



*Doña Ana Mutual Domestic Water Consumers Association Mailing
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Agenda

The following are the items for consideration at the Regular Board Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors on October 1, 2020, convening at 9:00 a.m. at the Doña Ana Mutual Domestic Water Consumers Association Board Room 5535 Ledesma Dr., Las Cruces, NM 88007:

Call to Order & Roll Call

Approval of Agenda

Minutes

1. Minute of September 17, 2020 Regular Meeting

Approval of New Members & Meters

Customer Issues and Public Input

Public Input will be limited to 3 minutes per person

Board President Report

Staff Reports

New Business

Unfinished Business

2. Approval of Resolution 2020 – 15 CIF 5168 Resolution & Grant Agreement

Board Open Discussion

Adjournment

A copy of this agenda may be requested by phone by calling (575) 526-3491 or in person at 5535 Ledesma Drive, Las Cruces, NM 88007. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, if summary or other type of accessible format is needed, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Margo Lopez at (575) 526-3491 on the Tuesday prior to the meeting or as soon as possible.

Doña Ana Mutual Domestic Water Consumers Association is An Equal Employment Opportunity Agency.



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The following are the minutes of the Regular Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors, September 17, 2020 convened at 9:05 a.m. in the Doña Ana Mutual Domestic Water Consumers Association Board Room located at 5535 Ledesma Dr., Las Cruces, NM 88007:

Call to Order & Roll Call

President Melton called the meeting to order at 9:05 a.m. and called roll:

Vice President – Jamie Stull, Present

Secretary/Treasurer – Kurt Anderson, Present (Telephonically)

Board Member – Paul Maxwell, Present (Telephonically)

A Quorum was declared

Others in Attendance:

Legal Counsel- Josh Smith

Executive Director- Jennifer Horton (Telephonically)

Office Manager- Margo Lopez

Approval of Agenda

Dr. Maxwell moved to approve the agenda as presented; the motion was seconded by Mr. Stull. There was no further discussion and the motion passed unanimously by roll call vote 4-0.

Minutes

Dr. Maxwell moved to approve the Regular Board Meeting Minutes of September 3, 2020 as presented; Dr. Anderson seconded. There was no further discussion and the motion passed unanimously by roll call vote 4-0.

Approval of New Members & New Meters

Dr. Anderson moved approval the New Members and New Meters as presented; Dr. Maxwell seconded; discussion provided the following information:

New Members – 12

New Meters – 0

Existing Members – 0

A roll call vote was taken, motion passed unanimously 4-0.

Customer Issues and Public Input

None

Board President Report

President Melton reported things are going well as staff has been focused with the on-going audit and reported projects are on schedule.

Staff Reports

Ms. Horton discussed the financials. She reviewed the checks for the month of August on Bank Transaction report. She pointed out the larger check amounts were for 2 current projects, Southeast Collection and the Wastewater Treatment Plant. She further stated all checks were standard for utilities, payroll, and debt payments.

Ms. Horton reviewed the Budget report. She reported \$1.3 million in revenue, \$740,000 in expenditures with a difference of almost \$600,000. She further reported grant revenue of \$1 million, grant expenditures of \$900,000 with a difference of \$100,000.

Ms. Horton explained the Balance Sheet is our current cash position with \$1.28 million for the operating fund.

Ms. Horton discussed the Income Statement and how it ties back to the Budget report.

Ms. Horton reported for the month of August there was \$11,700 in penalties with a total membership of 4,662 and 6,058 connections.

Ms. Horton reviewed the Billing Summary which indicates the number of bills sent out, the amount for water and sewer that were billed, active accounts and the number of members.

Ms. Horton stated the penalties have increased with the on-going pandemic and reported as of March there have been no disconnects.

Ms. Horton shared information from the Gallons Pumped vs Gallons Sold report. She pointed out 75 million gallons have been pumped and approximately 67 million gallons were sold, with a difference of 8.2. She disclosed Dona Ana pumped 6.5 million gallons, Fort Selden pumped 6.6 million gallons and Picacho Hills pumped 14.6 million gallons.

Ms. Horton initiated discussion on the Well Data report. She explained the color coding, well names and location information. She further mentioned once Well 7 is in service it will be identified as Well 7A as it is the replacement for Well 7. Ms. Horton explained the unknowns are due to no historical data. She reported Dona Ana is running on Wells 2, 5, and 6. Picacho Hills is running on all 3 wells and Radium is currently running on Well 11. Further discussion ensued. Dr. Maxwell suggested adding a line to the report which will indicate if the well is active or inactive.

Ms. Horton discussed projects. She reported Radium Springs had a walk thru with USDA for the wells and booster as a project update. She reported it as a partial substantial with leaving only the new SCADA system and getting Well 9 and 10 online. The estimated completion is set for late October early November.

Ms. Horton shared Southeast Collection is 85% complete for construction as they are finishing up the final 2 roads that were change ordered in. She stated she is looking into options to utilize the funding that will be left over.

Ms. Horton stated the Wastewater Treatment Plant is progressing and is 85% to 90% complete. She reported it is scheduled November 3, 2020 for completion.

Ms. Horton talked about the projects in planning and design. She stated Dona Ana Village lift station and force main is currently in its planning stage and is expected to have a PER by the first of October for the environment department to review.

Ms. Horton discussed the Southeast Collection Sewer project funded by USDA. She mentioned she has received a 60% design plan and will begin reviewing it next week. She will meet with the engineering firm to address any comments. Ms. Horton

continued to state once they get to a 90% complete design plan and it will be sent to USDA, the permitting agency of Dona Ana County and EBID to review for further discussion.

Ms. Horton reported the Association Parking Lot and Covered Storage is at 95% design completion and by late October will be ready to bid. Should it fall within the budget the project could begin construction in December.

Ms. Horton stated there were loan documents for Colonias funds to be available at the next meeting to start the planning design for the water design in West Mesa.

Ms. Horton pointed out the SAP resolution for the \$50,000 capital outlay is to start the planning for the arroyo in Picacho Hills. She stated it is associated with the resolution placed on the agenda for today.

Dr. Anderson inquired about upcoming developers. Ms. Horton stated there was a revised plan set for Legends West Phase 3A. The plans have been set to Bohannan Huston for review.

Ms. Horton reported Casa de Oro has signed all the final agreements and stated she had no updates on the Thurston Development.

New Business

None

Unfinished Business

Dr. Anderson moved the Approval of Resolution 2020 – 14 – SAP 20-E2119 as presented; the motion was seconded by Dr. Maxwell. The Chair called for discussion of the motion. Discussion was made by Ms. Horton. Ms. Horton stated this will authorize her to move forward with the Grant Agreement for the capital outlay funds of \$50,000. This is for the PER to begin planning for the Picacho Hills arroyo project. There was no further discussion and the motion passed unanimously by roll call vote 4-0.

Open Discussion

Dr. Anderson requested an update of Water Rights. Ms. Horton stated she is working on a new water table.

Dr. Maxwell addressed the concerns of the President of Picacho Hills Homeowners Association regarding the replacement of a plant in the entryway of Fairway Village. Six months ago a pipe was repaired and as result several plants were removed. It is asked if the Association would be replacing the plant. Ms. Horton stated upon the completion of the repair, field management advised the plants were replaced, however, they may not have been placed in the exact locations but within a close proximity.

Adjournment

Dr. Maxwell motioned to adjourn at 10:04 a.m., with a second from Mr. Stull. The motion passed unanimously by roll call vote 4-0.

Kurt Anderson
Secretary/ Treasurer

Date

New Members & New Meters

Name	Address	District	Membership Fee	Water Fee	Wastewater Fee	Total Cost
MICHAEL MCNEELY	1336 GOLDEN ROD CT	1	\$75.00	\$0.00	\$0.00	\$75.00
AUSTIN GELGAND	2829 CALLE DE POMEII	3	\$75.00	\$0.00	\$0.00	\$75.00
BRANDON EMON	2890 SAN LORENZO	3	\$75.00	\$0.00	\$0.00	\$75.00
CAMERON KLESEL	4238 TRILLIUM	3	\$75.00	\$0.00	\$0.00	\$75.00
CARLOS RODRIGUEZ	2882 SAN MIGUEL	3	\$75.00	\$0.00	\$0.00	\$75.00
DESERT VIEW HOMES	4282 DESERT BLOOM	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	2965 BORROUGHS	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	2961 BORROUGHS	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	2968 BORROUGHS	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	2953 BORROUGHS	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	2945 BORROUGHS	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	4272 DESERT BLOOM	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	2977 BORROUGHS	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	932 DESERT CANDLE	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
DESERT VIEW HOMES	926 DESERT CANDLE	3	\$0.00	\$4,897.00	\$0.00	\$4,897.00
GABRIEL RODRIGUEZ	3027 LA UNION CT	3	\$75.00	\$0.00	\$0.00	\$75.00
JACQUELINE TRONCOSO	3010 LA UNION	3	\$75.00	\$0.00	\$0.00	\$75.00
KYLE BENSLEY	3059 SAN ELIZARIO	3	\$75.00	\$0.00	\$0.00	\$75.00
MATCELINO SEDILLOS	4214 TRILLIUM DR	3	\$75.00	\$0.00	\$0.00	\$75.00
BILLY J. CHAMBERS	6824 VIA CAMPESTRE	5	\$75.00	\$0.00	\$0.00	\$75.00
DEBRA SETTS	1542 FAIRWAY VILLAGE	5	\$75.00	\$0.00	\$0.00	\$75.00
LISA PROVENCIO	8209 PISSARRO DR	5	\$75.00	\$0.00	\$0.00	\$75.00
MARCOS GOMES	8205 PISSARRO DR	5	\$75.00	\$0.00	\$0.00	\$75.00
MEGAN BOELTER	26 LAS CASITAS	5	\$75.00	\$0.00	\$0.00	\$75.00
MICHAEL LANE	1315 MATISSE	5	\$75.00	\$0.00	\$0.00	\$75.00
RONALD REYNOLDS	10010 SAN MARCOS	5	\$75.00	\$0.00	\$0.00	\$75.00
RYAN PRIETO	6535 VISTA DE ORO	5	\$75.00	\$0.00	\$0.00	\$75.00
Total						\$50,245.00

DONA ANA MDWCA WATER RIGHTS DETAIL							
	Groundwater						
System	OSE File No.	Name of Seller	Amount (AFY)	Vested (AFY)	Inchoate	Priority date	OSE Transfer Date
Dona Ana	LRG-1905	Total		2109.27			
	LRG-1905	Declared		1822.7		1960	
	LRG-667	Hurley		48.25		1948	1994
	LRG-4245	McKibben		2.18		1941	1998
	LRG-4593	Luchini		38.69		1953	1994
	LRG-4921-A	Strauss (Lalloo)		45		1967(1951)	1998
	LRG-4921-C	Strauss/Sidco		40		1967	1999
	LRG-6014-A	Jacquez		8.87		1965	1994
	LRG-8018-A	Medrano		3.5		1976	1997
	LRG-8513-A	Martinez		4.83		1955	1997
	LRG-8515-B	Backen		10.63		1955	1996
	LRG-1875-1	Buena Vista Dairy		62.5		1945	5/15/2020
	LRG-7869-2	Buena Vista Dairy		167.128		1955	5/15/2020
Fort Selden	LRG-80	Total		223.21			
	LRG-80	Ft Selden Water Co		198.43		1948	2013
	LRG-31	Duval		24.78		1949	2018
Picacho Hills	LRG-4250-B	PHUC		451.5		1960	2013
Fairview	LRG-15880.-1	Fairview Estates Water Co.		43.15		1974	2013
West Mesa	LRG-7216	West Mesa Water Co.		242		1978	2019
Hust	LRG-23	Hust		10.426		1954	2012
Westmoreland	LRG-5121		417.4	82		1962	2002
				Total	3161.556		

DONA ANA MDWCA WATER RIGHTS
Groundwater

System	OSE File No.	Name of Seller	Amount (AFY)	Vested (AFY)
Dona Ana	LRG-1905	Total		2109.27
Fort Selden	LRG-80			223.21
Picacho Hills	LRG-4250-B			451.5
Fairview	LRG-15880-1			43.15
West Mesa	LRG-7216			242
	LRG-23	Hust		10.426
	LRG-5121	Westmoreland		82
		Total		3161.556

Disputed

Disputed

All amounts are based up on NMOSE calculations and records.

LRG-4250-B is the subject of an OSE aggrieval.

LRG-5121 is the subject of the Westmoreland and Moongate lawsuits presently on appeal.

RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF
RESOLUTION NO. 2020-15 OF THE BOARD OF DIRECTORS
OF THE DOÑA ANA MUTUAL DOMESTIC WATER CONSUMER ASSOCIATION,
DOÑA ANA COUNTY, NEW MEXICO
OCTOBER 1, 2020

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

The Board of Directors (the “Governing Body”) of the Doña Ana Mutual Domestic Water Consumers Association (the “Borrower/Grantee”) met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at 5535 Ledesma Drive, Las Cruces, New Mexico 88007 being the meeting place of the Governing Body for the meeting held on the 1st day of October, 2020 at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Present:

President: _____

Board of Directors: _____

Absent: _____

Also Present: _____

Thereupon, there were officially filed with the Secretary/Treasurer copies of a proposed Resolution and Colonias Infrastructure Project Fund Loan/Grant Agreement in final form, the proposed Resolution being as hereinafter set forth:

DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION
RESOLUTION NO. 2020-15

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE NEW MEXICO COLONIAS INFRASTRUCTURE BOARD (“CIB”) AND THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” AND COLLECTIVELY WITH THE CIB, THE “LENDERS/GRANTORS”) AND THE DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF FAIRACRES, NEW MEXICO IN THE TOTAL AMOUNT OF \$93,533, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE CREATION OF A PLANNING DOCUMENT FOR THE UPGRADE OF THE EXISTING FAIRACRES WEST MESA WATER SYSTEM AND EXPANSION INTO AN UNSERVED AREA AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$9,353 SOLELY FROM NET SYSTEM REVENUES AND ACCEPTANCE OF A GRANT AMOUNT OF \$84,180; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

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

WHEREAS, the CIB is a public body duly organized and created under and pursuant to the laws of the State of New Mexico (the “State”), particularly the Colonias Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended, (the “Colonias Infrastructure Act” or the “Act”); and

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, 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 Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing incorporated mutual domestic water

consumers association in good standing under the general laws of the State and more specifically, the Sanitary Projects Act, §§ 3-29-1 through 3-29-21, NMSA 1978, as amended; and

WHEREAS, the Act creates the Colonias Infrastructure Project Fund (the “Fund”) in the Finance Authority, to be administered by the Finance Authority to originate grants or loans to Qualified Entities for Qualified Projects recommended by the CIB; and

WHEREAS, there exists within the service area of the Borrower/Grantee, Fairacres, New Mexico, a community that has been designated as a Colonia within the meaning of the Act; and

WHEREAS, the Borrower/Grantee will be receiving the Loan/Grant for the benefit of Fairacres, New Mexico, and the public they serve; and

WHEREAS, the Borrower/Grantee submitted an application dated February 17, 2020, for the Project; and

WHEREAS, the CIB has determined that the Project is a qualifying Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on May 20, 2020, recommended to the Finance Authority that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, for the benefit of the Colonia and the CIB has recommended that the Finance Authority enter into and administer this Agreement; and

WHEREAS, the Finance Authority approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on June 25, 2020; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and Fairacres, New Mexico that the Borrower/Grantee enter into an Agreement with the Lenders/Grantors to borrow \$9,353 from the Lenders/Grantors and to accept a grant in the amount of \$84,180 from the Lenders/Grantors to finance the costs of creation of a planning document for the upgrade of the existing Fairacres West Mesa water system and the expansion to an unserved area, being more particularly described in the Term Sheet; and

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

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

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

Borrower/Grantee, the CIB or the Finance Authority or a debt or pledge of the full faith and credit of the Borrower/Grantee, the CIB, the Finance Authority or the State; and

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

WHEREAS, the Governing Body hereby determines that the Local Match is now available to the Borrower/Grantee to complete the Project; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION, DOÑA ANA COUNTY NEW MEXICO:

Section 1. Definitions. Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Agreement including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms not defined herein shall have the meaning given them by the Loan/Grant Agreement.

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

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the President and Secretary/Treasurer thereof; with respect to the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer; and with respect to the CIB, any one or more of the Chairperson or the Vice-Chairperson, Secretary and the Treasurer thereof, and any other officer or employee of the Finance Authority or of the CIB designated in writing by an Authorized Officer thereof.

“Borrower/Grantee” means the Doña Ana Mutual Domestic Water Consumers Association in Doña Ana County, New Mexico.

“CIB” means the Colonias Infrastructure Board created by the Act.

“Closing Date” means the date of execution of the Loan/Grant Agreement by the Borrower/Grantee, the CIB and the Finance Authority.

“Colonia” or “Colonias” means a Colonia as defined in the Act, and more particularly in NMSA 1978, § 6-30-3(C), as amended, and particularly Fairacres, New Mexico.

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

“Conditions” has the meaning given to that term in the Loan/Grant Agreement.

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

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by the Agreement. “Eligible Items” has the meaning given to that term in the Loan/Grant Agreement.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and constructing the Project, and, without limitation, Eligible Legal Costs and Eligible Fiscal Agent Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the qualified project.

“Finance Authority” means the New Mexico Finance Authority.

“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 Borrower/Grantee as its fiscal year.

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

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

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall equal 90% of the Amount disbursed not to exceed \$84,180.

“Gross Revenues” has the meaning given to that term in the Loan/Grant 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.

“Lenders/Grantors” means the CIB and the Finance Authority.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall not equal more than \$9,353.

“Loan/Grant” or “Loan/Grant Amount” means the amount provided to the Borrower/Grantee as the Grant Amount and borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project. The value of the Loan/Grant shall not equal more than \$93,533.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is \$9,364.

“Net System Revenues” means the Gross Revenues of the System minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacements and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the System.

“NMAC” means the New Mexico Administrative Code.

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

“Operation and Maintenance Expenses” has the meaning given to that term in the Loan/Grant Agreement.

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

“Policies” means the Colonias Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a political subdivision of the State.

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

“Project Account” means the book account, if any, established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the Finance Authority for financial assistance that is primarily intended to develop Colonias infrastructure. A Qualified Project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

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

“Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, §§ 2.91.2.1 through 2.91.2.18 NMAC.

“State” means the State of New Mexico.

“System” means the water and wastewater utility system of the Borrower/Grantee, owned and operated by the Borrower/Grantee, and of which the Project, when completed, will form part.

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

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was acquired, which is at least thirty (30) years.

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

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition and completion of the Project and the method of funding the Project through execution and delivery of the Loan/Grant Agreement and the other documents related to the transaction are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee and Fairacres, New Mexico and the public they serve.

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

A. The Project is needed to meet the needs of the Borrower/Grantee and Fairacres, New Mexico and the public they serve.

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

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

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, the Local Match and other amounts available to the Borrower/Grantee, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life.

E. Together with the Loan/Grant Amount, and other amounts available to the Borrower/Grantee, the Local Match is now available to the Borrower/Grantee, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project.

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

G. To the extent required, the Borrower/Grantee may acquire title to or easements or rights of way on real property that Borrower/Grantee must access to complete the Project.

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

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Borrower/Grantee and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of \$84,180 and borrowing the Loan Amount of \$9,353 to be utilized solely for Eligible Items necessary to complete the Project, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which is hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Resolution

was adopted. The Grant shall be in the amount of \$84,180 and the Loan shall be in the amount of \$9,353. Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount.

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

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

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

A. Project Account. The Borrower/Grantee hereby consents to creation of the Project Account by the Finance Authority and further approves of the deposit or crediting of a portion of the Loan/Grant Amount to pay expenses. Until the Completion Date, the amount of the Loan/Grant credited to the Project Account shall be used and paid out solely for Eligible Items necessary to acquire and complete the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement.

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

C. CIB and Finance Authority Not Responsible. Borrower/Grantee shall apply the funds derived from the Loan/Grant Agreement as provided therein, and in particular Article V of the Loan/Grant Agreement. Neither the CIB nor the Finance Authority shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds held by or made available to the Borrower/Grantee in connection with the Project. Lenders/Grantors shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

Section 9. Payment of Loan Amount. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount directly from the Pledged Revenues to the Finance Authority as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and

other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount or other amounts due under the Loan/Grant Agreement.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, the priority of which is consistent with that shown on the Term Sheet.

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

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

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

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

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

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

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

[Form of Notice of Adoption of Resolution for Publication]

Doña Ana Mutual Domestic Water Consumers Association
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. 2020-15_, duly adopted and approved by the Board of Directors of Doña Ana Mutual Domestic Water Consumers Association on October 1, 2020. A complete copy of the Resolution is available for public inspection during normal and regular business hours in the office of the Secretary/Treasurer OR by contacting the Secretary/Treasurer, at 5535 Ledesma Drive, Las Cruces, New Mexico 88007.

The title of the Resolution is:

DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION
RESOLUTION NO. 2020-15

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE NEW MEXICO COLONIAS INFRASTRUCTURE BOARD (“CIB”) AND THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” AND COLLECTIVELY WITH THE CIB, THE “LENDERS/GRANTORS”) AND THE DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF FAIRACRES, NEW MEXICO IN THE TOTAL AMOUNT OF \$93,533, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE CREATION OF A PLANNING DOCUMENT FOR THE UPGRADE OF THE EXISTING FAIRACRES WEST MESA WATER SYSTEM AND EXPANSION INTO AN UNSERVED AREA AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$9,353 SOLELY FROM NET SYSTEM REVENUES AND ACCEPTANCE OF A GRANT AMOUNT OF \$84,180; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

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

PASSED, APPROVED AND ADOPTED THIS 1st day of October, 2020.

DOÑA ANA MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATION DOÑA ANA
COUNTY, NEW MEXICO

By _____
James Melton, President

ATTEST:

By _____
Kurt Anderson, Secretary/Treasurer

[Remainder of page intentionally left blank.]

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

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

Those Voting Aye:

Those Voting Nay:

Those Absent:

_____ () Members of the Governing Body having voted in favor of the motion, the President declared the motion carried and the Resolution adopted, whereupon the President and Secretary/Treasurer signed the Resolution upon the records of the minutes of the Governing Body.

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

DOÑA ANA MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATION
DOÑA ANA COUNTY, NEW MEXICO

By _____
James Melton, President

ATTEST:

By _____
Kurt Anderson, Secretary/Treasurer

[Remainder of page intentionally left blank.]

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

I, Kurt Anderson, the duly qualified and acting Secretary/Treasurer of the Doña Ana Mutual Domestic Water Consumers Association (the “Borrower/Grantee”), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of Directors of the Borrower/Grantee (the “Governing Body”), had and taken at a duly called regular meeting held at 5535 Ledesma Drive, Las Cruces, New Mexico 88007, on October 1, 2020, at the hour of 9:00 a.m., insofar as the same relate to the adoption of Resolution No. 2020-15 and the execution and delivery of the proposed Loan/Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including the Borrower/Grantee's open meetings Resolution No. 2020-01, adopted and approved on January 2, 2020, in effect on the date of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of November, 2020.

DOÑA ANA MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATION
DOÑA ANA COUNTY, NEW MEXICO

By _____
Kurt Anderson, Secretary/Treasurer

5620835

EXHIBIT "A"

Notice of Meeting, Meeting Agenda and Minutes, if available.

\$93,533

COLONIAS INFRASTRUCTURE PROJECT FUND
LOAN/GRANT AGREEMENT

Dated

November 6, 2020

By and Among the

COLONIAS INFRASTRUCTURE BOARD
and the
NEW MEXICO FINANCE AUTHORITY,
as Lenders/Grantors,

and the

DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION,
Doña Ana County, New Mexico,
as Borrower/Grantee.

COLONIAS INFRASTRUCTURE PROJECT FUND
LOAN/GRANT AGREEMENT

THIS LOAN/GRANT AGREEMENT (the “Agreement”) dated November 6, 2020, is entered into by and among the COLONIAS INFRASTRUCTURE BOARD (the “CIB”) and the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”) (collectively, the “Lenders/Grantors”), and the DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION in Doña Ana County, New Mexico, (the “Borrower/Grantee”) for the benefit of the Colonia of Fairacres, New Mexico (the “Colonia”).

W I T N E S S E T H:

WHEREAS, the CIB is a public body duly organized and created pursuant to the laws of the State of New Mexico (the “State”), particularly the Colonias Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended (the “Colonias Infrastructure Act” or the “Act”); and

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, 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 Act creates the Colonias Infrastructure Project Fund (the “Fund”) in the Finance Authority, to be administered by the Finance Authority to originate grants or loans to Qualified Entities for Qualified Projects recommended by the CIB; and

WHEREAS, the Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing incorporated mutual domestic water consumers association in good standing under the general laws of the State and more specifically, §§ 3-29-1 through 3-29-21, NMSA 1978, as amended; and

WHEREAS, there exists within the service area of the Borrower/Grantee, the Colonia, a community that has been designated as a Colonia within the meaning of the Act; and

WHEREAS, the Borrower/Grantee will be receiving the Loan/Grant for the benefit of the Colonia and the public the Borrower/Grantee serves; and

WHEREAS, pursuant to the Act, Board Rules and the Policies, the CIB and the Finance Authority are authorized to make loans/grants to Qualified Entities from the Fund for Qualified Projects; and

WHEREAS, the Borrower/Grantee submitted an application dated February 17, 2020, for the Project; and

WHEREAS, the CIB has determined that the Project is a qualifying Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on May 20, 2020, recommended to the Finance Authority that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, for the benefit of the Colonia and the CIB has recommended that the Finance Authority enter into and administer this Agreement; and

WHEREAS, the Finance Authority approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on June 25, 2020; and

WHEREAS, pursuant to the Board Rules and the Policies, the Borrower/Grantee will receive ten percent (10%) of its funding as a loan, in order to ensure the long-term solvency of the Fund by providing annual streams of revenue available to fund additional Qualified Projects; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan and grant a lien to the Finance Authority on the Pledged Revenues subordinate to all other liens thereon present and future, except that any present and future loans from the Finance Authority to the Borrower/Grantee pursuant to the Act or the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended, shall be on a parity with this Loan/Grant; and

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

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

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

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

ARTICLE I DEFINITIONS

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

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

“Application” means the Colonias Infrastructure Project Fund Application for Funding dated February 17, 2020, of the Borrower/Grantee and pursuant to which the Borrower/Grantee requested funding for the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the President and Secretary/Treasurer thereof; with respect to the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer; and with respect to the CIB, any one or more of the Chairperson or the Vice-Chairperson, Secretary and the Treasurer thereof, and any other officer or employee of the Finance Authority or of the CIB designated in writing by an Authorized Officer thereof.

“Board Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, §§ 2.91.2.1 through 2.91.2.18 NMAC.

“Closing Date” means the date of execution of this Agreement by the Borrower/Grantee, the CIB, and the Finance Authority.

“Colonia” or “Colonias” means a Colonia as defined in the Act, and more particularly in NMSA 1978, § 6-30-3(C), as amended, and particularly the Colonia of Fairacres.

“Conditions” means (1) all readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the CIB; (2) all requirements set forth in the Term Sheet; (3) all requirements outlined in § 2.1(p) and § 5.1; and (4) a determination that the disbursement applied for does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and the Policies.

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

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by this Agreement.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and constructing the Project, and, without limitation, Eligible Legal Costs and Eligible Fiscal Agent Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the Qualified Project.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Agreement.

“Final Debt Service Schedule” means the schedule of Loan Payments due on this Agreement following the Final Requisition, as determined on the basis of the Loan Amount.

“Final Requisition” means the final requisition of moneys to be submitted by the Borrower/Grantee, which shall be submitted by the Borrower/Grantee on or before the expiration of the Interim Period as provided in Section 4.4 of this Agreement.

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

“Force Majeure” means acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; an order of any kind of the Government of the United States or of the State or civil or military authority or any court of competent jurisdiction; or any other act or condition that was beyond the reasonable control of, without fault or negligence of, or not reasonably foreseeable by the party claiming the Force Majeure event; except for (i) general economic conditions; or (ii) an inability of a party claiming the Force Majeure event to pay any debts when due.

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

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

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and shall equal 90% of the amount disbursed during the Interim Period not to exceed \$84,180.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Borrower/Grantee from the operation and use of the System for any particular Fiscal Year or period to which term is applicable. In the event there is a conflicting description of Gross Revenues in any Ordinance or Resolution of the Borrower/Grantee, the language of such Ordinance or Resolution shall control.

“Hardship Waiver” means a determination by the Finance Authority pursuant to Section 4.1(a)(ii) herein that the annual principal payment by the Borrower/Grantee should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves.

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

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

“Interim Debt Service Schedule” means the anticipated schedule of Loan Payments due on this Agreement following the Final Requisition, assuming disbursement of the entire Loan Amount within twenty four (24) months of the Closing Date. The Interim Debt Service Schedule is attached hereto as Exhibit “C”.

“Interim Period” means the period no greater than twenty four (24) months, unless a longer period is approved by the Finance Authority as provided in Section 4.4 of this Agreement, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Borrower/Grantee to pay costs of the Project.

“Lenders/Grantors” means the CIB and the Finance Authority.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee as during the Interim Period for the purpose of funding the Project and shall not equal more than \$9,353.

“Loan/Grant” or “Loan/Grant Amount” means the combined amount distributed to the Borrower/Grantee during the Interim Period partially as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project and shall not equal more than \$93,533.

“Loan Payments” means, collectively, the Principal Component and interest, if any, to be paid by the Borrower/Grantee as payment of this Agreement as shown on Exhibit “C” hereto.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is \$9,364.

“Net System Revenues” means the Gross Revenues of the System minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacements and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the System.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” 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. In the event there is a conflicting description of Operation and Maintenance Expenses in any Ordinance or Resolution of the Borrower/Grantee, the language of such Ordinance or Resolution shall control.

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

“Pledged Revenues” means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Payments pursuant to the Resolution and this Agreement and described in the Term Sheet.

“Policies” means the Colonias Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a political subdivision of the State.

“Principal Component” means the portion of each Loan Payment paid as principal on this Agreement as shown on Exhibit “C” attached hereto.

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

“Project Account” means the book account, if any, established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, which shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the Finance Authority for financial assistance that is primarily intended to develop Colonias infrastructure. A Qualified Project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means the Borrower/Grantee Resolution No. 2020-15 adopted by the Governing Body on October 1, 2020, authorizing the acceptance of the Loan/Grant, approving this Agreement and pledging the Pledged Revenues to the payment of the Loan Payments as shown on the Term Sheet.

“Senior Obligations” means the Borrower/Grantee’s 2001 and 2013 loans from the United States Department of Agriculture, Rural Utilities Service; Finance Authority loans DW-2868, DW-3227 and DW-3382; 2013, 2014, 2015, 2018 and 2019 New Mexico Environment Department RIP loans, and any other obligations hereafter issued with a superior lien on the Pledged Revenues as defined in the Term Sheet, and meeting the requirements of the Agreement applicable to the issuance of Senior Obligations.

“State” means the State of New Mexico.

“System” means the water and wastewater utility system of the Borrower/Grantee, owned and operated by the Borrower/Grantee, and of which the Project, when completed, will form part.

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

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was acquired and constructed, which is thirty (30) years.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE BORROWER/GRANTEE

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

(a) Binding Nature of Covenants; Enforceability. All representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee contained in this Agreement shall be deemed to be the representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee to the full extent authorized or permitted by law, and such representations, covenants, stipulations, obligations and agreements shall be binding upon the Borrower/Grantee and its successors and enforceable in accordance with their terms, and upon any board or body to which any powers or duties affecting such representations, covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

(b) Authorization of Agreement. The Borrower/Grantee is a Qualified Entity as defined in the Act and the Board Rules. Pursuant to the laws of the State and in particular, the laws governing its creation and existence, as amended and supplemented from time to time, the Borrower/Grantee is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Borrower/Grantee has duly authorized and approved its acceptance of the Loan/Grant and the execution and delivery of this Agreement and the other documents related to the transaction described in this Agreement, and this Agreement and the other documents related to the transaction to which the Borrower/Grantee is a party constitute legal, valid and binding special obligations of the Borrower/Grantee enforceable against the Borrower/Grantee in accordance with their respective terms.

(c) Necessity of Project. The completion and operation of the Project under the terms and Conditions provided in this Agreement are necessary, convenient, and in furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee and the Colonia.

(d) Useful Life. The Agreement Term is not greater than the Useful Life of the Project, and in any event shall not exceed thirty (30) years.

(e) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the proceeds of the Loan/Grant Amount shall be distributed pro rata as the Loan Amount and Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to Eligible Items that will facilitate the completion of the Project, and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant Amount, together with the Local Match and other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project in its entirety.

(f) Lien. The Loan Payments constitute an irrevocable lien on the distribution on the Pledged Revenues, the priority of which is consistent with that shown on the Term Sheet.

(g) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Payments as provided in this Agreement, except when a Hardship Waiver is obtained pursuant to Section 4.1(a)(ii) of this Agreement. The Loan Payments shall be payable solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to make the Loan Payments from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

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

(i) Irrevocable Enactments. While this Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for payment of this Agreement, including the Resolution, shall be irrevocable until the Project has been fully acquired and completed, and the Loan Amount, including all principal and interest that has been repaid, or provision made for payment thereof, shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Agreement in a manner not permitted or contemplated by the terms hereof. The Borrower/Grantee

shall not impair the rights of the Finance Authority or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding.

(j) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute or deliver this Agreement and the other documents related to the transaction or to comply with its obligations under this Agreement and the other documents related to the transaction.

(k) Agency Approval. Neither the execution and delivery of this Agreement and the other documents related to the transaction by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations under this Agreement and the other documents related to the transaction, 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.

(l) No Event of Default. No event has occurred and no condition exists which, with the giving of notice or the passage of time or upon the execution and delivery of this Agreement or the other documents related to the transaction, would constitute an Event of Default on the part of the Borrower/Grantee under this Agreement and the other documents related to the transaction.

(m) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Payments, as and when due, is not needed or budgeted to pay current or anticipated Operation and Maintenance Expenses or other expense of the Borrower/Grantee.

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

(o) Budgeting of Pledged Revenues. The Pledged Revenues will be sufficient to make the Loan Payments, as and when due. The Borrower/Grantee will adequately budget for the Loan Payments and other amounts payable by the Borrower/Grantee under this Agreement.

(p) Use of Project; Continuing Covenant. During the Agreement Term, the Borrower/Grantee will at all times use the Project for the benefit of the Borrower/Grantee and the public it serves. The engineering design or engineering feasibility reports shall not involve or anticipate a sale, lease, mortgage, pledge, or the relocation or disposal of any part of the product or system designed during its Useful Life; provided, however, that if the Project is a joint project of the Borrower/Grantee and other qualifying entities (as defined by the Act), the Borrower/Grantee and the other qualifying entities may, with the express written approval of the Finance Authority and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during the term of the Agreement. Any such agreement shall provide that the Lenders/Grantors, or either of them, shall have the power to enforce the terms of this Agreement, without qualification, as to each and every qualifying entity

(as defined by the Act) other than the Borrower/Grantee, owning or operating any portion of the Project during the term of the Agreement. The Borrower/Grantee will operate and maintain the Project, so that it will function properly over its Useful Life.

(q) Expected Coverage Ratio. The Pledged Revenues are reasonably expected to equal or exceed—from the Fiscal Year in which the Closing Date occurs and, on an ongoing basis during each Fiscal Year of the Agreement Term—one hundred percent (100%) of the maximum annual principal and interest due on all outstanding obligations of the Borrower/Grantee payable from the Pledged Revenues.

(r) Right to Inspect. The Finance Authority shall have the right to inspect at all reasonable times all records, accounts and data relating to the System and to inspect the System and all properties comprising the System, and the Borrower/Grantee shall supply such records, accounts, and data as are requested by the Finance Authority, within thirty (30) days of receipt of such request, written or oral.

(s) Records and Reporting. The Borrower/Grantee shall maintain financial records in accordance with Generally Accepted Accounting Principles throughout the Agreement Term, and in the event that the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14 does not apply, conduct an audit of the Project's financial records if requested by the CIB or the Finance Authority and provide any and all other information and access to the Project as requested by the CIB or the Finance Authority.

(t) Acquisition and Completion. The Borrower/Grantee shall proceed expeditiously to complete the Project and shall commence the Project in a commercially reasonable timeframe following the Closing Date. Further, the Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire and complete the Project lawfully and efficiently in accord with all applicable laws, ordinances, resolutions and regulations relating to the acquisition and completion of the Project and use of the Loan/Grant proceeds. The plans and specifications for the Project shall incorporate available technologies and operational design for water use efficiency described in the approved plans and specifications. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(u) Use of Grant Proceeds for Construction; Other Qualified Entities. If any of the proceeds of the Loan/Grant are used for construction, the Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, installed, located, completed or extended on real property owned by a Qualified Entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other Qualified Entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, installed, located, completed or extended on such real property), which written agreement shall be subject to approval by the Lenders/Grantors and shall include an express statement by such other Qualified Entity that the Lenders/Grantors are third party beneficiaries of such written agreement.

(v) Local Match. The Local Match is legally available for the Project, has been applied or set aside by the Borrower/Grantee solely for the purposes of the Project and sufficient evidence of the Local Match has been provided and will be continued to be provided as part of the Borrower/Grantee's quarterly reporting as outlined in Section 7.1 and as otherwise requested by the Finance Authority.

(w) Rate Covenant. The Borrower/Grantee 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 in which the Loan is outstanding the Gross Revenues shall at least equal the Operation and Maintenance Expenses of the System for the Fiscal Year, plus one hundred percent (100%) of the maximum annual principal and interest payments due on all outstanding obligations payable from the Pledged Revenues.

(x) Audit Requirement. During the Agreement Term the Borrower/Grantee shall comply with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended, and upon request, provide the Finance Authority with a copy of any review or audit, report of agreed upon procedures, or any other document prepared pursuant to or required by the State Audit Act.

(y) Executive Order 2013-006 Requirements. The Borrower/Grantee has and will meet the requirements of Executive Order 2013-006 prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the CIB.

(z) Other Liens. Other than as provided in the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the Pledged Revenues.

ARTICLE III AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate upon the earliest of the following events: (a) submission and acceptance of a completed Form of Certificate of Completion, Exhibit "D", and repayment of the Loan Amount and Interest or (b) the exercise by the Finance Authority to terminate the Agreement pursuant to an Event of Default as outlined in Section IX of this Agreement.

ARTICLE IV LOAN/GRANT TO THE BORROWER/GRANTEE; INVESTMENT OF MONEYS

Section 4.1 Loan and Grant to the Borrower/Grantee.

(a) Loan to the Borrower/Grantee. The Finance Authority hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the Finance Authority, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit "C" of this Agreement. The

Loan Amount shall be pre-payable by the Borrower/Grantee at the conclusion of the Interim Period without penalty.

(i) Subordinate Nature of Loan Amount Obligation. The obligation of the Borrower/Grantee to make the Loan Payments shall be subordinate to all other indebtedness secured by the Pledged Revenues existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues; except, however, that the obligation of the Borrower/Grantee to make the Loan Payments shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the Finance Authority pursuant to the Act or the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended.

(ii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, if a Borrower/Grantee has encountered an unforeseeable hardship, the Borrower/Grantee may apply in writing on or before April 1st to the Finance Authority for forgiveness of the annual Loan Payment coming due on June 1 of the same year. The Borrower/Grantee shall submit its application to the Finance Authority for a determination by the Finance Authority, in cooperation with DFA, and shall submit sufficient documentation of the existence of the unforeseeable hardship as is reasonably required by the Finance Authority, in cooperation with DFA, to make a determination. The Borrower/Grantee shall promptly respond to additional requests for information from the Finance Authority or DFA. Such application for a Hardship Waiver shall be executed by the Authorized Officers of the Borrower/Grantee. The Finance Authority shall communicate the decision to the Borrower/Grantee in writing. In the event of a determination of unforeseeable hardship, the Loan Payment otherwise due on June 1 of that year shall be forgiven. If no unforeseeable hardship is found to exist, the Loan Payment shall remain outstanding and due and payable in accordance with the terms of this Agreement.

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

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

(c) Project Account. The Finance Authority may establish and maintain the Project Account as a book account only, on behalf of the Borrower/Grantee, which account shall be kept separate and apart from all other accounts of the Finance Authority.

Section 4.2 Investment of Borrower/Grantee's Accounts. Money on deposit in the Borrower/Grantee's accounts created hereunder and held by the Finance Authority may be invested by the Finance Authority for the credit of the Fund.

Section 4.3 Loan/Grant Amount Does Not Exceed Total Cost. The sum of the Grant Amount, the Loan Amount, and the Local Match (and as set forth on the Term Sheet) does not

exceed the cost of the Project, which, along with other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project.

Section 4.4 Final Requisition. The Final Requisition shall be submitted by the Borrower/Grantee within the Interim Period. The Interim Period may be extended only as approved in writing by an Authorized Officer of the Finance Authority, based on the Borrower/Grantee's demonstration, to the reasonable satisfaction of the Authorized Officer of the Finance Authority that unanticipated circumstances resulted in delaying the acquisition and completion of the Project, and submission of the Borrower/Grantee's Final Requisition.

ARTICLE V LOAN/GRANT AMOUNT DISBURSEMENT CONDITIONS

Section 5.1 Conditions Precedent to Disbursement of Loan/Grant Amount. Prior to the payment of any requisition of the Loan/Grant Amount or any portion thereof by the Finance Authority from the Fund, the following conditions shall be satisfied:

(a) The Finance Authority shall have determined that the Borrower/Grantee has met the Conditions established for the Loan/Grant; and

(b) Prior to disbursement of any portion of the Loan/Grant Amount for planning and design, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney (or shall have provided a title insurance policy) that the Borrower/Grantee has proper title to or easements, rights of way, or permits on the real property upon or through which the planning and design phase is to be conducted, or if acquisition and completion of the Project does not require physical or visual access to existing lands or facilities, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney certifying that no title to, easements, rights of way, or permits are necessary to acquire and complete the Project; and

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

(d) No Event of Default has occurred; and

(e) The Borrower/Grantee shall have provided any other information requested by the Finance Authority or CIB in its absolute discretion including documentation sufficient to make a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.

Section 5.2 Accounting for Amounts Credited to the Project Account. So long as Section 5.1 has been complied with and all Conditions to the disbursement of the Loan/Grant Amount have been satisfied (including approval of all plans and specifications), upon receipt by the Finance Authority of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Borrower/Grantee, supported by certification by the Borrower/Grantee's project architect, engineer, or such other authorized representative of the

Borrower/Grantee that the amount of the disbursement request represents the progress of design, acquisition or other Project-related activities accomplished as of the date of the disbursement request, the Finance Authority shall seek funds sufficient to satisfy the request and, upon receipt of those funds disburse from the Fund, amounts which together are sufficient to pay the requisition in full or that portion approved by the Finance Authority in its sole discretion. The certification provided pursuant to this Section 5.2 in support of the requisition must be acceptable in form and substance to the Finance Authority. The Borrower/Grantee shall provide such records or access to the Project as the Finance Authority, and, at its request, the CIB, in the discretion of each, may request in connection with the approval of the Borrower/Grantee's requisition requests made hereunder.

Section 5.3 Acknowledgment and Non-liability for Funding Interruption. The Borrower/Grantee hereby acknowledges that the Finance Authority may be required to seek or request funds to satisfy the request outlined in Section 5.2 from an agency, instrumentality or other Political Subdivision of the State and that the Lenders/Grantors may have no control or authority over those entities. The Borrower/Grantee hereby agrees to waive on behalf of itself and indemnify and hold the Lenders/Grantors harmless from any and all third party claims, liability or damage that may or could be caused as a result of a delay or denial of funds related to or arising from the procedure described above or any other mechanism necessary or required to request, secure or process funds.

Section 5.4 No Disbursement for Prior Expenditures Except upon Approval. No disbursement shall be made from the Fund, of the Loan/Grant Amount, or any portion thereof, without the approval of the Finance Authority to reimburse any expenditure made prior to the approval date of the award by the Finance Authority Board.

Section 5.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of the Project an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the Finance Authority and the CIB, substantially in the form of Exhibit "E" attached hereto, stating that, to his or her knowledge, that the Project has been completed. No portion of the Loan/Grant Amount shall be disbursed after the expiration of the Interim Period.

Section 5.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Amount; Termination of Pledge. Upon the first to occur of either (a) completion of the disbursement of the Loan/Grant Amount as signified by delivery of the completion certificate contemplated in Section 5.5 hereof; or (b) the earlier expiration of the time allowed for disbursements of Loan/Grant funds as provided in Section 5.5 hereof, the Finance Authority shall transfer the amounts remaining on deposit in the Project Account, if any, to such other fund permitted by law. Upon such entry, the pledge of the Project Account, if any, established in this Agreement shall terminate.

ARTICLE VI
LOAN PAYMENTS BY THE BORROWER/GRANTEE

Section 6.1 Loan to the Borrower/Grantee; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from the Finance Authority an amount not to exceed the Loan Amount. The Borrower/Grantee promises to pay, but solely from the sources pledged herein, the Loan Payments and other amounts owed by the Borrower/Grantee as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Borrower/Grantee does hereby grant a lien on and a security interest in and does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Borrower/Grantee in and to (i) the Pledged Revenues to the extent required to pay the Loan Payments, and other amounts owed by the Borrower/Grantee as herein provided, subject to and subordinate to all other pledges of the Pledged Revenues existing on the Closing Date and, further, that may exist in the future (except only that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligations issued by the Lender/Grantor pursuant to the Act or the Water Project Finance Act); (ii) the Loan/Grant Amount including the Project Account; and (iii) all other rights hereinafter granted, for the securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Payments and other amounts owed by the Borrower/Grantee as herein provided, however, that if the Borrower/Grantee, its successors or assigns, shall pay, or cause to be paid, all Loan Payments at the time and in the manner contemplated by this Agreement, and shall pay all other amounts due or to become due under this Agreement in accordance with its terms and provisions then, upon such final payment, this Agreement and the rights created thereby shall terminate; otherwise, this Agreement shall remain in full force and effect.

The schedule of Loan Payments, assuming the disbursement of the entire Loan/Grant Amount within twenty-four (24) months after the Closing Date, identified as the Interim Debt Service Schedule, is attached to this Agreement as Exhibit "C". Within thirty (30) days after the Final Requisition is made, the Finance Authority shall provide a Final Debt Service Schedule, reflecting the amount of the Loan/Grant Amount actually disbursed to the Governmental Unit pursuant to this Agreement. Such Final Debt Service Schedule shall supersede the schedule attached hereto as Exhibit "C".

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

of the Borrower/Grantee hereunder, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

Section 6.2 Deposit of Payments of Loan Amount to Colonias Infrastructure Project Fund. All Loan Payments made by the Borrower/Grantee to the Finance Authority to repay the Loan Amount and interest thereon, if any, shall be deposited into the Colonias Infrastructure Project Fund.

Section 6.3 Manner of Payment. The Loan Amount shall be payable by the Borrower/Grantee to the Finance Authority in annual installments of principal payable on June 1 after expiration of the Interim Period and continuing through the expiration of the last Loan Payment due as outlined in the Final Debt Service Schedule. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 10.1 of this Agreement. The obligation of the Borrower/Grantee to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder. Notwithstanding any dispute between the Borrower/Grantee and the Finance Authority, any vendor or any other person, the Borrower/Grantee shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

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

Section 6.5 Lender/Grantor's Release of Lien and Further Assurances. Upon payment in full of the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided in this Agreement and upon written request from the Borrower/Grantee, the Finance Authority agrees to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the Finance Authority no longer holds or maintains any lien or claim against the Pledged Revenues.

ARTICLE VII ADMINISTRATION

Section 7.1 Borrower/Grantee Reporting to Lenders/Grantors. The Borrower/Grantee shall provide the Lenders/Grantors with a quarterly written report substantially in the form of Exhibit "D" attached hereto, or other report format as designated by the Finance Authority, and signed by an Authorized Officer of the Borrower/Grantee. The first quarterly report shall be due on March 31, and subsequent reports shall be due on each March 31, June 30, September 30 and December 31 thereafter until the report date next following final distribution of the Loan/Grant funds. The description of the status of the Project in each quarterly report shall include, among

other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, and (c) a description of the percentage of completion of the Project.

Section 7.2 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds. Upon the completion of the Project as signified by delivery of the completion certificate required by Section 5.5 hereof, the Finance Authority shall determine, by reference to the Project Account, if any, whether any portion of the authorized Loan/Grant Amount remains unexpended. If any of the Loan/Grant Amount remains unexpended, the funds shall be transferred by the Finance Authority to the appropriate account or fund in accordance with applicable law and the Borrower/Grantee shall have no right to access the funds.

Section 7.3 Further Assurances and Corrective Instruments. The Lenders/Grantors and the Borrower/Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues and carrying out the intention hereof.

Section 7.4 Representatives of Lenders/Grantors or of Borrower/Grantee. Whenever under the provisions hereof the approval of the Lenders/Grantors, collectively or individually, or the Borrower/Grantee is required, or the Borrower/Grantee, or the Lenders/Grantors, collectively or individually, are required to take some action at the request of any of them, such approval or such request shall be given for the Lenders/Grantors, collectively or individually, or for the Borrower/Grantee, by an Authorized Officer of the Lenders/Grantors, collectively or individually, or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.5 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or, if the Borrower/Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Borrower/Grantee.

Section 7.6 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

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

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

(c) Any contractor or subcontractor providing construction services in connection with the Project shall comply with the prevailing wage laws in accordance with the requirements of NMSA 1978, § 13-4-11, as amended.

Section 7.7 Little Miller Act. To the extent NMSA 1978, § 13-4-1 et seq., (the “Little Miller Act”) is applicable to the Project, the Borrower/Grantee shall comply with the requirements of the “Little Miller Act”. If bonding requirements of the Little Miller Act are not applicable to the Project, the Borrower/Grantee will require that the contractor to whom is given any contract for construction appertaining to the Project supply a performance bond or bonds satisfactory to the Borrower/Grantee. Any sum or sums derived from said performance bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

ARTICLE VIII INSURANCE; NON-LIABILITY OF LENDERS/GRANTORS

Section 8.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State’s risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended, shall and hereby agrees to name the Lenders/Grantors as additional insureds with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a Qualifying Entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other Qualifying Entity to perform these insurance/risk-management program requirements for Borrower/Grantee with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other Qualifying Entity that the Lenders/Grantors are third party beneficiaries of such written agreement.

Section 8.2 Non-Liability of Lenders/Grantors.

(a) Lenders/Grantors shall not be liable in any manner for the Project, Borrower/Grantee’s use of the Loan/Grant, the acquisition, implementation, construction, installation, ownership, operation or maintenance of the Project, or any failure to act properly by the Borrower/Grantee or any other owner or operator of the Project.

(b) Lenders/Grantors shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

(c) To the extent permitted by law, the Borrower/Grantee shall and hereby agrees to indemnify and save the Finance Authority and the CIB 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 Agreement Term, from: (i) any act of negligence or other misconduct of the Borrower/Grantee, or breach of any covenant or warranty by the Borrower/Grantee 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/Grant Agreement proceeds and interest on the investment thereof. The Borrower/Grantee shall indemnify and save the Finance Authority and the CIB 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 the CIB, shall defend the Finance Authority or the CIB, as applicable, in any such action or proceeding.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default Defined. For purposes of this Article IX, the term Lenders/Grantors shall mean the Finance Authority on behalf of the CIB pursuant to the Board Rules. Any one of the following shall be an “Event of Default” under this Agreement:

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

(b) Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower/Grantee by the Lenders/Grantors, collectively or individually, unless the Lenders/Grantors, collectively or individually shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Lenders/Grantors but cannot be cured within the applicable thirty (30) day period, the Lenders/Grantors, collectively or individually, will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower/Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of Force Majeure the Borrower/Grantee is unable to carry out the agreements on its part herein contained, the Borrower/Grantee shall not be deemed in default under this paragraph 9.1(b) during the continuance of such inability (but Force Majeure shall not excuse any other Event of Default); or

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

(d) A petition is filed against the Borrower/Grantee 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 prior to the expiration of such thirty (30) days to protect their interests; or

(e) The Borrower/Grantee 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 Borrower/Grantee admits insolvency or bankruptcy or its inability to pay its debt as they become due or is generally not paying its debt as such debt 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 Borrower/Grantee 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 prior to the expiration of such thirty (30) days to protect their interests; or

(g) Default by the Borrower/Grantee in performance or observance of any covenant contained in any other loan agreement, document or instrument of any type whatsoever evidencing or securing obligations of the Borrower/Grantee to the Finance Authority.

Section 9.2 Limitations on Remedies. A judgment requiring payment of money entered against the Borrower/Grantee shall be paid only from available Pledged Revenues unless the Borrower/Grantee in its sole discretion pays the judgment from other available funds.

Section 9.3 Remedies on Default. Whenever any Event of Default has occurred and is continuing, and subject to Section 9.4 hereof, the Lenders/Grantors, collectively or individually, may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Borrower/Grantee in this Agreement:

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

(b) Terminate this Agreement;

(c) Cease disbursing any further amounts from the Project Account;

(d) Demand that the Borrower/Grantee immediately repay the Loan/Grant Amount or any portion thereof if such funds were not utilized in accordance with this Agreement;

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

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

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

(h) 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 Agreement or to enforce any other of their rights hereunder.

The Borrower/Grantee shall be responsible for reimbursing the Lenders/Grantors for any and all fees and costs incurred in enforcing the terms of this Agreement.

Section 9.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lenders/Grantors, collectively or individually, is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Borrower/Grantee or the Lenders/Grantors to exercise any remedy reserved in this Article IX, it shall not be necessary to give any notice, other than such notice as may be required in this Article IX.

Section 9.5 Waivers of Events of Default. The Lenders/Grantors, collectively or individually, may, in the respective discretion of each, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Lenders/Grantors, collectively or individually, in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Lenders/Grantors, collectively or individually, on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Lenders/Grantors shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 9.6 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 9.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Borrower/Grantee shall default under any of the provisions hereof, and the Finance Authority or the CIB shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower/Grantee herein contained, the Borrower/Grantee agrees that it shall, on demand therefor, pay to the Finance Authority or the CIB, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the

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

ARTICLE X
MISCELLANEOUS

Section 10.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Borrower/Grantee, to:

Doña Ana Mutual Domestic Water Consumers Association
Attn.: Executive Director
P.O. Box 866
Doña Ana, New Mexico 88032

If to the CIB or to the Finance Authority, to:

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

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

Section 10.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lenders/Grantors and the Borrower/Grantee and their respective successors and assigns, if any.

Section 10.3 Integration. This Agreement and any other agreements, certifications and commitments entered into between the Lenders/Grantors and the Borrower/Grantee on the Effective Date constitute the entire agreement of the parties regarding the Loan/Grant and the funding of the Project through the Loan/Grant as of the Effective Date, and the terms of this Agreement supersede any prior applications, discussions, understandings or agreements between or among the parties in connection with the Loan/Grant, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Agreement.

Section 10.4 Amendments. This Agreement may be amended only with the written consent of all of the parties to this Agreement. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Agreement may be given by an Authorized Officer of the Finance Authority. The execution of any such consent by an 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 component of this Agreement.

Section 10.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Lenders/Grantors, either directly or through the Finance Authority or the CIB, or against any officer, employee, director or member of the Borrower/Grantee, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Borrower/Grantee, the CIB or of the Finance Authority is hereby expressly waived and released by the Borrower/Grantee, the CIB and the Finance Authority as a condition of and in consideration for the execution of this Agreement.

Section 10.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to make the Loan Payments, 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 10.7 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. Pursuant to NMSA 1978, § 6-21-26, as amended, the venue for any proceedings or any other action or procedure against the Finance Authority shall be in Santa Fe County.

Section 10.9 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 10.10 Application of Act and Board Rules. The Lenders/Grantors and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and the Board Rules are incorporated into this Agreement by reference.

Section 10.11 CONSENT TO JURISDICTION. THE BORROWER/GRANTEE IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DOCUMENTS SIGNED IN CONNECTION WITH THIS TRANSACTION WILL BE LITIGATED IN THE FIRST JUDICIAL DISTRICT COURT, SANTA FE COUNTY, NEW MEXICO, PURSUANT TO SECTION 6-21-26, NMSA.

[Remainder of page intentionally left blank.]

[Signature pages follow.]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and the CIB, on behalf of itself, each have executed this Agreement, which was approved by the CIB on May 20, 2020, and by the Finance Authority's Board of Directors on June 25, 2020, in their respective corporate names by their duly Authorized Officers; and the Borrower/Grantee has caused this Agreement to be executed and attested by duly Authorized Officers thereof. All of the above are effective as of the date first above written.

LENDERS/GRANTORS:

NEW MEXICO FINANCE AUTHORITY

By _____
Chief Executive Officer or Designee

COLONIAS INFRASTRUCTURE BOARD

By _____
Chairperson or Vice-Chairperson

Prepared for Execution by Officers of the
New Mexico Finance Authority and the
Colonias Infrastructure Board:

SUTIN, THAYER & BROWNE
A PROFESSIONAL CORPORATION

By _____
Suzanne Wood Bruckner

Approved for Execution by Officers of the
New Mexico Finance Authority and the
Colonias Infrastructure Board:

By _____
Daniel C. Opperman,
Finance Authority Chief Legal Officer

BORROWER/GRANTEE:

DOÑA ANA MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATION,
DOÑA ANA COUNTY, NEW MEXICO

By _____
James Melton, President

ATTEST:

By _____
Kurt Anderson, Secretary/Treasurer

EXHIBIT "A"

TERM SHEET

\$93,533 COLONIAS INFRASTRUCTURE PROJECT LOAN/GRANT TO THE DOÑA ANA
MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION,
DOÑA ANA COUNTY, NEW MEXICO

Project Description:	The Project is infrastructure development in accordance with the Act consisting of improvements to a water system, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies and is more specifically described as creation of a planning document for the upgrade of the existing Fairacres West Mesa water system and expansion to an unserved area, including looking at constructing a well, a new water tank, and 6, 8 and 10 inch water lines to serve the existing customers as well as a large unserved area, and such other related work and revisions necessary to complete the Project.
Grant Amount:	\$84,180
Loan Amount:	\$9,353
Interest Component:	0%
Pledged Revenues:	Net System Revenues
Outstanding Senior Obligations for Pledged Revenues:	2001 and 2013 loans from the United States Department of Agriculture, Rural Utilities Service; Finance Authority Drinking Water Loan Nos. DW-2868, DW-3227 and DW-3382; 2013, 2014, 2015, 2018 and 2019 New Mexico Environment Department RIP loans
Outstanding Parity Obligations:	Finance Authority Water Trust Board Loan Nos. WTB-0083, WTB-0055, WTB-0105, WTB-0243 and WTB-0271; Finance Authority Colonias Loan Nos. CIF-2770, CIF-2972, CIF-3177, CIF-3184, CIF-3349, CIF-3507, CIF-4121, CIF-4634, CIF-4910 and CIF-4911
Authorizing Legislation:	Borrower/Grantee Resolution No. 2020-15, adopted October 1, 2020
Local Match:	\$9,364 as calculated pursuant to Section 2.5 of the Policies

Closing Date: November 6, 2020

Project Account Deposit: \$93,533

Conditions to be satisfied prior to first disbursement of the Loan/Grant Amount:

Delivery to Finance Authority of (i) a copy of the agenda of the meeting of the Governing Body at which the Resolution was adopted and at which this Agreement, the Resolution and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the President of the Borrower/Grantee, (ii) a copy of the minutes or record of proceedings of the Meeting, approved and signed by the President and attested to by the Secretary/Treasurer of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant:

All Conditions defined in the Agreement.

EXHIBIT "B"

FORM OF REQUISITION
(Colonias Infrastructure Project Fund)

RE: \$93,533 Loan/Grant Agreement by and between the Colonias Infrastructure Board and the New Mexico Finance Authority, as Lender/Grantor, and the Doña Ana Mutual Domestic Water Consumers Association as Borrower/Grantee (the "Agreement").

Loan/Grant No. CIF-5168

Closing Date: November 6, 2020

TO: NEW MEXICO FINANCE AUTHORITY

You are hereby authorized to disburse from the Project Account - Doña Ana Mutual Domestic Water Consumers Association with regard to the above-referenced Agreement, the following:

I. PAYMENT INFORMATION

REQUISITION NO. _____ PAYMENT AMOUNT: \$ _____

PAYEE'S NAME: _____

PAYEE'S ADDRESS: _____

II. REQUISITION INFORMATION (complete for all payments)

- *Attach proof of expenditures (cancelled check, wire transfer receipt, bank ledger, etc.).*
- *List all Vendors, Payment Purposes, or Eligible Item Categories below or attach separate page or spreadsheet if needed.*

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

III. WIRING INFORMATION:

BANK NAME:	
ROUTING NUMBER:	
ACCOUNT NUMBER:	

IV. MATCH INFORMATION

AMOUNT OF LOCAL MATCH EXPENDED SINCE LAST REQUISITION: \$ _____
Attach proof of expenditures for hard match (detailed invoices, cancelled checks, wire transfer receipt, bank statement, etc.) and written certification of type and value of any soft match.

AMOUNT OF LOCAL MATCH EXPENDED TO DATE: \$ _____

TOTAL REQUIRED MATCH: \$9,364

V. VERIFICATION AND AUTHORIZATION

Each obligation, item of cost or expense mentioned herein is for a loan/grant made by the Lender/Grantor pursuant to the Colonias Infrastructure Act to the Borrower/Grantee within the State of New Mexico, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Project Account – Doña Ana Mutual Domestic Water Consumers Association. All representations contained in the Agreement, the related closing documents remain true and correct, and the Borrower/Grantee is not in breach of any of the covenants contained therein.

The proceeds of the Loan/Grant are to be used to pay the costs of Eligible Items, as defined in the Agreement. Eligible Items include (1) planning, designing, construction, improving or expanding a qualified project; (2) developing engineering feasibility reports for Qualified Projects; (3) inspecting construction of Qualified Projects; (4) providing professional services; (5) completing environmental assessments or archeological clearances and other surveys for Qualified Projects; (6) acquiring land, water rights, easements or rights of way; (7) eligible legal costs and eligible fiscal agent fees associated with development of Qualified Projects, within limits set by the Colonias Infrastructure Board (“CIB”).

All construction and all installation of equipment with proceeds of the Loan/Grant has or will be used in accordance with plans and/or specifications approved by all entities required by the CIB and the New Mexico Finance Authority in their sole discretion to approve such plans and specifications, has or will be acquired in compliance with applicable procurement laws and regulations and has or will be inspected and approved in accordance with applicable laws and regulations.

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

DATE: _____

AUTHORIZED OFFICER
(As Provided in the Loan/Grant Agreement)
Print Name: _____
Print Title: _____

EXHIBIT "C"

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount shall be payable by the Borrower/Grantee to the Lenders/Grantors in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2023 and ending June 1, 2042. The Loan Amount shall be pre-payable upon expiration of the Interim Period without penalty.

EXHIBIT "D"

COLONIAS INFRASTRUCTURE PROJECT FUND STATUS REPORT
PREPARED FOR THE
NEW MEXICO FINANCE AUTHORITY

Fund Recipient: Doña Ana Mutual Domestic Water Consumers Association Contact Name: Title: Email Address:	Project Number: CIF-5168 Project Name: Fairacres West Mesa Water System Project Type: Plan
Reporting Period: From _____ To _____ <input type="checkbox"/> Quarterly Project Report: <input type="checkbox"/> 1 st <input type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input type="checkbox"/> 4 th <input type="checkbox"/> Final Project Report <input type="checkbox"/> Other _____	
CIF Funding Expiration: _____ Total CIF Award: \$ _____ Current Balance: \$ _____ Loan 10% Grant 90% Match \$9,364 Expected CIF Award Expenditure Next Quarter: \$ _____ Local Match Expenditure: To Date \$ _____ Next Quarter \$ _____	
Project Phase: <input type="checkbox"/> Planning <input type="checkbox"/> Design <input type="checkbox"/> Construction	
PROJECT COMPLETION: Original Date _____ Current Date _____ _____% Complete Days Remaining to Complete _____ On Schedule? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Briefly Describe Project Progress During This Reporting Period:	
Issues Addressed During This Reporting Period, including any current or anticipated issues that remain unresolved:	
Goals/Milestones, With Timeline or Dates, For The Next Reporting Period:	
Authorized Officer PRINT NAME: _____ PRINT TITLE: _____	
SIGNATURE: _____	Date: _____

**All fields must be completed*

EXHIBIT "E"

FORM OF CERTIFICATE OF COMPLETION

RE: \$93,533 Agreement by and between the Colonias Infrastructure Board and the Finance Authority, as Lenders/Grantors, and the Doña Ana Mutual Domestic Water Consumers Association, as Borrower/Grantee (the "Agreement")

Loan/Grant No.: CIF-5168

Closing Date: November 6, 2020

TO: NEW MEXICO FINANCE AUTHORITY

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

Borrower/Grantee, hereby certify as follows:

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

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

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

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

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

DOÑA ANA MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATION,
DOÑA ANA COUNTY, NEW MEXICO

By _____

Its _____

EXHIBIT “F”

DOCUMENTS

1. Open Meetings Act Resolution No. 20-01 adopted by the Borrower/Grantee on January 2, 2020
2. Resolution No. 2020-15 adopted on October 1, 2020, Agenda, and Affidavits of Publication of Notice of Adoption of Resolution in the *Las Cruces Sun News*
3. Loan/Grant Agreement
4. General and No Litigation Certificate of the Borrower/Grantee
5. Delivery, Deposit and Cross-Receipt Certificate
6. Right of Way Certificate
7. Borrower’s Counsel Opinion
8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan/Grant Counsel to the Finance Authority
9. Finance Authority Application and Project Approval (informational only)
10. Written consent of existing lenders to Colonias loan

\$93,533
DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION
DOÑA ANA COUNTY, NEW MEXICO
COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT
No.CIF-5168

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss. DELIVERY, DEPOSIT AND
) CROSS-RECEIPT CERTIFICATE

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting President and Secretary/Treasurer of the Doña Ana Mutual Domestic Water Consumers Association, Doña Ana County, New Mexico (the "Borrower/Grantee"):

1. On the date of this Certificate, the Borrower/Grantee executed and delivered, or caused to be executed and delivered, a Loan/Grant Agreement among the Borrower/Grantee, the Colonias Infrastructure Board and the New Mexico Finance Authority (the "Finance Authority"), in the aggregate principal amount of \$93,533 (the "Loan/Grant Agreement"), as authorized by Borrower/Grantee Resolution No. 2020-15 (the "Resolution") adopted on October 1, 2020, relating to the execution and delivery of the Loan/Grant Agreement. The Grant Amount equals \$84,180 and the Loan Amount equals \$9,353 as such terms are defined in the Loan/Grant Agreement.

2. The undersigned acknowledge that the Loan/Grant Amount, as defined in the Loan/Grant Agreement, is available for disbursement to the Borrower/Grantee pursuant to the terms of Section 5.2 of the Loan/Grant Agreement upon transmission of payment requisitions to the Finance Authority in substantially the form attached as Exhibit "B" to the Loan/Grant Agreement, with supporting documentation as provided in the Loan/Grant Agreement, and will be used as set forth in the Resolution and the Loan/Grant Agreement.

WITNESS our hands this November 6, 2020.

DOÑA ANA MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATION,
DOÑA ANA COUNTY, NEW MEXICO

By _____
James Melton, President

SEAL

By _____
Kurt Anderson, Secretary/Treasurer

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

It is hereby certified by the undersigned, a duly qualified and acting official of the New Mexico Finance Authority, that, the undersigned has, on the date of this Certificate, received from the Doña Ana Mutual Domestic Water Consumers Association the Loan/Grant Agreement for Project No. CIF-5168.

NEW MEXICO FINANCE AUTHORITY

By _____
Marquita D. Russel, Chief Executive Officer

5620827