

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY**  
**MINUTES, REGULAR BOARD OF DIRECTORS MEETING**

**9:00 a.m. Wednesday, April 17, 2013 at the Vado Office, Vado, NM**

Minutes are in **DRAFT** form until approved by the Directors

- I. **Sign in, Roll Call to Establish Quorum, Call to Order** Sign-in sheet and agenda are attached. Directors present were Chairman Robert “Marty” Nieto, Vice-Chairman John Holguin, Secretary Santos Ruiz, Director Blanca Martinez, Director Rosaura Pargas, Director Furman Smith and Director Mike McMullen. Staff members present were General Manager Martin Lopez, Finance Manager Kathi Jackson, Projects Manager Karen Nichols and Adm Asst Joan Ferguson. Operations Manager, Mike Lopez was absent. Also present were Carlos Tellez, director-elect and Arturo Uribe (MCAC). With a quorum established the meeting was called to order by Mr. Nieto at 9:08am.
- II. **Pledge of Allegiance** {0:47}
- III. **Approval of Agenda** Mr. McMullen moved to approve the agenda, Mr. Smith seconded the motion. The motion to approve the agenda carried 6–0. {1:20}
- IV. **Approval of Minutes of 2/20/13 and 3/20/13**
  - A. Mr. McMullen moved to approve the minutes of 2/20/13. Mr. Smith seconded the motion and it carried 6–0 with no discussion.
  - B. Mr. Holguin moved to approve the minutes of 3/20/13. Mr. Ruiz seconded the motion. There was no discussion and the motion was approved 6–0. {5:24}
- V. **Oath of Office for new Board of Directors** The Oath was postponed until the printed oaths of office were delivered. General Manager, Martin Lopez, presented of awards of appreciation to Rosaura Pargas and Blanca Martinez. Returned to Oath of Office after Projects report. Mr. Josh Smith, the Authority’s attorney, administered the Oath of Office to the new elected directors, .... {55:00}
- VI. **Guest Presentations** Finance Manager, Kathi Jackson introduced the German accounting intern, Tim Onhes. {11:37}
- VII. **Public Input—15 minutes total allotted for this item, 3 minute time limit per person** Mr. Arturo Uribe expressed his disappointment with the election process and made a series of unsubstantiated accusations against the Board, Management and Staff and will receive a response in writing. {19:55}
- VIII. **Managers’ Reports**
  - A. **Management Report** Mr. Martin Lopez submitted a written report (attached) and discussed it with the Board.
    - o Mr. Martin Lopez clarified to the Board that he had spent the last two months dealing with the election and that Sen. Mary Jane Papen and then Rep Joseph Cervantes wanted the election to be transparent and to that end it was decided that the County should run the election. Because the County ran the election they issued all of the public notices. The voter lists deadlines are outlined in the NM election code. Additionally, the Authority had notified the membership beginning in 2010 that they should verify their membership information for voter eligibility.
    - o An internet provider has requested attaching an antenna on a LRG water tank. This contract will be brought to the Board when the details are worked out.
    - o An appeals hearing to State Engineer pending on combine and comingle. A scheduling conference was held April 16.

- Potential conflict: A request for project funds by another water company that would conflict with the Authority's service area will be brought to the Board at a later date.
- The draft budget needs to be finished by June 1, 2013. {25:38}

**B. Finance Report** Ms. Jackson did not have a written report but discussed the following with the Board:

- She is still working on the transfer and assumption of assets from Organ, Butterfield Park and Brazito, specifically the short-lived assets requirement from Rural Development.
- Staff would like to suggest a change in the disconnect policy to require past due payments on disconnect day be made at the office and not the drop box. The policy will be presented at the next regular meeting. {29:56}

**C. Operations Report** Mr. Mike Lopez was not present and no report was submitted. {31:26}

**D. Projects Report** Ms. Nichols submitted a written report (attached) to the Board and answered questions.

- RE Berino/Mesquite-Del Cerro Project. Burn Construction has begun to work on the stub-outs. Barbara Romero from NMFA confirmed that the Authority can use the La Mesa Rural Development funds for this project. Mr. Tellez asked if this had been written in the contract. Ms. Nichols explained that Rural Development has given its authorization and we can access Water Trust Board funds from the Del Cerro Project. Additionally Ms. Romero at NMFA is amenable to letting the Authority use excess funds (\$20,000?) from the Alto de Las Flores Interconnect project towards the stub-outs. Mr. Martin Lopez assured Mr. Tellez that the funding approval had been written into the contract and there was approval from RD and NMFA.
- RE Surface Water Treatment Plant. Ms. Nichols and Mr. Martin Lopez met on April 16 with the project engineers, Steven Deal and the NMED Construction Programs Bureau about the scope of the treatment plant. Due to the current and probable future water situation, planning for a dual use water treatment plant that would be able to treat brackish ground water and surface water would be more feasible. Amending the engineering services agreement will be necessary as well as removing the surface water pilot studies and adding funds for hydrologic studies on the availability of brackish water.
- RE Authority PER. Meeting on April 16 with Simon Saiz at DFA to review the nearly complete environmental review. He was pleased and encouraged the Authority to talk with Ryan Gleeson about changing the CDBG rules so that we could apply for funds independently instead of through the County.
- RE Organ project. The Environmental Department required that two monitor wells be drilled and they both came up dry. He told the ED that there are no additional funds available to drill new wells and the wells that were dry were drilled at the locations they specified.
- Mr Lopez told the Board that he had completed the NOI for Snow Road Estates for a booster station being installed by a developer to be turned over to LRG under an agreement with former Brazito MDWA Board. Mr. Nieto asked about the warranty period which will be one year. Mr. McMullen asked about the EBID surface water treatment plant. Nichols said that the package plant had been purchased but was in storage. {53:00}

**IX. Unfinished Business**

- A. Director nominations for GM Review Committee** Mr. Holguin moved to nominate Ms. Blanca Martinez to the GM Review Committee. Mr. Ruiz seconded the motion and it passed 6–0 with no additional discussion. Ms. Martinez agreed to sit on the Review Committee. {59:10}

**X. New Business**

- A. Elect Officers** Mr. Holguin moved to keep Mr. Nieto as Chair, Mr. Holguin as Vice Chair and Mr. Santos as Secretary. Mr. Smith seconded and the motion passed 6–0 with no discussion. {59:10}
- B. Designate initial terms to establish staggered Board terms** The Authority’s governance documents call for four districts to be designated as four-year terms and three districts to initially be designated as two-year terms and thereafter revert to four-year terms. Because the Director District 1 will be appointed, it was decided that it would be designated as a two-year initial term. By roll of the dice, District 2 and 6 were also designated at initial two-year terms. Mr. McMullen made a motion that Districts 1, 2 and 6 be designated as the initial two-year terms and that Districts 3, 4, 5 and 7 be designated as four-year terms. Mr. Smith seconded the motion and with no further discussion, the motion passed 6–0. {1:01:55}
- C. Decide on procedure to appoint a Director for District 1** The Board has 45 days from the point of the vacancy—April 17–May 31— to appoint a director. The Board decided to post on the website and mail a letter to members in District 1 explaining the vacancy and ask for letters of interest. Mr. Smith was reassured that all potential appointees would have to meet the criteria that candidates did. Mr. Holguin made a motion to post on the web site and solicit letters of interest from members in District 1. Mr. McMullen seconded the motion and it passed 6–0 with no further discussion. {1:05:39}
- D. Potential O&M contract for Alto de Las Flores** Alto de Las Flores asked LRG to help with accounting and maintenance issues. LRG would be able to provide operations and maintenance assistance but because of the lack of any budget records or audits, management has decided it would be best to recommend them to an accounting firm for accounting and billing matters. Mr. Smith asked why this O&M contract would be any different from those with La Union and Desert Aire which were cancelled in November. Mr. Martin Lopez explained that it would be easier to service this contract because Alto de Las Flores is geographically in the middle of the LRG service area. Desert Aire and La Union were a half an hour away from the LRG service area. Mr. Smith then asked why they don’t merge with the Authority. Mr. Lopez explained that they hadn’t asked to merge and the Authority doesn’t solicit mergers. Mr. Smith then asked if LRG would “come out on top,” with this contract. Mr. Lopez said yes: the contract was for a year and if either party was dissatisfied, they could cancel the contract. Mr. Lopez explained that he was familiar with the system and it is a simple one. Mr. Nieto made a motion to accept the contract with Alto de Las Flores, Mr. Ruiz seconded it and it passed 6–0 with no further discussion. {1:16:30}
- E. Discuss opening Vado office for customer service** Mr. Holguin told the Board that before they could discuss opening the Vado office the Vado Historical Society had planned on new interior paint and flooring after Head Start is out. Mr. Martin Lopez’s concern is the ADA remodel which would run \$50,000-\$60,000. Ms. Jackson clarified from last month’s discussion that she hadn’t hired extra staff. {1:19:00}
- F. Adoption of Resolution FY2013-11 Amending Loan and Subsidy Agreement 2710-DW originally adopted under Resolution FY2013-05 on 11/4/12 (Radio-Read Meter Project)** This had previously been authorized and the funding agency needs it to be re-authorized. Mr. Ruiz moved

to adopt Resolution FY2013-05. Mr. McMullen seconded the motion and it passed 5–0. Mr. Holguin was out of the room. {1:20:27}

**G. Postpone May 15 Regular Board Meeting at the Butterfield Park Office from 9am to 10am**

There was an error in the schedule. Mr. McMullen moved to postpone the May 15 Board meeting from 9am to 10am. Mr. Smith seconded the motion and it passed 5-0. Mr. Holguin was not in the room. {1:22:00}

**XI. Other discussion and agenda items for next meeting, 5/15/13 at the Butterfield Park Office**

- A.** Annual Open Meetings Act Resolution adoption (fy 2014 meeting schedule)
- B.** Possible customer disconnect policy change
- C.** Draft budget for approval {1:27:05}
- D.** Re-adopt CDBG resolutions originally adopted last year

**XII. Adjourn** Mr. Holguin moved that the meeting be adjourned, it was seconded by Mr. Ruiz and the motion passed 6-0. The meeting was adjourned at 1037am. {1:28:01}

# Lower Rio Grande Public Waterworks Authority

## Sign In Sheet

1/2

Date: Apr 17, 2013

Time: 9A

Place: WPD

Meeting Type: Regular Meeting

Name, Title - Print	Company or Agency Represented	Mailing Address	Telephone	Email
MARTIN G LOPEZ	LRG PWWA	325 Holguin rd Wagon, NM 88072	575 521-3628	martin_lopez@ lrgpwwa.org
DIANE McMILLAN	LRG PWWA	201 STONE DR Mesa, NM 88047	980-302-7852	me.mcmillan@lrgpwwa.org
EURMAN SMITH	OUSN/LRG	PO Box 172 ORSON NM PO Box 24 La Mesa, NM 88042	382-5982 505 233-4140	SMITH@ZIANET.COM
Josh Smith	Attorney for LRG PWWA	3800 E Lohman Av LC NM 88011	503-2481	Jsmith@msflaw.com
Antonio Rein	LRG PWWA	1205 Wagon Mesa, NM 88042	875-8825939	
John Holguin	LRG PWWA	615 Holguin rd Unde, NM	605-9007	Jholguin@lrgpwwa.org
Robert W. Wick	LRG PWWA	325 Holguin rd Wagon, NM 88072	575 636-3871	Rob.Wick@ lrgpwwa.org
Bonnie Mack	LRG PWWA	4600 San Jose Mesa, NM	642-3551	martin@lrgpwwa.com
Rosaura Ranges	Desert Sands	PO. Box 3343 Anthony, NM 88021		



**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY**  
**MEETING NOTICE & AGENDA—REGULAR BOARD OF DIRECTORS MEETING**  
**9:00 a.m. Wednesday, April 17, 2013 at our Vado Office, , NM**

Agendas are final 24 hours prior to the meeting and may be obtained at any LRGPWWA Office—call 575-233-5742 for information

- I. Sign in, Roll Call to Establish Quorum, Call to Order
- II. Pledge of Allegiance
- III. Approval of Agenda
- IV. Approval of Minutes of 2/20/13 and 3/20/13
- V. Oath of Office for new Board of Directors
- VI. Guest Presentations
- VII. Public Input—15 minutes total allotted for this item, 3 minute time limit per person
- VIII. Managers' Reports
  - A. Management Report
  - B. Finance Report
  - C. Operations Report
  - D. Projects Report
- IX. Unfinished Business
  - A. Director nominations for GM Review Committee
- X. New Business
  - A. Elect Officers
  - B. Designate initial terms to establish staggered Board terms
  - C. Decide on procedure to appoint a Director for District 1
  - D. Potential O&M contract for Alto de Las Flores
  - E. Discuss opening Vado office for customer service
  - F. Adoption of Resolution FY2013-11 Amending Loan and Subsidy Agreement 2710-DW originally adopted under Resolution FY2013-05 on 11/14/12 (Radio-Read Meter Project)
  - G. Postpone May 15 Regular Board Meeting at the Butterfield Park Office from 9am to 10am.
- XI. Other discussion and agenda items for next meeting, 5/15/13 at the Butterfield Park Office
  - A. Annual Open Meetings Act Resolution
- XII. Adjourn

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aide or service to attend or participate in the hearing or meeting, please contact the LRG PWWA office at 575-233-5742, 325 Holguin Rd, Vado NM 88072 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the LRGPWWA office if a summary or other type of accessible format is needed.

*Si es un individuo con una incapacidad esta en necesidad de un lector, amplificador, lenguaje por senas, o cualquier otra forma de asistencia o servicio para atender o participar en las juntas, por favor llame a la oficina LRG PWWA office at 575-233-5742, 325 Holguin Rd, Vado NM 88072 una semana antes de la junta o en cuanto posible. Documentos públicos, incluyendo la agenda y minutos, están disponibles en varios formatos. Por favor opóngase en contacto con la oficina LRGPWWA si un resumen o otro tipo de forma accesible es necesario.*

# LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

## Minutes—REGULAR BOARD OF DIRECTORS MEETING

9:00 a.m. Wednesday, February 20, 2013 at the Vado Office, 325 Holguin Rd

NOTE: Minutes are in DRAFT form until approved by the Board

- I. **Sign in, Roll Call to Establish Quorum, Call to Order** Sign-in sheet and agenda are attached. Directors present were Secretary Santos Ruiz, Director Blanca Martinez, Director Rosaura Pargas, Director Mary Berry, Director Furman Smith and Director Mike McMullen. Absent were Chairman Robert “Marty” Nieto and Vice-Chairman John Holguin. Staff members present were General Manager Martin Lopez, Finance Manager Kathi Jackson, Operations Manager Mike Lopez, Projects Manager Karen Nichols and Adm Asst Joan Ferguson. With a quorum established, the meeting was called to order by Ms. Berry at 9:06 am. {0:20}
- II. **Approval of Agenda** Mr. Ruiz moved to approve the agenda. Ms. Martinez seconded the motion. The motion carried 6–0. {:48} Mr. Martin Lopez noticed at {22:09} that Item VI.B.2. was incorrect. It should read LRGMDWA.
- III. **Approval of Minutes of 1/16/13** Ms. Pargas noticed an error in item I. Instead of “with Mr. Nieto’s arrival pending,” it should read “with Mr. Holguin’s arrival pending.” Mr. Santos made a motion to approve the minutes of 1/16/13 with the above correction. Ms. Martinez seconded the motion and it carried 6–0. {2:15}
- IV. **Guest Presentations: Souder Miller Associates** Souder, Miller & Associates’ presentation is attached. Mr. Karl Tonander (Senior Vice President) introduced his staff and their credentials and gave his presentation. Ms. Berry reiterated how easy she found it to work with Souder, Miller when she was with Butterfield Park. {21:07}
- V. **Public Input—15 minutes total allotted for this item, 3 minute time limit per person:** none.
- VI. **Managers’ Reports**
  - A. **Management Report** Mr. Martin Lopez’s written report is attached and he discussed it with the Board.
    - The East Mesa office will be open 10am–5pm, Monday–Friday.
    - There was a question about whether the legislative funding request for a groundwater study had been submitted. It was unclear.
    - RE elections, there is one candidate for each district except for District 1 which is the former Desert Sands district. There is the possibility for write-in candidates and if that doesn’t happen, the Board has 45 day to appoint someone. Candidates were reminded to vote for themselves! The election is April 2, 2013 at the Del Cerro Community Center and the Butterfield Park Community Center.
  - B. **Finance Report** Ms. Kathi Jackson’s written report is attached and she discussed it with the Board.
    - Two new employees: an accountant, Shane Greeder and Mary Berry who will be at the Butterfield Park office.
    - In the next couple of weeks the online system should be up and running. Customers will be able to access their accounts and for a fee of \$2.50 pay their bills online. {32:47}



## **2. FY2012 Audit—for acceptance**

- *Capital Asset Finding* Because of no inventory system. With the new employee, an inventory system should be set up within the year.
- *Under Collateralized Finding*. Because of time constraints, LRG was not able to dispute this finding but are still contesting it. According to the Federal Reserve, LRG was fully collateralized.
- *Per diem finding*. The auditor mistook an expense for a per diem payment by thinking that the credit card issued to the General Manager was a personal credit card that was being reimbursed.
- *Overstatement of Revenue Finding*. A check was inadvertently entered in a previous month. Because it came at year-end it affected revenue.
- *Compensated Absences Finding*. LRG bought out vacation and sick time of previous MD employees. The auditor believed that LRG paid too much.
- *Over Budget Finding*. Because of the mergers with Organ and Butterfield Park, LRG was taking in more revenue and the budget was not amended.

A motion was made by Mr. Smith to accept the FY2012 Audit. The motion was seconded by Ms. Martinez and the motion carried 6–0.

**3. LRGMDDWA Agreed-Upon Procedures, June 30, 2012—for acceptance** The funding for this entity was simply grant funding and there were no findings. Mr. McMullen made a motion to accept the LRGMDDWA Agreed-Upon Procedures, June 30, 2012. Mr. Smith seconded and it passed 6–0.

**4. Organ Water and Sewer Association Agreed-Upon Procedures, December 31, 2011—for acceptance** Findings: fixed asset inventory; no budget amendments; lack of review of documentation; late reporting. Ms. Pargas made a motion to approve the Organ Water and Sewer Association Agreed-Upon Procedures, June 30, 2012. Mr. Smith seconded and the motion carried, 6–0.

**5. Brazito MDWCA Agreed-Upon Procedures, December 31, 2011—for acceptance** Findings: fixed asset inventory; budget adjustments; late report; lack of review documentation. Mr. Smith moved to accept the Brazito MDWCA Agreed-Upon Procedures, December 31, 2011. Mr. McMullen seconded and the motion carried 6–0. {45:56}

This month's P/L shows a loss. This loss is the result of decreased revenue during the winter months and because the Authority paid Brazito's loans a month earlier than anticipated. Ms. Berry asked about the Government Penalties and Interest line item. Ms. Jackson said it was a portion of what was owned on the payroll tax issue. First and second quarter amended budgets (not on agenda) were passed around for review. They were signed by the Secretary and will be signed by the Chair. {1:00:58}

**C. Projects Report** Ms. Karen Nichols' written report is attached and she discussed it with the Board.

- Re La Mesa Water, the new gate will cost \$1,700–1,800.
- Re Surface Water Treatment Plant, the transcript has been received since the report was written and design will begin immediately.
- Re Authority PER, the third draw has been approved and Ms. Nichols is looking at 65% submittal by the end of the month.
- RE Radio Read Meters, one bid was received and was sent to the Project Engineer Feb 20 and his recommendation is expected shortly.

**2. Signature Authority for Alto de Las Flores Interconnect Project—for approval** Ms. Pargas made a motion to approve the Signature Authority for Alto de Las Flores Interconnect Project. The motion was seconded by Mr. Smith and passed 6–0.

- D. Operations Report** Mr. Mike Lopez’s written report is attached and he discussed it with the Board.
- The new on-call system has halved overtime expenses. Recording fails at this point
  - The pump control panels for the new sewer project will need to be reinforced somehow because they are located on DOT right-of-way and DOT will not allow fencing so they are susceptible to tampering.
  - Wetlands were burned to clean out the brush. Recording starts at this point {1:03}

**VII. Unfinished Business**

- A. Draft Documents Retention Schedule, Operations—for approval** Ms. Ferguson explained that this schedule is different than the other and has been taken from Federal codes dealing with the EPA. Mr. Smith moved to approve the Documents Retention Schedule, Operations. Ms. Pargas seconded the motion: it passed 6–0. {3:00}
- B. Director nominations for GM Review Committee** Two more nominees are needed for the Review Committee. {4:01}
- C. Resolution FY2013-10 re: Colonias Infrastructure Trust Fund Loan & Grant—for adoption** For a grant of \$1,503,232 and a loan of \$167,025. A motion to adopt Resolution FY2013-10 re: Colonias Infrastructure Trust Fund Loan & Grant was made by Mr. Smith and seconded by Mr. McMullen. The motion carried 6–0. {6:00}
- D. Motion to convene in closed session pursuant to NMSA 1978 Section 10-15-1 (H)(8) and (H)(7) for discussion of the acquisition of real property or water rights and threatened or pending litigation.** A motion to postpone items VII.D–F was made by Mr. McMullen. It was seconded by Mr. Smith and carried 6–0. {7:15}
- E. Motion to resume in open session** postponed
- F. Action (if any) related to items discussed in closed session** postponed

**VIII. New Business**

- A. Pledge of CITF matching funds for water rights acquisition for approval.** Because the Authority lost 300 acre feet as a result of the Combine and Comingle. It needs to buy water rights because without the extra water rights there would be a moratorium on new water hookups. Ms. Nichols explained that having matching funds in place, i.e., the reserve funds that she is requesting, garners more points in the application process with the CITF. Ms. Pargas moved that the pledge be amended to read “A pledge of \$150,000 matching funds for the potential purchase of water rights contingent upon the award of CITF funding and they are pledged until another source of matching funds is secured.” The amendment passed 6–0. Mr. McMullen moved that a pledge of \$150,000 matching funds for the potential purchase of water rights contingent upon the award of CITF funding and they are pledged until another source of matching funds is secured. Mr. Smith seconded the motion and it passed, 6–0. {20:07:}
- B. Amendment to Resolution FY 2013-09, CITF Applications.** Ms. Pargas moved to approve the Amendment to Resolution FY 2013-09, CITF Applications changing the title. Mr. Ruiz seconded it and it passed 6–0. {21:41}

- C. **Customer policy on connection fee.** Mr. McMullen moved to amend the customer policy to require new members to have a shut-off valve on the customer side of the meter prior to the service being activated. The motion was seconded by Mr. Smith and carried 6–0. {30:00}
  - D. **Customer policy on tampering fees.** Mr. Martin Lopez suggested changing the wording to “Unauthorized opening/closing of service...” The proposed amendment was to recognize that unauthorized opening and/or closing of the service was not always malicious and did not warrant a \$500 fine. Mr. McMullen moved that the amendment with the changed language be approved. Ms. Pargas seconded it and it passed 6–0. {33:50}
  - E. **HR policies on part-time employees and holiday pay.** When the policy was originally written, there were no part-time employees. This amendment closes a gap. Mr. McMullen moved to accept the amendment as written and Ms. Pargas seconded it. The motion carried 6–0. {35:37}
  - F. **Employee bonuses for calendar year 2012** Bonuses have usually been awarded during the Christmas party and they were overlooked this year. Last year, a lump sum of \$5,500 was allocated to the GM to distribute according to a formula. The Board directed Ms. Kathi Jackson to determine a dollar amount that would be appropriate and Mr. McMullen moved to postpone the decision. Mr. Smith seconded and the motion carried 6–0. {41:40}
- IX. **Other discussion and agenda items for next meeting, 3/20/13, 10am at the Organ Community Center**  
Ms. Mary Berry tendered her resignation as she has been employed by the Authority. {42:45}
- X. **Adjourn** Mr. McMullen moved to adjourn the meeting. Mr. Smith seconded. The vote to adjourn was unanimous. The meeting adjourned at 11:26 am.

Date Minutes approved: *March 20, 2013*

**Directors Present**

*Absent*

\_\_\_\_\_  
Chairman Robert M. Nieto

*Absent*

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Vice-Chairman John Holguin

\_\_\_\_\_  
Secretary Santos Ruiz

\_\_\_\_\_  
Director Rosaura Pargas

\_\_\_\_\_  
Director Blanca Martinez

\_\_\_\_\_  
Director Mary Berry

\_\_\_\_\_  
Director Furman Smith

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Director Mike McMullen

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY**  
**MINUTES—REGULAR BOARD OF DIRECTORS MEETING**

**10:00 a.m. Wednesday, March 20, 2013 at the Organ Community Center, 5880 Second St. Organ, NM**

Note: Minutes are in DRAFT form until approved by the Board

- I. **Sign in, Roll Call to Establish Quorum, Call to Order** Sign-in sheet and agenda are attached. Directors present were Chairman Robert “Marty” Nieto, Vice-Chairman John Holguin, Secretary Santos Ruiz, Director Furman Smith and Director Mike McMullen. Staff members present were Finance Manager Kathi Jackson, Operations Manager Mike Lopez, Projects Manager Karen Nichols and Adm Asst Joan Ferguson. Absent were Director Blanca Martinez, Director Rosaura Pargas, General Manager Martin Lopez. Also in attendance were Tod Phinney (WH Pacific), BJ Alford and Espy Holguin (HUD). With a quorum established the meeting was called to order by Mr. Nieto at 10:02am. {0:35}
  
- II. **Approval of Agenda** The time of the meeting on the agenda was incorrect and has been changed to 10:00am. Additionally, the approval of minutes of 2/20/13 was postponed because of a lack of quorum. With the change, Mr. McMullen moved to approve the agenda. Mr. Smith seconded the motion and it passed 5–0. {1:39}
  
- III. **Approval of Minutes of 2/20/13** Approval of minutes was postponed due to a lack of quorum. {1:49}
  
- IV. **Guest Presentations** Mr. Tod Phinney from WH Pacific was in attendance. He introduced himself, his company and passed out company literature. {3:29}
  
- V. **Public Input—15 minutes total allotted for this item, 3 minute time limit per person** none
  
- VI. **Managers’ Reports**
  - A. **Management Report** Mr. Martin Lopez submitted a written report which is attached but he was not present to answer questions. He was attending a CITF Board meeting.
    - Ms. Nichols reminded the board that next month they will be seating a new Board and deciding which districts would be 2-year and which districts would be 4-year.
    - There was a short discussion concerning two election disputes. Dona Ana County is running the elections and they decided that the disputes had no standing.
    - Ms. Jackson asked about write-ins. Ms. Nichols said that write-ins are not available for this election but the policy could be re-written to make them available in subsequent elections.
    - Ms. Jackson asked if the candidates for election had been posted on the website. Ms. Nichols said that due to technical difficulties (see Finance Report) and her schedule she had not been able to post the ballots but will. {10:20}
  
  - B. **Operations Report** Mr. Mike Lopez submitted a written report which is attached and answered questions.
    - An arrest has been made in the Well 8 tagging and because it involved water utility property a felony charge is possible.
    - Mr. Smith asked about the progress in Organ. Mr. Mike Lopez explained where new lines were being laid and assured Mr. Smith that the fire plugs on Furnace would be installed above ground.
    - There was an illegal hook-up on Scud Buster Road in Berino. The meter was reinstalled in the right-of-way and the flush-out was removed. The owner will be fined \$500 for tampering.

- Ms. Nichols requested to be invited to the Master Meter training.
- Mr. Smith asked if the Timberline invoice had been received. Ms. Jackson assured him that they had received it. {30:41}

**C. Finance Report** Ms. Jackson submitted a Profit and Loss statement, gave a verbal report and answered questions.

- Various technical difficulties have occurred over the past month: a computer virus that took five days to resolve; phone lines and internet equipment that failed simultaneously and has taken over a week to resolve.
- Mr. Smith asked about the \$3,600 in late fees.
- Fifty thousand dollars were taken from the reserve fund which will be reflected in next month's accounting.
- Mr. Mike Lopez's scheduling has helped cut down on overtime which has helped with the bottom line.
- Warned that electrical costs will begin going up once the lift stations are operational but corresponding maintenance costs should drop.
- Re personnel: The accountant that was hired in January quit. Priorities were reorganized and there is a new hire for the Butterfield Park that will be doing double duty, manning that office full-time and filling some accounting duties as well as help with the inventory. In this context Mr. Holguin asked why the Vado Office couldn't be opened. Ms. Jackson explained that because of the finding in the last audit on the lack of an inventory system she and Martin Lopez determined that at this point that that best use of funds would be the second person at BP. Additionally she pointed out that one of the Operations crew, Mr. G, will be transferred to Finance to run Operations' inventory.
- Online credit card payment should be available by the end of the week. Finance is still working on the automatic bank draft system.
- Ms. Jackson said she would be going to audit training. Ms. Nichols asked about new rules and if the Authority could extend the current audit contract and Ms. Jackson said it was possible but it was something to look into. {50:15}

**D. Projects Report** Ms. Nichols report is attached and she reviewed it for the Board.

- Ms. Nichols explained how—working together—she, Martin; Robert Garcia, Rural Development Engineering; the people at the Water Trust Board; Wyatt Karchner, Molzen Corben Engineering ; Hector Vasquez, Vencor Engineering and Burns Construction are putting together a project using overages from the La Mesa Well Project, funds from the Water Trust Board and possibly overages from the Alto de las Flores project to install stub-outs (for lines that will have to be installed regardless) under roads in the Mesquite project before they are paved during the sewer project. This (unprecedented) project will allow Lower Rio Grande to avoid the future and inevitable cost of digging up the paved road to install those water lines.
- RE Organ Water and Sewer project. Mike Lopez and Mr. Smith discussed the water tank.

## VII. Unfinished Business

**A. Draft Documents Retention Schedule, Projects—for approval** Mr. Smith said that the Schedule looked familiar. Ms. Ferguson said it was because it was gleaned from the other schedules and tailored for Projects. Mr. Nieto asked if we were comfortable with it. Ms. Nichols said yes. Mr. Smith moved to approve the Document Retention Schedule, Projects. Mr. Ruiz seconded the motion and it carried 5–0 with no further discussion.

**B. Director nominations for GM Review Committee** Mr. McMullen nominated Mr. George Abernathy from Brazito to the GM Review committee. Mr. McMullen moved to accept Mr.

George Abernathy for the GM Review Committee. Mr. Holguin seconded the motion and with no discussion, it passed 5–0. {1:17:15}

- C. Employee bonuses for calendar year 2012** Ms. Jackson, reporting back to the Board, said she and Mr. Martin Lopez had devised the following tiered schedule: \$200 for regular employees, \$300 for crew leaders; \$400 for managers and \$500 for the GM. Mr. Holguin moved to accept the employee bonuses as presented, Mr. Ruiz seconded the motion and with no further discussion, the voted was 5–0. {1:18:23}
- VIII. New Business** none
- IX. Other discussion and agenda items for next meeting, 4/17/13 at the Vado Office**

  - A.** Opening the Vado office.
  - B.** Seating a new Board, appointing a Director for District One and designating which districts will have 4-year terms and which districts will have 2-year terms.
- X. Adjourn** Mr. Holguin moved to adjourn the meeting. Mr. Ruiz seconded. The vote was 5-0 to adjourn. The meeting was adjourned at 11:24am.



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# LOWER RIO GRANDE

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## Public Water Works Authority

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325 Holguin Road Box C Vado, New Mexico 88072 (575) 571-3628

## Oath of Office

I Click here to enter text. do solemnly swear that I will support the Constitution of the United States and the Constitution and the laws of the State of New Mexico and that I will faithfully and impartially discharge the duties of the office of Director of the Lower Rio Grande Public Water Works Authority on which I am about to enter, to the best of my ability, so help me God.

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Appointee's Signature

Subscribed and sworn to be this 20<sup>th</sup> day of April,  
2013

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Signature

---

Title

My commission/term expires \_\_\_\_\_

**LRGPWWA**  
**Manager's Report**  
**April 17, 2013**

- Election
- Continue to work with County and other Governmental entities to define “proposed” changes to the Land Use and Zone Ordinance
- Transfer of Assets from Associations
  - Berino: BLM permit application to transfer has been submitted
  - Berino: Arsenic ACO extension request to NMED DWB (2 years) No word
  - Brazito items pending
    - transfer of bank account balances and closing of accounts—pending transactions



	TOTAL VOTES	%	ABSENTEE	EARLY	ELECTION DAY
PRECINCTS COUNTED (OF 7)	7	100.00			
BALLOTS CAST - TOTAL	22		0	8	14
BALLOTS CAST - DISTRICT 1	2		0	2	0
BALLOTS CAST - DISTRICT 2	4		0	0	4
BALLOTS CAST - DISTRICT 3	2		0	2	0
BALLOTS CAST - DISTRICT 4	2		0	1	1
BALLOTS CAST - DISTRICT 5	4		0	1	3
BALLOTS CAST - DISTRICT 6	2		0	1	1
BALLOTS CAST - DISTRICT 7	6		0	1	5
BALLOTS CAST - COUNTY	22		0	8	14
BOARD OF DIRECTORS DISTRICT 2					
VOTE FOR 1					
SANTOS RUIZ	4	100.00	0	0	4
BOARD OF DIRECTORS DISTRICT 3					
VOTE FOR 1					
CARLOS TELLEZ	2	100.00	0	2	0
BOARD OF DIRECTORS DISTRICT 4					
VOTE FOR 1					
JOHNNY O. HOLGUIN	2	100.00	0	1	1
BOARD OF DIRECTORS DISTRICT 5					
VOTE FOR 1					
ROBERTO NIETO	3	100.00	0	1	2
BOARD OF DIRECTORS DISTRICT 6					
VOTE FOR 1					
MICHAEL McMULLEN	2	100.00	0	1	1
BOARD OF DIRECTORS DISTRICT 7					
VOTE FOR 1					
FURMAN SMITH	6	100.00	0	1	5
AUTHORITY'S GOVERNANCE DOCUMENT QUESTION					
VOTE FOR 1					
FOR / POR	14	66.67	0	5	9
AGAINST / EN CONTRA	7	33.33	0	3	4

**LA UNION MUTUAL DOMESTIC WATER  
&  
SEWER ASSOCIATION  
P.O BOX 1634 ANTHONY, NM 88021  
(575) 589-4676 Fax: (575) 589-0992  
Email: [launionwater@yahoo.com](mailto:launionwater@yahoo.com)**

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March 30, 2013

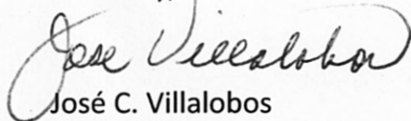
Mr. Martín López  
Lower Rio Grande Public Water  
Works Authority  
325 Holguin Rd.  
Vado New Mexico, 88072

Dear Martín,

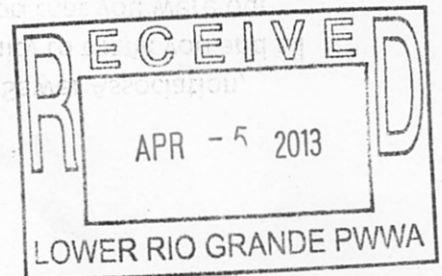
The Board of Directors of La Union Mutual Domestic Water and Sewer Association, along with the office personnel, would like to take this opportunity to thank you and all of your personnel that helped to service us during the time period that you were our Operations and Maintenance. We are, also deeply appreciative of your guidance during our critical learning period and the time frame thereafter.

We wish you and the Authority success in your new endeavors and adventures.

Sincerely,



José C. Villalobos  
Association President



**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY  
PROJECTS REPORT – 4/17/13 BOARD OF DIRECTORS MEETING**

**Authority Construction Projects:**

**LRG-11-01 - La Mesa Water System Improvements – Molzen Corbin – Construction Stage – Burn Construction - RD - \$2,040,346:** ESA addendum, PER amendment and Change Order to include stub-outs for future Berino/Mesquite-Del Cerro water project to be constructed by Burn have been approved by USDA-RD and work began 4/1. Well pump is installed and piping is near completion.

**LRG: 11-02.1 -Mesquite Wastewater Project – Gannett Fleming– CONSTRUCTION Stage – Layne Southwest - RD \$7,262,081, CITF \$1,670,257:** Construction of gravity mains is nearly completed. The contractor has begun working on NM 228 despite utility conflict issue(s). Engineer anticipates a claim for additional work when completed, but has tried to position us to deny the claim since the contractor did not get approval to move forward with the additional work before he began. Will try to reach an agreement with them regarding the cost of additional work, but we anticipate a large discrepancy between their request and what we believe the work costs based on previous proposals. We also received a very high proposal for the grinder pump stations and engineer will make recommendations this week.

**LRG-11-02.2 - Authority/Brazito Sewer Project – Vencor – Pre-Design Stage/Funding Application Stage – NMFA/SAP/RD Application:** Funding application for design has been submitted to CITF, agreement with DAC for treatment is pending further negotiations. CITF Board meets May 16<sup>th</sup> in Alamogordo to award funding. LRGPWWA provided Vencor with a summary of current costs of sewer operations labor, administrative labor, vehicles, overhead, debt service, DAC proposed fees for flow and connections for analysis of DAC fee proposal and sewer rates on 4/4. We asked Engineer to provide USDA-RD 2 copies of the Final Cultural Report for the project to replace the 2 missing copies submitted to USDA-RD on 4/27/12. RD will then distribute to agencies.

**LRG-11-03 – Interconnect & Looping Project – see 12-01 Authority PER**

**LRG-11-04 – Berino/ Mesquite-Del Cerro Water System Project WTB #223 – Vencor - Letter of Conditions/final design & review of plans & specs – RD - \$5,420,147/WTB - \$4,371,630:** USDA-RD Engineer approved Change Order for La Mesa Well Project to include proposed Stub-Out project in Mesquite on 3/25. Vencor finalized construction plans for proposed Mesquite stub-outs and provided to Burn Construction on 3/27. Burn mobilized on 4/3 and began Stub-Out Project at North Mesquite Park & NM 478 on 4/4. They are scheduled to begin the bore along Post & NM 228 on 4/15/13.

**LRG-11-05 – Surface Water Treatment Plant WTB #252– Bohannon Huston - Design phase - \$750,000 WTB – GM, PM, OM met with engineers Matt Thompson & Robert Fowlie on 4/8/13 to discuss PER update and agreed that pursuing a dual (both surface & groundwater) treatment approach with initial emphasis on the groundwater side was the sensible approach considering the current drought conditions. This necessitate the use of membrane filters as the treatment type.**

**LRG-12-03 – Authority-Alto de Las Flores Interconnect– Vencor – Design - \$86,400 Old Colonias Initiative/DFA + GF & Alto contributions - General Contractor, Rio Services, began installation on**

3/4/13. Substantial completion scheduled for Friday, March 22, 2013 was held on 4/9/13. County is satisfied with asphalt work and EBID is satisfied with work on their ROW. Payment is pending receipt of contractor's pay app. As Built plans were submitted 4/12/13.

#### **Authority PERs/EAs/40 Yr. Water Plan:**

**LRG-12-01 – Authority PER – Vencor - prelim. planning - CDBG Planning Grant \$50,000, NMFA Planning Grant \$37,500 & \$12,500 Local Match:** Fifth draw from CDBG funds has been requested. final draft PER report to us by 4/30/13. Vencor has set up a meeting with Mr. Saiz of NM DFA to review the pre-final Environment Report on 4/16/13.

**Forty-Year Water Plan – CE&M – complete:** pending NM-OSE comments/approval.

**Return Flow Credit Plan – CE&M – GF – Pending Review:** Drafted and submitted to Ms. Thacker at local NM-OSE 12/21/11.

**LRG-12-02 - Radio Read Meters – in-house/Rio Grande Pump & Supply – 600,950 DWSRLF:** \$595,000 was approved at 50% subsidized + 25% grant = 75% grant, 25% loan at 0% plus fees approved by NMFA Board 4/27/12. Notice to proceed was issued 3/18/13, first order has been placed.

#### **Individual MDWCA Projects:**

**LRG-12-04 - Organ Water & Sewer Project – Bohannon Huston – Construction Phase – Morrow - \$2,990,382 RD Colonias Grant, \$101,000 RD Loan:** Water main line installation continues in the lower Mountain View project area. Bore across El Centro to Coyote Rd. is complete. Crews begin installing 6" PVC on El Centro Rd. at STA.-10+00 and have progressed to STA.-13+00. It was discussed to delete a portion of the El Centro alignment and only extend the 6" from the end of the existing 3" PVC. Crews will locate the existing 3" and make a determination where to transition to the new 6". Only one construction crew was onsite during this month installing main line on Eagle, Fox, Arrowhead, & El Centro. Approximately 6,500 LF of 6" PVC installed this period. Work at the WW lagoons on the dosing station and the electrical feeders continue. No crews currently working on water services. Well driller for monitor wells began mobilization to site. CLC was unable to locate their existing 24" main on El Centro and coordinated with Dona Ana County to approve open trench of El Centro to install new 6" and locate existing CLC 24". Permit modifications for this change was approved by DAC Engineering.

**LRG-13-01 – Brazito Water System Improvements – Engineers Inc. – Design Phase - \$523,354 NM CITF Grant, \$58,150 Loan, \$58,150 Match Requirement:** Met with Brazito MDWCA Board of Directors on 4/10/13 to have them adopt the Resolution and execute the Agreement, sent those back to the law firm for NMFA on the 11<sup>th</sup>. NMFA decided to close the project under Brazito and then transfer to us. The legal ad regarding adoption of the Resolution appeared in the Las Cruces Sun News on the 12<sup>th</sup>.

#### **Other projects:**

**Legislature** – Pocket veto date was 4/5/13, Report is final. SB60-Capital Outlay Bill including \$175k for Information Technology for LRGPWWA was passed and signed by the Governor.

**Water Trust Board Policy Committee** – Staying in touch w/Ramon Lucero of El Valle Alliance regarding this issue.

**USDA-RD Transfer & Assumption Application Packages:** Application packages for Butterfield Park, Organ & Brazito were submitted 1/7/13 and are pending RD review.

**Documents Retention & Destruction** – Joan has completed retention schedules except for electronic documents and board has approved them. She has made a great deal of progress sorting files for permanent or temporary storage or destruction and has done some research into firms that handle document destruction.

**Website** - Board Minutes Page & Notices Page are up to date. Have uploaded election information to the Boards & Elections page, Notices and Documents pages.

**Funding Applications** – One of the three Capital Outlay Requests was funded (new billing software). CITF applications for design of the Mesquite-Brazito Sewer Project and purchase of water rights are pending review and CITF Board meets to award funding on May 16<sup>th</sup> in Alamogordo.

**Training:** I completed DACC Continuing Ed Customized Training Program “Manage Projects 1 & 2” on 3/19/13, and Joan, Angie & I complete DACC Continuing Ed Customized Training Program “Excel 2010 – Introduction” on 4/11/13.



From: [www.csoonline.com](http://www.csoonline.com)

## The Seven Deadly Sins of Records Retention

Records retention periods are increasingly governed by regulations. Here are worst (and best) practices for securing data and documents.

by Sarah D. Scalet, CSO

July 01, 2006

Sure, you're thinking, [records retention](#) can be deadly. Deadly dull. "I don't want to own that," TriWest Healthcare [CSO](#) John Pontrelli said to himself when people came poking around about it—this after the U.S. Department of Defense, TriWest's only customer, announced it was going to audit the company's document retention practices.

"It's just one of those thankless kinds of jobs," Pontrelli continues, noting that he'd rather keep his security staff focused on its core business. "I can't become the retention police."



Records retention has always been about as sexy as Birkenstocks with socks. Even the nomenclature, retention, has an unsavory connotation, something better left to the clinically uptight. But recent legal actions have made [document retention](#) programs not just boring but risky. One wrong step can cost a company. Just ask the latest poster child, Morgan Stanley, which in May said it would pay a record \$15 million to the Securities and Exchange Commission for failing to properly retain or produce e-mails related to several investigations. And the regulatory environment is unlikely to soften anytime soon, with [Internet service providers now under particular scrutiny](#), as the government seeks access to customer information for child pornography cases.

To avoid having anyone hit a \$15 million delete key, some companies have concluded that they should archive, forever, anything and everything—boring and unboring, sexy and unsexy, damning and defensible—just to err on the safe side. But that's not quite right either.

In records-retention land, there is no "safe side." Keeping too much information is a risk too. "If you retain [a record] for too long, it's very expensive, you expose yourself to litigation risks, and you might be violating privacy rights," says [Edward R. McNicholas, a Washington, D.C.-based partner at the law firm Sidley Austin](#).

Sound like you're damned if you do, damned if you don't? We're here to help you avoid either extreme, by offering seven common mistakes—dare we call them deadly sins?—and strategies to avoid them.

### 1. Not keeping your records straight from your backup.

[Records Retention Resources on Amazon.com](#)

[Records Retention Made Simple](#)

By Dee Armstrong Crabtree (2009)

[E-discovery: Creating and Managing an Enterprisewide Program - A Technical Guide to Digital Investigation and Litigation Support](#)

By Karen Schuler (Syngress, 2008)

First, the basics. The first step to a [good records management program](#) is simply identifying what a record is.

Sure, the e-mail servers and network drives get backed up at the end of the day or week. You need those backups to keep the business running. But a record, technically, is something that you need to keep around for a set period of time, either for regulatory, legal or business reasons. Records encompass both structured information, like financial transactions stored in the company's enterprise resource planning system, and unstructured information, like financial spreadsheets exchanged by e-mail that might eventually feed into [the ERP system](#) (or just sit on someone's desktop computer indefinitely). Records probably don't encompass e-mails exchanged by two accountants about whether to lunch on Thai food or Mexican.

"You have to boil it down to, what are your storage requirements versus your legal requirements to retain business documentation?" says John Petrucci, director of enterprise security for [Constellation Energy](#), a \$17 billion company based in Baltimore. The two things can be very different. For instance, while backup media may be in a continual state of being written and overwritten, records that must legally be retained (more on that in a minute) often need to be stored on immutable, nonrewritable storage, and should be either very well-organized, very easily searched or both.

## 2. Expecting the legal department to produce a rule of thumb for how long to store records.

About those legal requirements: If you're waiting for an easy answer, keep breathing.

Take Constellation, for instance. As an energy company with trading operations—and one that's currently in the midst of an acquisition by the rival FPL Group—Constellation has pretty extreme retention requirements. "You're under a microscope with everything that's said," says Petrucci, who can talk only generically about records retention because of the merger.

As a publicly held company, for instance, Constellation has to answer to the SEC, which under various regulations, including the [Sarbanes-Oxley Act](#), enforces retention periods of two, three, four or seven years, depending on the company and type of record. Then there's the Federal Energy Regulatory Commission, which has its own set of requirements, including one that changed in May, extending from three years to five years the time companies need to keep certain types of pricing information. The U.S. Department of Labor's Occupational Safety & Health Administration requires that some health-related records be kept for either 30 years or the duration of a person's employment plus 30 years. Employment law enforced by the U.S. Equal Employment Opportunity Commission stipulates that documents about job applicants and personnel records be kept from one to three years. For companies in the health-care industry, things get even trickier. Under the [Health Insurance Portability and Accountability Act's](#) Privacy Rule, for instance, the Department of Health and Human Services requires that certain records be held for six years.

You get the drift. And that's not addressing various state and local regulations.

"For a Fortune 50 company with 20 lines of business, you may have 50 or 60 different laws that apply to [document retention](#)," says the attorney McNicholas, who specializes in information law. He refused to even hazard a guess about how long most business records need to be kept on hand. "You have to start with an accurate survey of the information that's in the organization," McNicholas says—what he calls a data map.

At TriWest, Pontrelli ended up with a 243-line spreadsheet put together by the team in charge of TriWest's contract with the Defense Department. It held retention requirements for everything from accident reports to years of service, with time periods ranging from one year to indefinitely. The spreadsheet laid out where the information was stored, on what medium and much to his relief—the department responsible for keeping it and eventually destroying it.

## 3. Assuming that document retention is someone else's job.

The former CSO of the SEC can't help but think of records retention as a hot-potato issue. "Everyone gets thrown the hot potato, and everyone wants to throw it back because they don't understand it," says Chrisan Herrod, now a consultant with Scalable Software, which sells regulatory compliance and asset management products. "It's a really difficult information management problem that is not clearly owned by anyone in an organization."

Hammering out the specifics of retention requirements may be a job for the attorneys, and implementing those policies may best be left to individual business units. But it's in the CSO's best interest to be involved with the whole process for two reasons.

One is that the CSO is the organization's information protector.



The regulatory environment for document retention is prompting more IT departments to move to integrated content management solutions—the (still mostly fictional) end game being one where

e-mails, instant messages, spreadsheets, word-processing documents and anything else that contains certain keywords or meets certain criteria is stored in one repository, with an underlying software that applies retention policies. Sound scary? A bit.

While that repository may contain a treasure chest of information assets, the fact that it exists in one place makes it a security concern, says Brian Babineau, an analyst at Enterprise Strategy Group. "I may have to access this to provide information to attorneys, but I also need to make sure that access is denied to any unauthorized user." This is either a problem or an opportunity, depending on how you look at it.

"Can you manage one big target better than you can manage several small ones?" Babineau asks. "It might be easier to manage them together." That way, you'd have a good idea of where to encrypt data at rest.

The second reason that CSOs should care is that when the companies get served with a subpoena or notified of an inquiry by regulators, it's the CSO's door that'll be knocked on. "You can tell [the chief legal officer], 'It's not my game; I don't play in this area,'" says Timothy Gladura, former CSO of Cardinal Health, the drug and medical supply company. But if you want to extend your influence, you're better off being able to help with the investigation. Warns Gladura, who's now a divisional president at the Carco Group, which does investigative and security consulting: "If you say you're going to play, when the call comes in you'd better be able to deliver."

#### 4. Not being able to respond quickly to a request.

One of the most potentially expensive parts of records retention is that stomach-punch moment of being served with a subpoena or notice of a regulatory audit. Having to sort individually through backup files can cost millions of dollars. Worse, not being able to access the right files can anger the judge. McNicholas, who worked for the Clinton administration, remembers this as one of the less salacious footnotes of the independent counsel's investigations into Whitewater and Monica Lewinsky.

"The Clinton White House spent more than \$10 million to pull records off of backup tapes and look at them again in light of subpoenas," McNicholas says. Ultimately, the White House was investigated for failing to search certain e-mail systems and backup tapes during specific time frames, due to technical problems. (The independent counsel, Robert W. Ray, did not press charges because there was "no substantial evidence that electronic records had been intentionally withheld.")

At least during a [legal discovery process](#), organizations have weeks, not hours, to present evidence. The SEC wants information much faster. That's why once a year, CISO Matthew Todd of Financial Engines takes part in a test of whether every single e-mail, instant message, customer record or data model that the company used to offer financial advice in the past seven years can be accessed at a moment's notice. The compliance group, pretending to be the SEC, asks Todd to pull a specific set of records about certain individuals during a set time frame.

It's a "fire drill," says Todd, who is also the VP of risk and technical operations for the \$34 million company, which offers individuals advice about retirement planning, usually as part of an employee benefit program. "We have to be able to produce this stuff within 24 hours." Todd says that over time, not only have the drills helped the company be confident that it's complying with federal regulations but the process has also improved the speed and quality of information that customer service reps can access about an individual's interaction with the company. "There was never a time when the data wasn't available to us," he says, "but it used to be much more onerous to be able to interpret it quickly."

#### 5. Having a policy you can't follow.



Whether your company decides to archive all e-mail and IM from the past five years automatically, or just rely on users to save certain documents, another key point to document retention is setting a policy that can be reasonably followed. Says McNicholas, the attorney: "A good policy does not need to retain all possible information and documents, but it has to be customized to the particular companies, to their culture and their organization and their regulatory environment."

Gladura, echoing that statement, posits that a company could dictate that every e-mail be deleted after seven days. "But if you do that, you'll be deleting information that people may need, and they'll find workarounds," he says. "They'll drag it onto their hard drive or a [thumb drive](#), and then you really won't be able to control what happens to it. It's better to have a loose policy that you can follow than a strict one you couldn't." For instance, it would be better to have a three- to six-month retention policy with an automatic clean-up function for e-mails not subject to retention requirements.

## 6. Failing to offer guidance on how to destroy old records.

Once the retention period ends, the CSO's real work begins. Business units will need guidance on how to get rid of information. This is where classification schemes are useful. At energy giant Chevron, for instance, Global Information Protection Architect Jay White is establishing [an information classification system and setting up destruction standards based on information type](#).

When what's considered "public information" outlives its usefulness, users or administrators can just delete it, White says. For business information, users or system administrators can again hit the delete key, but when the drive is retired, it needs to be degaussed—a process of demagnetizing so that information is destroyed. If the information is deemed classified or confidential, it must immediately be shredded, burned, degaussed or overwritten to a Department of Defense level standard.

These standards, though, are more about protecting the information, period, than destroying the record. Experts we spoke with did not know of any instances where prosecutors used forensics tools to try to recover records that were deleted as a normal course of business. Of course, a judge who is frustrated with your company's inability to produce records could issue a subpoena for them.

Carco's Gladura likens the situation to the paper world and says it would depend on how a subpoena was written, and also whether a company was compliant with its own policies. "You don't have to get out the shredder bag and piece things together in a normal situation," he says, "but you may have to if you're under investigation. For a document retention policy, it's typically enough just to delete. It's not reasonable for me to go back and recover things that were deleted as part of a retention policy."

## 7. Telling people to delete information at the wrong time.

Finally, it's not enough to do all this if you tell people to delete things out of turn. Just ask anyone who used to work for Arthur Andersen. Or ask Frank Quattrone, the former Credit Suisse First Boston banker who spent three years fighting obstruction-of-justice charges after he forwarded the document retention policy to other employees and instructed them to "catch up on file cleaning" this when the company was going to be under investigation. (Charges were dropped last month.)

Once a company learns that it is under discovery or being audited or learns that it's about to be audited or served with a subpoena, destroying anything could make you look like you're hiding something.

A policy can help you keep records in order so that, if needed, you'll only have to trawl through a reasonable amount of information. At American Savings Bank, where Kenneth Newman reluctantly accepted responsibility for records management, the security group sends out quarterly e-mail reminders about certain records that need to be destroyed. "We issue a reminder that if you have these types of documents in any format"—paper or electronic—"the time has come to arrange for their destruction," says Newman, VP of security for the \$371 million Honolulu-based bank.

For instance, if a certain loan file has a seven-year retention requirement, his group would send a notice in the first quarter of 2006 that "any of these loan documents that are older than Q1 1999 can be deleted." He follows up as best he can. For papers stored with an offsite provider, it's easier to track. For electronic records, however, he depends on business units to follow through.

The system can be complicated or simple, automated or centered around users. The important part is establishing a system that you can describe, follow and stand behind. It can make your head hurt, says Herrod, the former SEC CSO. "You want to give up. But at the end of the day, you have to have some sort of written policy around it."





[www.LRGauthority.org](http://www.LRGauthority.org)

# LOWER RIO GRANDE

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## Public Water Works Authority

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325 Holguin Road Box C

Vado, New Mexico 88072

(575) 571-3628

### MANAGEMENT AND O&M INTERAGENCY AGREEMENT

**Services (routine) at \$1,500.00 per month.**

- Daily inspection of facilities
- Use of On-call and Back-up staff and phone number
- Maintain daily log sheets
- Collect and submit monthly microbiological samples to lab
- Analyze and record daily chemical handling, dosages, recordkeeping, and residuals
- Operation of Treatment Facilities
- Prepare annual Consumer Confidence Report
- Prepare and submit chlorine residuals report to NMED (Chlorine By Products Rule)
- Prepare and submit chlorine residuals report to NMED as part of compliance in with Chlorine By Products Rule (Near Future requirement by USEPA)
- Line Location and marking in compliance with New Mexico Excavation Law
- Read meters on or about the \_\_\_\_\_ of each month, but no later than the \_\_\_\_\_ of the month
- Association Management to maintain compliance with State and Federal drinking water regulations along with all other applicable state and federal statutes and regulations

**Services provided at \$50.00 per hour:**

- Any and all other required and/or requested operation and maintenance services to not outlined as routine including emergency responses in which no equipment (backhoe, trencher) is required.

**Services provided at \$100.00 per hour (rental expense if equipment is rented):**

- Any and all other required operation and maintenance services not outlined as routine including emergency responses in which equipment (backhoe, trencher) is required.

Alto De Las Flores MDWCA is responsible for materials and supply cost for all aspects of operation and maintenance including the need for special equipment (Example-boring machine). Complete documentation will be provided for operation and maintenance cost reflecting the type of operation and maintenance performed; materials, supplies and equipment used (if any); including date, time and location.

Operation and maintenance which will need to be performed, but not considered routine:

- Monthly-Estimate 2 hours per month
  - Hydrant flushing
  - Flush-out flushing
  - Well Drawdown
- Quarterly-Estimate 2 hours per quarter
  - Storage tanks flushing
  - Cathodic Protection
- Annual-Estimate 8 hours per year
  - Exercise isolation valves
- As-need or requested-Estimate 8 hours per quarter
  - Paint storage tanks Graffiti

- Cut weeds at facility
- Maintain facility free of debris
- Installation and testing of back preventers for commercial meter site if not so equipped
- Media change-out and waste disposal

Any and other operation and maintenance services will only be performed if needed in emergency situations (line breaks, etc.), if requested by Alto De Las Flores MDWCA or if requested or needed by NMED to maintain compliance with state and federal drinking water regulations.



Thereupon, there was officially filed with the Secretary a copy of a proposed Resolution in final form, as follows, and a form of Amended and Restated Loan Agreement:

*[Remainder of page left blank.]*

LOWER RIO GRANDE  
PUBLIC WATER WORKS AUTHORITY, NEW MEXICO

RESOLUTION NO. FY2013-11

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED LOAN AND SUBSIDY AGREEMENT (“LOAN AGREEMENT”) BY AND BETWEEN THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF NO MORE THAN \$148,750, TOGETHER WITH INTEREST, COSTS OF ISSUANCE AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO MORE THAN \$446,250, FOR THE PURPOSE OF FINANCING THE COSTS OF THE INSTALLATION AND REPLACEMENT OF MANUAL-READ WATER METERS WITH RADIO-READ WATER METERS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, ADMINISTRATIVE FEES AND INTEREST DUE UNDER THE AMENDED AND RESTATED LOAN AGREEMENT SOLELY FROM THE PLEDGED REVENUES; SETTING A MAXIMUM INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE AMENDED AND RESTATED LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE AMENDED AND RESTATED LOAN AGREEMENT.

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

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing public water works authority under the general laws of the State; and

WHEREAS, on December 21, 2012 The Financial Authority and the Governmental Unit entered in the Original Loan Agreement for the purpose of funding the Loan; and

WHEREAS, The Finance Authority and the Government Unit desire to amend the Original Loan Agreement to make certain technical revisions; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and the public that it serves that the Loan Agreement be executed and delivered and that the financing of the construction of the Project take place by executing and delivering the Loan Agreement; and



WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than as described in Exhibit "A" to the Loan Agreement, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues, and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, other than the Pledged Revenues, no revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; and

WHEREAS, there have been presented to the Governing Body, and there presently are on file with the Secretary, this Resolution and the form of the Loan Agreement; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan Agreement is to be used for governmental purposes of the Governmental Unit and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement, which are required to have been obtained by the date of the Resolution have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY, NEW MEXICO:

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

“Administrative Fee” or “Administrative Fee Component” means the 0.25% annual fee payable to the Finance Authority as 0.125% of the Loan Agreement Principal Amount 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.

“Aggregate Disbursements” means, at any time after the Closing Date, the sum of aggregate amounts disbursed to the Governmental Unit for payment of the incurred costs of the Project.

“Aggregate Forgiven Disbursements” means the amount of Loan subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date equal to seventy-five

percent (75%) of the Aggregate Disbursements, up to a maximum of seventy-five percent (75%) of the principal amount or, four hundred forty-six thousand two hundred fifty dollars (\$446,250).

“Aggregate Repayable Disbursements” means, at any time after the Closing Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

“Authorized Officers” means the Chairman, Secretary, Finance Manger and General Manager of the Governmental Unit.

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

“Closing Date” means December 21, 2012, the date of execution, delivery and funding of the Original Loan Agreement.

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

“Debt Service Account” means the debt service account established in the name of the Governmental Unit and administered by the Finance Authority to pay the Loan Agreement Payments under this Loan Agreement as the same become due.

“DWSRLF Act” means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended, and the general laws of the State, including NMSA 1978, § 73-26-1 et seq., as amended, and enactments of the Governing Body relating to this Loan Agreement including the Resolution.

“Effective Date” means the date of execution and delivery of the Loan Agreement authorized by this Resolution.

“Final Disbursement” means the final disbursement of moneys from the Program Account to the Governmental Unit, which shall occur within two years following the Closing Date, except as otherwise provided in the Loan Agreement.

“Final Loan Agreement Payment Schedule” means the schedule of Loan Agreement Payments due on the Loan Agreement following the Final Disbursement, as described in the Loan Agreement.

“Finance Authority” means the New Mexico Finance Authority.

“Governing Body” means the duly organized Board of Directors of the Governmental Unit and any successor governing body of the Governmental Unit.

“Governmental Unit” means the Lower Rio Grande Public Water Works Authority, Dona Ana County, New Mexico.

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

Gross Revenues do not include:

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

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

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption, and except as provided in Section 2.2(h) of the Loan Agreement.

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

“Loan” or “Loan Amount” means the funds to be loaned by the Finance Authority to the Governmental Unit pursuant to the Loan Agreement, including funds repayable to the Finance Authority by the Governmental Unit and also including funds not repayable to the Finance Authority in accordance with the subsidization provisions of the Loan Agreement.

“Loan Agreement” or “Amended and Restated Loan Agreement” means the Amended and Restated loan and subsidy agreement dated the Effective Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority, and any amendments or supplements thereto, including the exhibits attached to the Loan Agreement.

“Loan Agreement Payment” means, collectively, all payments due under the Loan Agreement including principal and interest, to be paid by the Governmental Unit as payment on the Aggregate Repayable Disbursements under the Loan Agreement as shown on the Final Loan Agreement Payment Schedule.

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

“Maximum Aggregate Forgiven Amount” means the maximum amount of loan subsidy available in the form of principal forgiveness, which is equal to seventy-five percent (75%) of the Maximum Principal Amount. The Maximum Aggregate Forgiven Amount, assuming

disbursement of all funds available to the Governmental Unit under the Loan Agreement, is four hundred forty-six thousand two hundred fifty dollars (\$446,250).

“Maximum Aggregate Repayable Amount” means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to this Loan Agreement, and is equal to the Maximum Principal Amount less the Maximum Aggregate Forgiven Amount. The Maximum Aggregate Repayable Amount, assuming disbursement of all funds available to the Governmental Unit under the Loan Agreement, is one hundred forty-eight thousand seven hundred fifty dollars (\$148,750).

“Maximum Principal Amount” means five hundred ninety-five thousand dollars (\$595,000).

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

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

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

(a) Legal and overhead expenses of the various Governmental Unit departments directly related and reasonably allocable to the administration of the System;

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

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

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

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

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

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

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

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

“Original Loan Agreement” means the Drinking Water State Revolving Fund Loan Agreement entered into by and between the Government Unit and The Finance Authority on December 21, 2012, and relating to the Project.

“Parity Obligations” mean the obligations of the Governmental Unit under the 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 the Loan Agreement, including any such obligations shown on the Term Sheet.

“Pledged Revenues” means the Net Revenues of the System of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to this Resolution and described in Exhibit "A" to the Loan Agreement.

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

“Resolution” means this Resolution No. FY2013-11 adopted by the Governing Body of the Governmental Unit on April 15, 2013, approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet and the Final Loan Agreement Payment Schedule, as supplemented from time to time in accordance with the provisions hereof.

“Senior Obligations” means all bonds or other obligations of the Governmental Unit 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 superior to the lien created by this Loan Agreement, including any such obligations shown on the Term Sheet.

“State” means the State of New Mexico.

“Subsidy” means the additional subsidy in the form of principal forgiveness for the Governmental Unit, to be applied proportionally at the time of each disbursement of moneys to the Governmental Unit, being seventy-five percent (75%) of such disbursements.

“System” means the public utility designated as the Governmental Unit's water system consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions enlargements and improvements of or to water system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the

Governmental Unit designated by the Governing Body as part of the water system, situated within the limits of Dona Ana County, New Mexico.

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

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Governing Body and officers of the Governmental Unit directed toward the acquisition and construction of the Project, and the execution and delivery of the Loan Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan Agreement. The acquisition and construction of the Project and the method of financing the Project through execution and delivery of the Loan Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

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

A. The Project is needed to meet the needs of the Governmental Unit and the public that it serves, and the issuance and delivery of the Loan Agreement in the Maximum Principal Amount is necessary or advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan Agreement are not sufficient to defray the cost of acquiring and constructing the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible and prudent to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement pursuant to the DWSRLF Act to provide funds for the financing of the Project are necessary in the interest of the public health, safety, and welfare of the residents and the public served by the Governmental Unit.

F. The Governmental Unit will acquire, install and construct the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in Exhibit "A" to the Loan Agreement, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement.

H. The net effective interest rate on the Maximum Aggregate Repayable Amount does not exceed the current market rate which is the maximum rate permitted by Federal law.

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public that is served by the Governmental Unit and acquiring and constructing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the DWSRLF Act, execute and deliver the Loan Agreement evidencing a special limited obligation of the Governmental Unit to pay a principal amount of one hundred forty-eight thousand seven hundred fifty dollars (\$148,750) and interest thereon, and to accept a loan subsidy in the amount of four hundred forty-six thousand two hundred fifty dollars (\$446,250) and the execution and delivery of the Loan Agreement is hereby authorized. The Governmental Unit shall use the proceeds of the Loan and Subsidy (i) to finance the acquisition and construction of the Project and (ii) to pay the costs of issuance of the Loan Agreement and the costs of issuance of the Bonds, if any. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement shall be in substantially the form of the Loan Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Loan shall be in an amount not to exceed the Maximum Principal Amount of five hundred ninety-five thousand dollars (\$595,000). The Loan Agreement Principal Amount shall be payable in installments of principal due on May 1 of the years designated in the Final Loan Agreement Payment Schedule and bear interest payable on May 1 and November 1 of each year, commencing on May 1, 2013, at the rates designated in the Loan Agreement, including Exhibit "A" thereto, which rates include the Administrative Fee.

Section 6. Approval of Amended and Restated Loan Agreement. The form of the Loan Agreement as presented at the meeting of the Governing Body at which this Resolution was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the Secretary is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and attest the same. The execution of the Loan Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Resolution, and the Loan Agreement shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Resolution nor in the Loan Agreement, nor any other instruments, shall be construed as

obligating the Governmental Unit (except with respect to the application of the Pledged Revenues) or as imposing a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Resolution, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds; Completion of Acquisition, Installation and Construction of the Project.

A. Debt Service Account; Disbursements. The Governmental Unit hereby consents to creation of the Debt Service Account to be held and maintained by the Finance Authority as provided in the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be disbursed promptly upon receipt of an Approved Requisition, as defined in the Loan Agreement.

Until the Completion Date or the date of the Final Disbursement, the money disbursed pursuant to the Loan Agreement shall be used and paid out solely for the purpose of acquiring, installing and constructing the Project in compliance with applicable law and the provisions of the Loan Agreement.

B. Prompt Construction of the Project. The Governmental Unit will acquire, install, construct and complete the Project with all due diligence.

C. Completion of Acquisition, Installation and Construction of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that the acquisition and construction of and payment for the Project have been completed.

D. Finance Authority Not Responsible for Application of Loan Proceeds. The Finance Authority shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues; Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid directly by the Governmental Unit to the Finance Authority in an amount sufficient to pay principal, interest,



Administrative Fees and other amounts due under the Loan Agreement, as provided in Section 5.2 of the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Debt Service Account if the amount in the Debt Service Account totals a sum at least equal to the entire aggregate amount of Loan Agreement Payments to become due as to principal, interest on, Administrative Fees and any other amounts due under the Loan Agreement, in which case moneys in such account in an amount at least equal to such principal, interest and Administrative Fee requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided in Section 9(C) of this Resolution.

C. Use of Surplus Revenues. After making all the payments required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Debt Service Account shall be transferred to the Governmental Unit on a timely basis and applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged, and are hereby pledged, and the Governmental Unit grants a security interest therein, for the payment of the principal, Administrative Fees, interest, and any other amounts due under the Loan Agreement, subject to the uses thereof permitted by and the priorities set forth in this Resolution. The Loan Agreement constitutes an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein, and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan Agreement including, but not limited to, the execution and delivery of closing documents and reports in connection with the execution and delivery of the Loan Agreement, and the publication of the summary of this Resolution set out in Section 17 of this Resolution (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Resolution. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Resolution may be supplemented or amended by ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Resolution. This Resolution

may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

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

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

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Chairman and Secretary, and the title and general summary of the subject matter contained in this Resolution (set out in Section 17 below) shall be published in a newspaper which is of general circulation in the Governmental Unit, and said Resolution shall be in full force and effect thereafter, in accordance with law.

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

*[Remainder of page intentionally left blank.]*

*[Form of Summary of Resolution for Publication.]*

Lower Rio Grande Public Water Works Authority, New Mexico  
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. FY2013-11, duly adopted and approved by the Governing Body of the Lower Rio Grande Public Water Works Authority, New Mexico (the "Governmental Unit"), on April 17, 2013. Complete copies of the Resolution are available for public inspection during normal and regular business hours in the office of the Secretary, 325 Holguin Road Box C, Vado New Mexico 88072.

The title of the Resolution is:

LOWER RIO GRANDE  
PUBLIC WATER WORKS AUTHORITY, NEW MEXICO  
RESOLUTION NO. FY2013-11

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED LOAN AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF NO MORE THAN \$148,750, TOGETHER WITH INTEREST, COSTS OF ISSUANCE AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO MORE THAN \$446,250, FOR THE PURPOSE OF FINANCING THE COSTS OF THE INSTALLATION AND REPLACEMENT OF MANUAL-READ WATER METERS WITH RADIO-READ WATER METERS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, ADMINISTRATIVE FEES AND INTEREST DUE UNDER THE AMENDED AND RESTATED LOAN AGREEMENT SOLELY FROM THE PLEDGED REVENUES; SETTING A MAXIMUM INTEREST RATE FOR THE AMENDED AND RESTATED LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE AMENDED AND RESTATED LOAN AGREEMENT.

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

This notice constitutes compliance with NMSA 1978, § 6-14-6.

*[End of Form of Summary for Publication.]*

Section 18. Execution of Agreements. The Lower Rio Grande Public Water Works Authority through its Governing Body agrees to authorize and execute all such agreements with the New Mexico Finance Authority as are necessary to consummate the Loan contemplated herein and consistent with the terms and conditions of the Loan Agreement and this Resolution.

PASSED, APPROVED AND ADOPTED THIS 17<sup>TH</sup> DAY OF APRIL, 2013.

LOWER RIO GRANDE PUBLIC WATER  
WORKS AUTHORITY, NEW MEXICO

By \_\_\_\_\_  
\_\_\_\_\_, Chairman

[SEAL]

ATTEST:

By \_\_\_\_\_  
\_\_\_\_\_, Secretary

*[Remainder of page intentionally left blank.]*

Governing Body Member \_\_\_\_\_ then moved adoption of the foregoing Resolution duly seconded by Governing Body Member \_\_\_\_\_.

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

Those Voting Aye:

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Those Voting Nay:

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Those Absent:

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\_\_\_\_\_ (\_\_\_) members of the Governing Body having voted in favor of said motion, the Chairman declared said motion carried and said Resolution adopted, whereupon the Chairman and the Secretary signed the Resolution upon the records of the minutes of the Governing Body.

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

LOWER RIO GRANDE PUBLIC WATER  
WORKS AUTHORITY, NEW MEXICO

By \_\_\_\_\_  
\_\_\_\_\_, Chairman

[SEAL]

ATTEST:

By \_\_\_\_\_  
\_\_\_\_\_, Secretary

*[Remainder of page intentionally left blank.]*



**EXHIBIT "A"**

Notice of Meeting  
Meeting Agenda



**\$595,000 Maximum Principal Amount**

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

**dated**

**May 21, 2013**

**by and between the**

**NEW MEXICO FINANCE AUTHORITY**

**and the**

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY,  
New Mexico**

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

This AMENDED AND RESTATED LOAN AND SUBSIDY AGREEMENT (the “Loan Agreement” or “Amended and Restated Loan Agreement”), dated as of May 21, 2013 is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the “Finance Authority”), and the **LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY** (the “Governmental Unit”), a public water works authority duly organized and existing under the laws of the State of New Mexico (the “State”).

WITNESSETH:

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

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

WHEREAS, the Finance Authority is authorized, pursuant to the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended, (the “DWSRLF Act”) to implement a program to permit qualified local authorities, such as the Governmental Unit, to enter into agreements with the Finance Authority to provide low-cost financial assistance in the construction and rehabilitation of necessary drinking water facilities; and

WHEREAS, the Governmental Unit is a public water works authority organized and existing under the laws of the State, and in particular NMSA 1978, § 73-26-1, as amended, and is a qualified local authority under the DWSRLF Act; and

WHEREAS, on December 21, 2012 The Finance Authority and the Governmental Unit entered in the Original Loan Agreement for the purpose of funding the Loan;

WHEREAS, The Finance Authority and the Governmental Unit desire to amend the Original Loan Agreement to make certain technical revisions,

WHEREAS, funds may be provided from the Drinking Water State Revolving Loan Fund, in accordance with the DWSRLF Act and with the Safe Drinking Water Act, to finance the design, acquisition, construction, improvement, expansion, repair or rehabilitation of drinking water systems and water supply systems in the State; and

WHEREAS, a portion of the Loan funds made available pursuant to the DWSRLF Act and the Safe Drinking Water Act may be forgiven and, if forgiven, will not be required to be repaid; and

WHEREAS, the Governmental Unit is authorized by the laws of the State and in particular NMSA 1978, § 73-26-1, as amended, to enter into this Loan Agreement and accept a loan for the purpose of financing the Project; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and the public that it serves that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of the Project, which includes the installation and replacement of manual-read meters with radio-read meters, as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

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

WHEREAS, the New Mexico Environment Department (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 and the requirements of the laws and regulations of the State governing the construction and operation of drinking water supply facilities; and

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

WHEREAS, pursuant to information provided by the Governmental Unit and environmental review by applicable State and federal agencies, and in accordance with 40 C.F.R. Sections 6.204, 6.300(c)(1), and 6.301(f), and pursuant to the environmental review process of the State, the Finance Authority has determined that the Project meets the requirements for a Categorical Exclusion as defined in the State Environmental Review Process (SERP) for the Drinking Water State Revolving Loan Fund; and

WHEREAS, for purposes of financing the Project, the Governing Body and the Finance Authority have determined that it is in the best interests of the Governmental Unit and the public that it serves that the Finance Authority lend the Loan Agreement Principal Amount to the Governmental Unit; and

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

WHEREAS, the Finance Authority has found and determined that the Governmental Unit is a severely disadvantaged community under the Intended Use Plan in that its median annual household income is \$30,420, which is less than 90% of the State median annual household income of \$43,820, and it has an affordability ratio determined as provided in the Intended Use Plan of greater than 0.015; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and

delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement on parity with the Parity Obligations; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, payable solely from 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 or the State; and

WHEREAS, the Finance Authority has determined that the Governmental Unit has sufficient technical, managerial and financial capability to operate the Project for its useful life and ensure compliance with the requirements of the Safe Drinking Water Act; and

WHEREAS, on December 21, 2012, the Governmental Unit and The Finance Authority entered into the Original Loan Agreement to provide funding for the Project as described in the Original Loan Agreement; and,

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

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

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the Finance Authority and the Governmental Unit agree:

## **ARTICLE I**

### **DEFINITIONS**

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

“Administrative Fee” or “Administrative Fee Component” means the 0.25% annual fee payable to the Finance Authority as 0.125% of the Loan Agreement Principal Amount 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 the aggregate amounts disbursed to the Governmental Unit for payment of the incurred costs of the Project.

“Aggregate Forgiven Disbursements” means the amount of Loan subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date be equal to seventy-five percent (75%) of the Aggregate Disbursements, up to a maximum of seventy-five percent (75%) of the principal amount, or four hundred forty-six thousand two hundred fifty dollars (\$446,250).

“Aggregate Program Amount” means, with respect to this Loan Agreement, the sum of five hundred ninety-five thousand dollars (\$595,000) which amount shall be available for disbursal to the Governmental Unit to pay costs of the Project upon receipt by the Finance Authority of a properly executed requisition or requisitions in substantially the form attached as Exhibit “C” to this Loan Agreement, with supporting documentation.

“Aggregate Repayable Disbursements” means, at any time after the Effective Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

“Approved Requisition” means a requisition in the form of Exhibit “C” to this Loan Agreement, together with supporting documentation (e.g. a payment request from the contractor or vendor) submitted to and approved by the Finance Authority pursuant to Section 4.2 of this Loan Agreement.

“Authorized Officers” means, with respect to the Governmental Unit, the Chairman, Secretary, the Finance Manager and the General Manager thereof; and with respect to the Finance Authority, any one or more of the Chairperson, Vice-Chairperson, Secretary and Chief Executive Officer of the Finance Authority, and any other officer or employee of the Finance Authority designated in writing by an Authorized Officer thereof.

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

“Closing Date” means December 21, 2012.

“Debt Service Account” means the debt service account established in the name of the Governmental Unit and administered by the Finance Authority to pay the Loan Agreement Payments under this Loan Agreement as the same become due.

“Department” means the New Mexico Environment Department.

“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” means the drinking water state revolving loan fund established by the DWSRLF Act.

“DWSRLF Act” means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended,

including NMSA 1978, § 73-26-1 et seq., as amended, and enactments of the Governing Body relating to this Loan Agreement including the Resolution.

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

“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.

“Final Disbursement” means the final disbursement of moneys to the Governmental Unit, which shall occur within two (2) years following the Closing Date, 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 within two (2) years after the Closing Date, is attached as Exhibit “B” to this Loan Agreement. If the Aggregate Program amount is not disbursed until after two (2) years from the Closing Date, the Interest Component during such times as only interest is payable shall continue to be payable as provided in Section 5.2(a)(i). Thereafter the Loan Agreement Payments shall be payable as provided in Section 5.2(a)(ii) with the Loan Agreement Principal Amount amortized at the interest rate specified in Exhibit “B” hereto for a total of twenty (20) years from the date of the first principal payment. In such latter event a revised Final Loan Agreement Payment Schedule shall be approved by an Authorized Officer of the Governmental Unit and an Authorized Officer of the Finance Authority.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Act” means NMSA 1978, §§ 6-21-1 through 6-21-31, as amended.

“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 Finance Authority establishing accounting principles applicable to the Governmental Unit.

“Governing Body” means the duly organized Board of Directors of the Governmental Unit and any successor governing body of the Governmental Unit.

“Governmental Unit” means the Lower Rio Grande Public Water Works Authority in Dona Ana County, New Mexico.

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

Gross Revenues do not include:

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

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

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption, and except as provided in Section 2.2(h) of this Loan Agreement.

“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 plan in effect as of May 21, 2013, approved by the Finance Authority and the Department and submitted by the Finance Authority and the Department to the Environmental Protection Agency pursuant to 42 U.S.C. Section 300j-12(b) which establishes criteria for extending drinking water improvements financial assistance to qualifying public drinking water utility systems.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest accruing on the Aggregate Repayable Disbursements then outstanding, 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 no greater than two (2) years, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Governmental Unit to pay costs of the Project.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement, including funds repayable to the Finance Authority by the Governmental Unit and also including funds not repayable to the Finance Authority in accordance with the subsidization provisions of this Loan Agreement.

“Loan Agreement” or “Amended and Restated Loan Agreement” means this amended and restated loan and subsidy agreement and any amendments or supplements hereto, including the exhibits attached to 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 Repayable 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 Repayable Disbursements then outstanding, up to the Maximum Aggregate Repayable Principal.

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

“Maximum Aggregate Forgiven Amount” means the maximum amount of loan subsidy available in the form of principal forgiveness, which is equal to seventy-five percent (75%) of the Maximum Principal Amount. The Maximum Aggregate Forgiven Amount, assuming disbursement of all funds available to the Governmental Unit under this Loan Agreement, is four hundred forty-six thousand two hundred fifty dollars (\$446,250).

“Maximum Aggregate Repayable Principal” means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to this Loan Agreement, and is equal to the Maximum Principal Amount less the Maximum Aggregate Forgiven Amount. The Maximum Aggregate Repayable Principal, assuming disbursement of all funds available to the Governmental Unit under this Loan Agreement, is one hundred forty-eight thousand seven hundred fifty dollars (\$148,750).

“Maximum Principal Amount” means five hundred ninety-five thousand dollars (\$595,000).

“Memorandum of Understanding” means the current memorandum of understanding by and between the Finance Authority and the Department pursuant to the DWSRLF Act describing



and allocating duties and responsibilities in connection with the Drinking Water State Revolving Loan Fund.

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

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

“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.

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

(a) Legal and overhead expenses of the various Governmental Unit departments directly related and reasonably allocable to the administration of the System;

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

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

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

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

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

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

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

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit’s general fund, liabilities incurred by the Governmental Unit as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for

capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

“Original Loan Agreement” means the Drinking Water State Revolving Fund Loan Agreement entered into by and between the Governmental Unit and the Finance Authority on December 21, 2012, and relating to the Project.

“Parity Obligations” means the obligations of the Governmental Unit under 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 NMSA 1978, § 6-10-10.1, as amended, and operated, maintained and invested by the office of the State Treasurer.

“Pledged Revenues” means the Net Revenues of the System of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to the Resolution and described in the Term Sheet.

“Principal Component” means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement, based upon the Aggregate Repayable Disbursements; the Principal Component of each Loan Agreement Payment, assuming the disbursal of the Aggregate Program Amount within two (2) years after the Closing Date, is shown on Exhibit “B” attached to this Loan Agreement.

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

“Resolution” means Resolution No. FY2013-05 adopted by the Governing Body of the Governmental Unit on November 14, 2012, approving 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.

“Senior Obligations” means all bonds or other obligations of the Governmental Unit 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 superior to the lien created by this Loan Agreement, including any such obligations shown on the Term Sheet.

“State Environmental Review Process” or “SERP” means the environmental review process adopted by the Department and the Finance Authority, 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 subordinate to any other outstanding Parity Obligations having a lien on the Pledged Revenues, including any such obligations shown on the Term Sheet.

“Subsidy” means the subsidy in the form of principal forgiveness for the Governmental Unit, if any, to be applied proportionally at the time of each disbursement of moneys to the Governmental Unit, being seventy-five percent (75%) of such disbursements.

“System” means the public utility designated as the Governmental Unit’s water system consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions enlargements and improvements of or to water system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the Governmental Unit designated by the Governing Body as part of the water system, situated within the limits of Dona Ana County, New Mexico.

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

“Unrequisitioned Principal Amount” means the amount, if any, by which the Maximum Principal Amount exceeds the Aggregate Disbursements at the time the Governmental Unit submits the certificate of completion required pursuant to Section 6.3 of this Loan Agreement.

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

## 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 Resolution shall be exercised or performed by the Governmental Unit or by such members, officers, 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 thereof.

(c) Authorization of Loan Agreement. The Governmental Unit is a public water works authority, a political subdivision of the State, and is duly organized and existing under the statutes and laws of the State, including specifically NMSA 1978, § 73-26-1, as amended. The Governmental Unit is a local authority pursuant to the DWSRLF Act. The Governmental Unit is authorized to enter into the transactions contemplated by this Loan 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 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 to the acquisition and completion of the Project and to no other purpose, as follows:

(i) The Governmental Unit shall requisition moneys not less frequently than quarterly;

(ii) The Governmental Unit shall, within two (2) years after the Closing Date, have requisitioned the Aggregate Program Amount, or such portion thereof as shall be necessary to complete the Project, unless an extension is agreed to pursuant to Section 4.1(b) of this Loan Agreement.

(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 Project; Compliance with Laws. The Project will consist of the installation and replacement of manual-read meters with radio-read meters, 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

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and the public that it serves.

(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. This Loan Agreement constitutes a legal, valid and binding special obligation of the Governmental Unit enforceable in accordance with its 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 as a whole.

(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. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement, nor the consummation of the transactions contemplated herein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which 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 and Additional Debt. Except for 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. No additional indebtedness, bonds or notes of the Governmental Unit, payable on a priority ahead of the indebtedness herein authorized out of Pledged Revenues, shall be created or incurred while this Loan Agreement remains outstanding.

(o) No Litigation. To the 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 to comply with its obligations under this Loan Agreement. Neither the execution and delivery of this Loan Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under this Loan 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.

(p) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan 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 twenty percent (120%) of the maximum annual principal and interest due on all outstanding Parity Obligations of the Governmental Unit.

(s) 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 Finance Authority.

(t) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: Project documents, 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 Finance Authority, and notification of any event deemed material by the Finance Authority. For the purposes of this Loan Agreement, a material event shall include, without limitation, any violation or alleged violation 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 Fund.

(u) Single Audit Act Requirement. The Governmental Unit acknowledges that the funding provided pursuant to this Loan Agreement is derived in large part from federal grants to the Drinking Water State Revolving Loan Fund program pursuant to the Operating Agreement. During the Loan Agreement Term, the Governmental Unit shall annually cause an audit of the books and accounts of its operations in their entirety, or in the alternative an audit of the books and accounts of each of its departments, agencies and other organizational units which expended or otherwise administered the Loan or any other funds derived from the government of the United States, to be completed by an Independent Accountant in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. Section 7501 et seq.), and applicable regulations thereunder. The audit will be available for inspection by the Finance Authority and by the Environmental Protection Agency.

(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 NMSA 1978, § 13-4-18, as amended. Upon completion of the acquisition of the Project, the Governmental Unit shall provide a written notice of completion of the Project.

Section 2.2 Protective Covenants Regarding Operation of the System. The Governmental Unit further represents, covenants and warrants as follows:

(a) Rate Covenant. The Governmental Unit covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year the Gross Revenues shall at least equal the Operation and Maintenance Expenses of the System for the Fiscal Year, plus one hundred thirty percent (130%) of the maximum annual principal and interest payments due on all Parity Obligations.

(b) Efficient Operation. The Governmental Unit will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and to supply reasonable public and private demands for System services within the service area of the System.

(c) Records. So long as this Loan Agreement remains outstanding, proper books of record and account will be kept by the Governmental Unit, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. However, pursuant to NMSA 1978, § 6-14-10(E), as amended, records with regard to the ownership or pledge of Utility Revenue Bonds are not subject to inspection or copying.

(d) Right to Inspect. The Finance Authority, or its duly authorized agents, shall have the right to inspect at all reasonable times the Project and all records, accounts and data relating to the Project, the Pledged Revenues and the System.

(e) Audits. Within two hundred seventy (270) days following the close of each Fiscal Year, the Governmental Unit will cause an audit of the books and accounts of the System and its separate systems to be made by an Independent Accountant and the audit will be available for inspection by the Finance Authority. Each audit of the System shall comply with Generally Accepted Accounting Principles. The audit required by this section may, at the Governmental Unit's discretion, be performed as a part of or in conjunction with the audit required under the Single Audit Act as set forth in Section 2.1(w) of this Loan Agreement.

(f) Billing Procedure. Bills for all utility services, furnished by or through the System shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by Governmental Unit ordinance. To the extent permitted by law, if a bill is not paid within the period of time required by Governmental Unit ordinance, water and sewer services shall be discontinued as required by Governmental Unit ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection.

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

(h) Insurance. Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, the Governmental Unit will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by entities which operate systems such as the System. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the Governmental Unit may have a material interest and of which the Governmental Unit may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Governmental Unit determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to



the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, and any remainder may be used to redeem Utility Revenue Bonds or be treated as Gross Revenues and used in any legally permissible manner.

(i) Competing Utility System. Unless contrary to any provision of, or required by, applicable law, as long as Utility Revenue Bonds are outstanding, the Governmental Unit prior to granting any franchise or license to a competing utility system, or permitting any person, association, firm or corporation to sell similar utility services or facilities to any consumer, public or private, within the Service Area of the System, shall obtain a written report from an independent utility rate consultant stating that in the opinion of the consultant the use charges in effect immediately prior to the approval of the franchise or license by the Governmental Unit are sufficient to meet the requirement of section 2.1(s) for the first full calendar year after the approval of the franchise or license.

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

(k) Management of the System. If an “event of default” as defined in Section 10.1 of this Loan Agreement shall occur or if the Pledged Revenues in any Fiscal Year fail to equal principal and interest due on the Parity Obligations, the Governmental Unit shall retain an independent consultant qualified in the management of utility systems to assist in the management of the System so long as such default continues or the Pledged Revenues are less than the amount designated.

(l) Competent Management. The Governmental Unit shall employ experienced and competent personnel to manage the System.

(m) Performing Duties. The Governmental Unit will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State and the ordinances and resolutions of the Governmental Unit relating to the System and this Loan Agreement, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as required by this Section and the proper segregation and application of the Gross Revenues.

(n) Other Liens. Except for those Parity Obligations listed in the Term Sheet, there are no liens or encumbrances of any nature whatsoever, on or against the System or the Gross Revenues or Net Revenues on parity with or senior to the lien of this Loan Agreement.

Section 2.3 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement. The Finance Authority has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement.

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

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

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

### **ARTICLE III**

#### **LOAN AGREEMENT TERM**

The Loan Agreement Term shall commence on 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 shall be available for disbursement by the Finance Authority 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 within two (2) years following the Closing Date, except only as otherwise approved in writing by an Authorized Officer of the Finance Authority, 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.

Section 4.2 Disbursement 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 Finance Authority. The Finance Authority 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. The Finance Authority shall arrange for payment of all requisitions 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 Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount which, including funds previously provided to the Governmental Unit pursuant to the Original Loan Agreement, shall not 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 Parity Obligations and Senior Obligations, the Governmental Unit does hereby convey, assign and pledge unto the Finance Authority 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, 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 Repayable Disbursements, the payment schedule of which is attached hereto as Exhibit "B".

Within five (5) days after each payment of an Approved Requisition during the Interim Period, the Finance Authority shall recalculate on the basis of the Aggregate Repayable

Disbursements to that date the Interest Component and Administrative Fee Component next coming due and shall provide written notice to the Governmental Unit of the recalculated Interest Component and Administrative Fee Component. 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 Aggregate Program Amount within two (2) years after the Closing Date, is attached to this Loan Agreement as Exhibit “B”. The Finance Authority shall provide a revised Final Loan Agreement Payment Schedule following the Final Disbursement which shall supersede the schedule attached as Exhibit “B”.

The pledge of the Pledged Revenues and the lien thereon has been effective since the date of the Original Loan Agreement and shall remain effective upon and from the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that the Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan 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 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 and the laws of the State.

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

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Government Unit shall remit to the Finance Authority and the Finance Authority shall collect and deposit into the Debt Service Account from the Government Unit the Pledged Revenues, in the manner specified herein.

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

(A) During the Interim Period, Interest and Administrative Fees shall accrue on the Aggregate Repayable Disbursement of moneys from the date of each payment of an Approved Requisition.

(B) During the Interim Period, within five (5) days after each payment of an Approved Requisition, the Finance Authority shall calculate the Interest Component and Administrative Fee Component next coming due on the Aggregate Repayable Disbursements.

(C) During the Interim Period the Governmental Unit shall monthly, commencing on the first day of the month next following the first payment by the Finance Authority of an Approved Requisition, pay to the Finance Authority for deposit into the Debt Service Account such amount as is necessary, in monthly installments, to pay the Interest Component and Administrative Fee Component on the Aggregate Repayable Disbursements as of each Loan Agreement Payment Date as described in the Loan Agreement Payment schedule attached as Exhibit "B" hereto.

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

(A) Interest and Administrative Fee Components. Monthly, commencing on the first day of the month next following the Final Disbursement, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account an amount in equal monthly installments which is necessary to pay the first maturing Interest Component and Administrative Fee Component coming due on this Loan Agreement and monthly thereafter, commencing on each Loan Agreement Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component and Administrative Fee Component on this Loan Agreement as described in the Final Loan Agreement Payment Schedule.

(B) Principal Payments. Monthly, commencing on the first day of the month next following the Final Disbursement, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account an amount in equal monthly installments which is necessary to pay the first maturing Principal Component; and thereafter on the first day of each month thereafter, one-twelfth (1/12) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in the Final Loan Agreement Payment Schedule.

(iii) Method of Payment. The Governmental Unit shall transfer each month to the Finance Authority, 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, provided, that in the event of any default in making the Loan Agreement Payments by the Governmental Unit, the Finance Authority shall be entitled to seek payment of the amounts due through any of the remedies provided in Article X of this Loan Agreement.

(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 Finance Authority 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 Finance Authority 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 between the Governmental Unit, the Finance Authority 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 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 Resolution 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 thirty percent (130%) of the combined maximum annual principal, interest requirement and the Administrative Fee coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the Governmental Unit's treasurer or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of 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 shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior or superior to this Loan Agreement.

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 subparagraph (f) of Section 5.4 hereof and in subparagraphs (b) and (c) of this Section.

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

(i) The outstanding obligations so refunded 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 (f) 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 (f) 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 created hereunder may be invested by the Finance Authority 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 Finance Authority. Any earnings on 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 Acquire and Complete the Project. The Governmental Unit hereby agrees that in order to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general do all things which may be requisite or proper to acquire and complete the Project.

The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed by the Finance Authority pursuant to Section 6.2 of this Loan Agreement.



Section 6.2 Disbursements. So long as no Event of Default shall occur, the Finance Authority or its designee shall disburse moneys to pay a requisition upon receipt and approval by the Finance Authority or its designee of a requisition substantially in the form of Exhibit “C” attached hereto signed by an Authorized Officer of the Governmental Unit, with adequate supporting documentation.

Section 6.3 Completion of the Acquisition of the Project. Upon completion of the acquisition of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority, substantially in the form of Exhibit “D” attached hereto, stating that, to his or her knowledge, the acquisition 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 Unrequisitioned Amounts. In the event that, (1) the delivery of the certificate of completion required by Section 6.3 hereof, there remains an Unrequisitioned Principal Amount, or (2) the Finance Authority shall not have received a certificate of completion as required by Section 6.3 hereof, by the date that is two (2) years from the Closing Date, unless an extension is approved pursuant to Section 4.1(b) of this Loan Agreement, then the Governmental Unit shall have no right or title to the Unrequisitioned Principal Amount, nor any right to pledge, encumber or draw upon such Unrequisitioned Principal Amount, and the Finance Authority will not approve, honor, or enforce any requisition upon such Unrequisitioned Principal Amount pursuant to this Loan Agreement.

## ARTICLE VII

### COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority 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. Authorized Officers are authorized to execute, acknowledge and deliver any such supplements and further instruments.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority 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 Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 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, §§ 13-1-28 through 13-1-199, as amended, or its local procurement ordinances and regulations, 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.

(g) For all contracts, the Governmental Unit shall comply with the requirements of the Environmental Protection Agency's Program for Utilization of Minority and

Women's Business Enterprises set out in Title 40, Chapter I, Subchapter B, Part 33 of the Code of Federal Regulations.

(h) For all contracts, the Governmental Unit shall comply with the requirements of Executive Order 13502 on Use of Project Agreements for Federal Construction Projects.

(i) For all contracts, the Governmental Unit shall comply with the requirements of Executive Order dated September 25, 2012 on Strengthening Protections Against Trafficking in Persons in Federal Contracts.

The Finance Authority 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 for payment of an Approved Requisition.

Section 7.5 Lien Status. The Loan Agreement Payments constitute an irrevocable lien (but not necessarily an exclusive lien) upon the Pledged Revenues. 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 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. Any such prepayment shall include accrued interest to the redemption date of the corresponding Bonds to be redeemed, if any, and notice of intent to make such prepayment shall be provided to the Finance Authority or its designee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Finance Authority 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 Finance Authority and its designee, if any, harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (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 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 Finance Authority and its designee, if any, 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 Finance Authority or its designee, shall defend the Finance Authority or its designee, if any, 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 Finance Authority or its designee, if any, unless the Finance Authority 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 Finance Authority or its designee but cannot be cured within the applicable thirty (30) day period, the Finance Authority 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 Finance Authority shall have the right to intervene in the proceedings to protect the Finance Authority'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 Finance Authority shall have the right to intervene in the proceedings to protect its interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority 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:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority under this Loan 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 Finance Authority; or

(c) Intervene in judicial proceedings that affect this Loan 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 thereunder.

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

Section 10.5 Waivers of Events of Default. The Finance Authority 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, or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payment of principal and all expenses of the Finance Authority, 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 Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority 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. In the event that the Governmental Unit should default under any of the provisions hereof and the Finance Authority 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 Finance Authority 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:

Lower Rio Grande Public Water Works Authority  
Attn: General Manager  
325 Holguin Road Box C  
Vado, New Mexico 88072

If to the Finance Authority, then to:

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

And if to Finance Authority'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 Finance Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, 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 Finance Authority and the Governmental Unit on the Effective Date constitute the entire agreement of the parties regarding the subject matter hereof as of the Effective Date. The Loan provided herein, which was approved by the Finance Authority Board of Directors on April 27, 2012 and the terms hereof supersede all prior understandings and agreements between the parties in connection with the Loan, including the Original Loan Agreement, to the extent inconsistent herewith.

Section 11.4 Amendments. Except for amendments approved pursuant to Section 4.1(b) of the Loan Agreement, this Loan Agreement may be amended only with the written consent of the Finance Authority and the Governmental Unit. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Loan Agreement may be given by an Authorized Officer of the Finance Authority. The execution of any such consent by and Authorized Officer of the Finance Authority shall constitute his or her determination that such amendment does not affect the terms of payment of the Loan made pursuant to this Loan Agreement.

Section 11.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority or against any officer, employee, director or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority 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 Finance Authority. This Loan Agreement (except as to the Administrative Fee) may be assigned and transferred by the Finance Authority 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 Finance Authority, on behalf of itself has executed this Amended and Restated Loan Agreement, and the Loan to which it applies, was originally approved by the Finance Authority's Board of Directors on April 27, 2012, 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

[SEAL] By \_\_\_\_\_  
Chairperson or Vice-Chairperson

ATTEST:

By \_\_\_\_\_  
William F. Fulginiti, Secretary

Prepared for Execution by Officers of the Finance Authority:

VIRTUE NAJJAR & BROWN, PC  
As Loan Counsel to the Finance Authority

By \_\_\_\_\_  
Richard L.C Virtue

Approved for Execution by Officers of the Finance Authority:

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

LOWER RIO GRANDE PUBLIC WATER WORKS  
AUTHORITY

By \_\_\_\_\_  
\_\_\_\_\_, Chairman

ATTEST:

By \_\_\_\_\_  
\_\_\_\_\_, Secretary

**EXHIBIT "A"**

**TERM SHEET**

**LOAN NO. 2710-DW  
TO THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY**

Governmental Unit:	Lower Rio Grande Public Water Works Authority, New Mexico
Project Description:	The Project will consist of the installation and replacement of manual-read water meters, with radio-read water meters.
Maximum Principal Amount:	\$595,000
Pledged Revenues:	Net Revenues of the System, defined as the Gross Revenues after deducting Operation and Maintenance Expenses.
Currently Outstanding Parity Obligations for Pledged Revenues:	NMFA PPRF Loan 2601-PP, Matures 2041; NMFA PPRF Loan 2354-PP, Matures 2014; NMED Rural Infrastructure Program Loan 88-12R, Matures 2015
Currently Outstanding Subordinate Obligations for Pledged Revenues:	Water Trust Board Loan 223-WTB, Matures 2032; Colonias Infrastructure Board Loan 2766-CIF Matures 2033
Authorizing Legislation:	Governmental Unit Resolution No. FY2013-11 adopted April 17, 2013
Closing Date	December 21, 2012
Effective Date of Amended and Restated Loan Agreement:	May 21, 2013
Interest Rate:	0.250% (which includes the Administrative Fee)

Maximum Principal Amount:	\$595,000
Aggregate Program Amount:	\$595,000
Subsidy Percent:	75%
Maximum Aggregate Forgiven Amount:	\$446,250
Maximum Aggregate Repayable Principal:	\$148,750

**EXHIBIT “B”**

**LOAN AGREEMENT PAYMENT SCHEDULE**

[SEE ATTACHED]

**EXHIBIT "C"**

**FORM OF REQUISITION**

RE: \$595,000 Amended and Restated Loan Agreement by and between the Finance Authority and the Lower Rio Grande Public Water Works Authority (the "Loan Agreement")

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

LOAN NO. 2710-DW

Effective December 21, 2012

You are hereby authorized to disburse— to Lower Rio Grande Public Water Works Authority or its payee 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:

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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 for requisition and payment.

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 Lower Rio Grande Public Water Works Authority is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the Lower Rio Grande Public Water Works Authority understands its obligation to complete the acquisition of the Project and shall 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: \$595,000 Amended and Restated Loan Agreement by and between the Finance Authority and the Lower Rio Grande Public Water Works Authority (the "Loan Agreement")

Loan No. 2710-DW

Effective Date: May 21, 2013

TO: NEW MEXICO FINANCE AUTHORITY

I, \_\_\_\_\_, the \_\_\_\_\_ of the  
[Name] [Title or position]

Lower Rio Grande Public Water Works Authority, hereby certify as follows:

1. The project described in the Amended and Restated 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 Maximum Principal 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.

LOWER RIO GRANDE PUBLIC  
WATER WORKS AUTHORITY

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

Its: \_\_\_\_\_



\$595,000  
LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY DRINKING WATER LOAN  
No. 2710-DW

AMENDED & RESTATED

STATE OF NEW MEXICO                                 )                 GENERAL AND NO LITIGATION  
   ) ss.                         CERTIFICATE  
COUNTY OF DONA ANA                                 )

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Chairperson and Secretary for the Lower Rio Grande Public Water Works Authority (the "Governmental Unit") in the County of Dona Ana and the State of New Mexico (the "State"):

Capitalized terms used in this Certificate have the same meaning as defined in Resolution No. FY2013-11 (the "Resolution"), adopted April 17, 2013, unless otherwise defined in this Certificate or the context requires otherwise.

1. The Governmental Unit is a political subdivision of the State and is duly organized and validly existing under the laws of the State, its full name being the "Lower Rio Grande Public Water Works Authority."
2. The Governmental Unit was established in the year 2009.
3. From at least \_\_\_\_\_, 2013 to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers of the Governmental Unit:

Chairman: \_\_\_\_\_  
Vice-Chairman: \_\_\_\_\_  
Directors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

General Manager: Martin Lopez  
Finance Manager: Kathi Jackson

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

4. Based on the data collected during the 2010 Census, the population of the Governmental Unit is less than 75% English speaking and less than 75% Spanish Speaking. Notice of adoption of the Resolution was published in English in the Las Cruces Sun-News, a newspaper qualified to publish legal notices that is of general circulation in Dona Ana County, New Mexico.

5. There is no reason within our knowledge why the Governmental Unit may not enter into the Amended and Restated Loan Agreement (the "Loan Agreement") with the Finance Authority (the "Finance Authority"), as authorized by the Resolution.

6. The Governmental Unit has duly authorized the execution, delivery and performance of its obligations under the Loan Agreement. The Loan Agreement has been duly authorized, executed and delivered by the Governmental Unit.

7. The Resolution has been duly signed and adopted in accordance with all applicable laws and has not been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Resolution. The Resolution constitutes valid and sufficient legal authority for the Governmental Unit to carry out and enforce the provisions of the Loan Agreement. No referendum petition has been filed with respect to the Resolution under the provisions of the laws, bylaws or regulations of the Governmental Unit or the State.

8. No event will result from the execution and delivery of the Loan Agreement that constitutes a default or an event of default under the Loan Agreement, and no event of default and no default under the Loan Agreement, have occurred and are continuing on the date of this Certificate.

9. The Governmental Unit has duly authorized and approved the consummation by it of all transactions and has complied with all requirements and satisfied all conditions, which are required by the Loan Agreement to have been authorized, approved, performed or consummated by the Governmental Unit at or prior to the date of this Certificate. The Governmental Unit has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution and the Loan Agreement.

10. A. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the financing of the Project, the enforceability of the Loan Agreement any of the actions required to be taken by the Resolution or the Loan Agreement on or prior to the date of this Certificate have been obtained and are in full force and effect; or

B. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the financing of the Project have been obtained and are in full force and effect.

11. To the best of our knowledge and belief, neither the Governmental Unit's adoption of the Resolution nor any action contemplated by or pursuant to the Resolution or the Loan Agreement does or will conflict with, or constitute a breach by the Governmental Unit of, or default by the Governmental Unit under, any law, court decree or order, governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Governmental Unit is subject or by which it is bound.

12. No material adverse change has occurred, nor has any development occurred involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects, properties of the Governmental Unit or the Pledged Revenues since the date of the Resolution.

13. To the best of our knowledge and belief, none of the events of default referred to in Article X of the Loan Agreement has occurred.

14. Subsequent to the adoption of the Resolution, the Governmental Unit has not pledged or otherwise encumbered the Pledged Revenues. On the date of this Certificate, except as set forth in Exhibit "A" attached to the Loan Agreement, there are no other outstanding obligations with a lien or encumbrance against the Pledged Revenues senior to or on a parity with the lien of the Loan Agreement.

15. The Loan Agreement permits the Governmental Unit to issue additional bonds or other obligations with a lien on the Pledged Revenues, on parity with or subordinate to the lien of the Loan Agreement on the Pledged Revenues upon satisfaction of the conditions set forth in the Loan Agreement. The Loan Agreement prohibits the Governmental Unit from issuing additional bonds or other obligations with a lien on the Pledged Revenues senior to the lien of the Loan Agreement.

16. There is no threatened action, suit, proceeding, inquiry or investigation against the Governmental Unit, at law or in equity, by or before any court, public board or body, nor to our knowledge is there any basis therefore, affecting the existence of the Governmental Unit or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of revenues or assets of the Governmental Unit pledged or to be pledged to pay the principal, interest, and Administrative Fee on the Loan Agreement, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Governmental Unit, (b) the use of the proceeds of the Loan Agreement for the Project and to pay certain costs of the New Mexico Finance Authority associated with the administration of its drinking water state revolving fund loan program, (c) the validity or enforceability of the Loan Agreement or any proceedings of the Governmental Unit taken with respect to the Loan Agreement or the Resolution, (d) the execution and delivery of the Loan Agreement, or (e) the power of the Governmental Unit to carry out the transactions contemplated by the Loan Agreement or the Resolution, including the existence of required rights of way.

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

18. The Governmental Unit is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest except that no representation is made with respect to industrial revenue bonds or conduit bonds payable solely from installment sale or lease payments, loan repayments or other amounts received by the Governmental Unit from private entities.

19. To the best of our knowledge and belief, neither the Chairperson, Secretary, any member of the Governing Body, nor any other officer, employee or other agent of the Governmental Unit is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

20. Regular meetings of the Governing Body have been held at the Vado Office located at 325 Holguin Road, Vado, New Mexico, the principal meeting place of the Governing Body.

21. The Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Governing Body in connection with the Loan Agreement. The Open Meetings Act Resolution No. 2012-12 adopted and approved by the Governing Body on June 20, 2012 establishes notice standards as required by NMSA 1978, § 10-15-1, as amended. The Open Meetings Act Resolution has not been amended or repealed. All action of the Governing Body with respect to the Loan Agreement and the Resolution was taken at meetings held in compliance with the Open Meetings Act Resolution.

22. The Chairperson and Secretary, on the date of the signing of the Loan Agreement, and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Governmental Unit authorized to execute such agreements.

23. This Certificate is for the benefit of the Finance Authority.

24. This Certificate may be executed in counterparts.

25. Nothing has occurred that would adversely affect the Final Opinion of Counsel delivered by Joshua L. Smith as attorney for the city on December 21, 2012. The December 21, 2012 Final Opinion of Counsel remains in full force and effect.

26. Nothing has occurred that would adversely affect the Right of Way Certificate executed on December 21, 2012. The December 21, 2012 Right of Way Certificate remains in full force and effect.

*[Signature page follows.]*

WITNESS our signatures and the seal of the Governmental Unit this 21st day of May, 2013.

LOWER RIO GRANDE PUBLIC WATER  
WORKS AUTHORITY, NEW MEXICO

By \_\_\_\_\_  
\_\_\_\_\_, Chairperson

[SEAL]

By \_\_\_\_\_  
\_\_\_\_\_, Secretary

MARCH 2013						
M	T	W	T	F	S	S
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL 2013						
M	T	W	T	F	S	S
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY 2013						
M	T	W	T	F	S	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

**NEW MEXICO FINANCE AUTHORITY**

**FINANCING SCHEDULE & DISTRIBUTION LIST**

**AMENDED AND RESTATED**

**LOWER RIO GRANDE PWWA, DONA ANA COUNTY, NEW MEXICO  
\$600,950 DRINKING WATER STATE REVOLVING LOAN FUND**

**Project No. 2710-DW**

**Prepared: March 11, 2013**

<b>DATE</b>	<b>ACTION</b>	<b>PARTIES</b>
Monday, March 11, 2013	Distribution of draft Financing Schedule to Finance Authority for review and comment	VNB
Friday, March 15, 2013	Comments due from Finance Authority on draft Financing Schedule	Finance Authority
Wednesday, March 20, 2013	Distribution of drafts of the Resolution, Loan Agreement and Closing Documents for review and comment to Finance Authority.	VNB
Wednesday, March 27, 2013	Comments due on drafts of the Resolution, Loan Agreement and Closing Documents from Finance Authority.	Finance Authority
Wednesday, April 3, 2013	Distribution of drafts of Resolution to Borrower's for comment.	VNB
Wednesday, April 10, 2013	Comments due on drafts of the Resolution, Loan Agreement and Closing Documents from Borrower.	Borrower
Friday, April 12, 2013	Distribution of all final draft documents to Borrower for signature. Copy Finance Authority	VNB
<b>Wednesday, April 17, 2013</b>	<b>Borrower's Governing Body meeting and adoption of Resolution</b>	<b>Board of Directors</b>
Thursday, April 18, 2013	Submit Notice of Adoption of Resolution to newspaper by 1:30 p.m.	VNB

<b>DATE</b>	<b>ACTION</b>	<b>PARTIES</b>
Friday, April 19, 2013	Publish Notice of Adoption of Resolution	Newspaper
Wednesday, April 24, 2013	Delivery of fully executed documents to Loan Counsel	Borrower
Friday, May 10, 2013	Distribution of signed Resolution, Loan Agreement and Closing Documents to the Finance Authority for signature with complete set copy to Gloria and LaRain for Accounting.	VNB
Wednesday, May 15, 2013	Finance Authority signatures due.	Finance Authority
Monday, May 20, 2013	Expiration of 30-day limitation of action period	
Tuesday, May 21, 2013	Effective Date of Amended and Restated loan agreement	All
Friday, June 7, 2013	Transcripts distributed	VNB

### **DISTRIBUTION LIST**

#### **BORROWER**

Lower Rio Grande  
Public Water Works Authority  
325 Holguin Road Box C  
Vado, NM 88072  
Phone: (575) 571-3628

Contact: Martin Lopez, General Manager  
Email: [martin.lopez@LRGauthority.org](mailto:martin.lopez@LRGauthority.org)  
Phone: (575) 571-3628

Kathi Jackson, Finance Manager  
Email: [kathi.jackson@LRGauthority.org](mailto:kathi.jackson@LRGauthority.org)

#### **Borrower's Counsel:**

Joshua L. Smith  
Miller Stratvert P.A.  
3800 E. Lohman Avenue, Suite B  
Las Cruces, NM 88011  
Phone: (575) 523-2481  
Fax: (575) 526-2215  
Email: [jsmith@mstlaw.com](mailto:jsmith@mstlaw.com)

#### **LOAN COUNSEL**

Virtue Najjar & Brown, PC (VNB)  
2200 Brothers Road, 2nd Floor  
P.O. Box 22249  
Santa Fe, New Mexico 87502-2249

#### **NEW MEXICO FINANCE AUTHORITY**

207 Shelby Street  
Santa Fe, NM 87501

Gloria Castillo, Sr. Administrative Assistant  
Email: [gcastillo@nmfa.net](mailto:gcastillo@nmfa.net)  
Phone: (505) 992-9663

Jana M. Amacher, Director of Water Resources  
Email: [jamacher@nmfa.net](mailto:jamacher@nmfa.net) (Financing Schedule only)

Ryan Helton, Sr. Program Administrator - DW  
Email: [rhelton@nmfa.net](mailto:rhelton@nmfa.net) (Financing Schedule only)

Todd Johansen, Sr. Program Administrator - DW  
Email: [tjohansen@nmfa.net](mailto:tjohansen@nmfa.net) (Financing Schedule only)

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#### **NEWSPAPER**

Las Cruces Sun-News

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April 12, 2013

## VIA FEDERAL EXPRESS

Mr. Martin Lopez, General Manager  
Lower Rio Grande PWWA  
215 Vryant Street  
Mesquite, NM 88048

Amended and Restated Loan Agreement to the  
Lower Rio Grande NMFA Loan 2710-DW

Dear Mr. Lopez:

We enclose the documents listed below, for signature where indicated, for the above-referenced Loan:

1. Financing Schedule (for your records, no signature requested);
2. Authorizing Resolution (1 original and 2 sets of additional signature, voting and attendance pages);
3. Amended and Restated Loan Agreement (1 original document and 2 additional signature pages); and
4. Amended General and No Litigation Certificate (1 original document and 2 additional signature pages).

All original documents and signature pages will need to be signed and sealed, if indicated, and returned as discussed below.

We anticipate that the City Council will adopt the Authorizing Resolution ("Resolution") at its April 17<sup>th</sup> regular meeting. Following the meeting, please complete the attendance record (front) and the voting record (page 16), and have the original signature pages (pages 15 and 17) each signed and sealed by the Chair Person and the Secretary/Treasurer. Return all the documents to me, along with the original Clerk's Certificate (page 18 of the Resolution) signed and sealed.

In regard to all the documents, I have flagged all the pages requiring the signature of the Chairman with red tabs and the Secretary's signature with green tabs.

2710-DW Lower Rio Grande PWWA


April 12, 2013

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We ask that you please have all the documents signed where indicated, and returned to us by Wednesday, April 24, 2013, using the enclosed prepaid Federal Express slip. Thank you for your assistance with this matter. If you have any questions, or you need additional information, please call me at (505) 983-6101, extension 55, or Richard L. C. Virtue at (505) 983-6101, extension 57.

Very truly yours,

Virtue Najjar & Brown, PC

By  \_\_\_\_\_  
Pamela Ortiz  
Paralegal

Enclosures

cc: Gloria Castillo, Finance Authority w/encl. by electronic mail