance No. 1394 adopted on September 19, 1994, as amended by City of Las Cruces Ordinance No. 1846 adopted on December 18, 2000, which distributions are made monthly by the Distributing State Agency

Distributing State Agency: State of New Mexico Taxation and Revenue Department

Currently Outstanding Senior Obligations: City of Las Cruces, New Mexico South Central Solid Waste Authority Environmental Services Gross Receipts Tax/Project Revenue Refunding Bonds, Series 2004, maturing June 1, 2016, in the outstanding principal amount of \$6,375,000

Currently Outstanding Parity Obligations: None

Authorizing Legislation:	Governmental Unit Ordinance No. 2423, adopted December 3, 2007
Closing Date:	May 20, 2011
Interest Rate:	2.000% (which includes the Administrative Fee)
Coverage Ratio:	115%
Additional Parity Bonds Test:	115%
Maximum Principal Amount:	\$3,535,000
Aggregate Program Amount:	\$3,500,000
Maximum Expense Fund Component:	\$35,000

EXHIBIT "B"

LOAN AGREEMENT PAYMENT SCHEDULE

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: \$3,535,000 Amended and Restated Loan Agreement by and between the NMFA and the City of Las Cruces (the "Loan Agreement")

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

LOAN NO. 1974-DW

CLOSING DATE: May 20, 2011

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

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

PURPOSE OF PAYMENT:

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

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

PAYEE INFORMATION

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

WIRING INFORMATION

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

Please indicate if this Business is considered a

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

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Las Cruces.

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

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Las Cruces is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Las Cruces shall and understands its obligation to complete the acquisition of the Project from other legally available funds.

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

DATED: _____

By: _____
Authorized Officer

(Print name and title)

EXHIBIT "D"

FORM OF CERTIFICATE OF COMPLETION

RE: \$3,535,000 Amended and Restated Loan Agreement by and between the NMFA and the City of Las Cruces (the "Loan Agreement")

Loan No. 1974-DW

Closing Date: May 20, 2011

TO: NEW MEXICO FINANCE AUTHORITY

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

the City of Las Cruces, hereby certify as follows:

1. The project described in the Loan Agreement (the "Project") was completed and placed in service on _____, 20__.
2. The total cost of the Project was \$ _____.
3. Cost of the Project paid from the Loan was \$ _____.
4. The portion of the Aggregate Program Amount unexpended for the Project is \$ _____.
5. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Loan Agreement.

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

CITY OF LAS CRUCES

By: _____

Its: _____

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