

Sandra Whitehead
Mayor

Kathy Clark
Mayor Pro-Tem

Rolf Hechler
Commissioner



Paul Baca
Commissioner

George Szigeti
Commissioner

Morris Madrid
City Manager

505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.org

REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, IS TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, JUNE 26, 2019; TO START AT 9:00 A.M.

A. CALL TO ORDER

B. INTRODUCTION

1. ROLL CALL

Hon. Sandra Whitehead, Mayor
Hon. Kathy Clark, Mayor Pro-Tem
Hon. Rolf Hechler, Commissioner
Hon. Paul Baca, Commissioner
Hon. George Szigeti, Commissioner

2. SILENT MEDITATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

C. PRESENTATIONS

1. Presentation/Discussion/Update: Infrastructure Capital Improvements Plan (ICIP) plan. Traci Burnette, Grant/Projects Coordinator & Designated Zoning Official

D. CONSENT CALENDAR

1. Acknowledge the Public Utility Advisory Board Minutes, April 8, 2019
2. Acknowledge the Public Arts Advisory Board Minutes, November 13, 2018
3. Approve the appointment of City Manager Morris Madrid and Clerk-Treasurer Renee Cantin as Alternate on the SCRDA Board

E. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Ordinance No. 705 for publication refunding of PPRF-2246 and new money for infrastructure projects, including the Loan Agreement, Intercept Agreement and closing documents. City Manager Madrid
2. Discussion/Action: Resolution No. 50 18/19 approving the Loan Agreement and closing documents for the refunding of PPRF-1704 and RIP 95-16. City Manager Madrid
3. Discussion/Action: Resolution No. 47 18/19 authorizing acceptance of Colonias Infrastructure Fund Project No. 4927-CIF; Water Infrastructure Project, T or C Municipal Water System from NMFA. City Manager Madrid
4. Discussion/Action: Resolution No. 48 18/19 designating signatory authority for the New Mexico Finance Authority Drinking Water Revolving Loan Fund related documentation. City Manager Madrid
5. Discussion/Action: Resolution No. 49 18/19 approving the final Fiscal Year 2018/2019 Budget Adjustment. City Manager Madrid

F. NEW BUSINESS

1. Discussion/Action: Approve the recommendation of the Public Arts Board to reappoint Sid Bryan, Cary "Jagger" Gustin, Andy Underwood, and Eduardo Alicea. City Manager Madrid
2. Discussion/Action: Mainstreet Truth or Consequences MOU extension to June 30, 2020. City Manager Madrid

G. REPORTS

1. City Manager
2. City Attorney
3. City Commission

H. EXECUTIVE SESSION

1. Real Property (808 Maple & various properties) *Pursuant to 10-15-1(H.8)*

I. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any.

J. ADJOURNMENT

NEXT CITY COMMISSION MEETING JULY 10, 2019



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **C.1**

SUBJECT: ICIP 2021-2025 Presentation

DEPARTMENT: Community Development

DATE SUBMITTED: June 18, 2019

SUBMITTED BY: Traci Burnette

WHO WILL PRESENT THE ITEM: Traci Burnette

Summary/Background:

Information presentation of the City of Truth or Consequences Capital Improvement Plan

Recommendation:

Presentation Only

Attachments:

- -
- -

Fiscal Impact (Finance): No

-

Legal Review (City Attorney): N/A

-

Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☐ Legal ☐ Other: Click here to enter text.

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: C.1 ICIP Presentation



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **D.1**

SUBJECT: Acknowledge the Public Utility Advisory Board Minutes, April 8, 2019

DEPARTMENT: Clerk's Office

DATE SUBMITTED: June 19, 2019

SUBMITTED BY: Angela A. Torres

WHO WILL PRESENT THE ITEM: Renee Cantin, Clerk-Treasurer

Summary/Background:

PUAB Minutes as approved by the PUAB.

Recommendation:

Approve the minutes.

Attachments:

- Minutes as approved by PUAB

Fiscal Impact (Finance): No

[Click here to enter text.](#)

Legal Review (City Attorney): No

None.

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: CC Agendas 2019/06-26-2019/AF-PUAB Minutes 04-08-2019

**CITY OF TRUTH OR CONSEQUENCES
PUBLIC UTILITY ADVISORY BOARD**

MINUTES

MONDAY, APRIL 8, 2019

REGULAR MEETING

Regular meeting of the Public Utility Advisory Board of the City of Truth or Consequences, New Mexico held in the City Commission Chambers, 405 W. 3rd Street, at 5:30 p.m. on Monday, April 8, 2019.

INTRODUCTION:

ROLL CALL:

Jeff Dornbusch, Chairman
Ed Williams, Vice-Chairman
Ron Pacourek, Member
Don Armijo, Member
Gil Avelar, Member

ALSO PRESENT:

Morris Madrid, City Manager
Renee Cantin, City Clerk
Bo Easley, Electric Division Director
Andy Alvarez, Sanitation Director
Jesse Cole, Water/Wastewater Director
Priscilla Fuentes, Electric Administrative Assistant
Kristen Weddle, Sanitation Administrative Assistant
Ruby Otero-Vallejos, Water/Wastewater Administrative Assistant
Traci Burnette, Grant Projects/P & Z Coordinator
Angela A. Torres, Deputy City Clerk

APPROVAL OF AGENDA:

Chairman Dornbusch called for approval of the agenda.

Vice Chairman Williams moved to approve the agenda. Member Armijo seconded the motion. Motion carried unanimously.

APPROVAL OF MINUTES:

Member Pacourek moved to approve the minutes of Regular meeting of Monday, March 18, 2019. Member Avelar seconded the motion. Motion carried unanimously.

COMMENTS FROM THE PUBLIC:

None.

RESPONSE TO COMMENTS FROM THE PUBLIC:

None.

Discussion/Update: Electric Department - Bo Easley, Electric Division Director:

Bo Easley, Electric Division Director reported the following:

- The Mud Mountain Tower Project is complete. BLM completed their inspection and it passed.
- The AMI RFP will hopefully go out this week, and hopefully the bid will be awarded before July. If so the process will start after that.
- They plan to meet with NMDOT this Wednesday regarding the roundabouts.
- They are waiting on the contractors to complete the C-field Verizon Tower Project.
- Marto Electric will set new poles on the Western/Eastern side of the Gun Club, as well as the Westside of I-25.

Discussion/Update: Sanitation Department - Andy Alvarez, Sanitation Director:

Andy Alvarez, Sanitation Director reported the following:

- He ordered a new truck back in August of 2018, and hopefully it will be here next month. The trucks are usually good for 3-5 years.
- He reminded everyone of the Free Spring Cleanup Day on April 27th from 8am-3pm at the City Collection Center.
- They will know by April 29th if they were awarded funds from the RAID Grant.

Discussion/Update: Water/Wastewater Department – Jesse Cole, Water/Wastewater Director:

Jesse Cole, Water/Wastewater Director reported the following:

- His crew fixed 14 water leaks last week.
- The Quarterly Report for the NMED Discharge Permit has been sent in.
- He met with Jeff Thomas from OSE regarding repairs of the pump at the fish pond.
- They fed a camera down the clarifier and it showed that there was some sludge that was stuck in the line. They couldn't get it out, but they are in the process of figuring that out.
- They installed 3 new valves and controllers at the Vac Station.
- They want to fill the secondary pond at the Golf Course with fresh water. They are looking into getting a meter for that. Bart Rivers at the Golf Course is concerned about the PH with the water. Bart is using a PH Probe that they had at the Wastewater Plant to monitor that a little more closely.
- They are working on quotes for the sulfur burner.
- They have a Bobcat that is currently down and the repairs will cost more than it's worth. They also need some tires, and possibly a tilt bed trailer for the backhoe so they can pull the backhoe up and down instead of driving it across town. That will save some money on the tires and that will make it a bit quicker to respond to calls.
- He has been to a couple of places where they tried to implement a CUFF Program and it was hard to differentiate between where the line was drawn between the anti-donation clause and being a Municipality. We have to be careful as to those boundaries and how we give out stuff to places or people. Anything that benefits an individual can get you in some rough times. You would also need a Building Inspector (which we don't have) who would normally go out and do

the inspection on the property so you can show that the resident is actively taking the proper steps for the program. In our case, it would more than likely fall on the Water Department to do the inspections.

Discussion/Action: CUFF Program – Jeff Dornbusch, Chairman:

Chairman Dornbusch said it seems there is a lot more to this program than just making it possible for people to be forgiven.

City Manager Madrid responded that there are ways to do this program. Some Municipalities start the clock when the leak is reported. The forgiveness can take place if the customer hires a licensed plumber to do the repairs and shows a proof of the repair so the same leak doesn't occur over and over again. The only area that can be kind of grey is how long it takes you to report the leak. The forgiveness is determined by your average water bill. They will take that amount back down to what your average bill usually is and forgive everything above that. Here in T or C it can be done, but it will take a change to the ordinance because the current ordinance does not have any provision for forgiveness of any kind.

Vice Chairman Williams mentioned that Santa Fe and Las Cruces have this program, but the process they go through is a lot. You have to notify the Municipality within 3 months of the leak, and like the City Manager said, you have to have a licensed plumber repair it, and if you don't, and you repair it yourself, then you have to leave it exposed until someone from the city can go and do an inspection. And only if the bill is 200% over their normal average will they start the forgiveness process, and Santa Fe only forgives one leak per customer, per calendar year. He also feels that the forgiveness amount should be straight across the board.

Member Pacourek mentioned that he had a water leak on his property, and even though his bill was not forgiven, the Utility Office did contact him to let him know that his bill was higher than usual.

Chairman Dornbusch suggested that they investigate this program a little bit more and come up with the perimeters for what they can present to the Commission, because he would really like to see this move forward.

Discussion/Action: Trash Forgiveness Program - Jeff Dornbusch, Chairman:

Chairman Dornbusch feels like this could be a great program and he would think that the county would be very grateful to us for doing this, because it seems like a lot of the illegal dumps happen on county property, and they are the ones tasked with cleaning it up. He doesn't know what the cost to the city would be, but if we limit it to ½ a ton once a month, he thinks the benefit of having people taking it in would outweigh any of the loss of revenue. Plus if we get people more interested in recycling, we could raise the \$30,000 saved last year to \$50,000 saved in transportation costs. People are recycling on their own by separating and transporting it, and we are benefiting from it, so he doesn't see any reason why the city should not give back the service that they used to provide by picking up couches and stuff that were placed by the dumpsters.

Vice Chairman Williams thinks this is something we should look into. However, back in the day Sanitation didn't charge for a lot of services they were providing and they were losing a lot of money, so

that is the reason why a lot of things changed. He thinks it's a decent thing to look into, he just doesn't know about it being on a monthly basis.

Andy Alvarez, Sanitation Director stated back then when they were picking things up in the alleys, they had a landfill to keep the cost down, but they no longer have a landfill, and they now have to transport the trash, and the cost for that is \$49 per ton. We send out 3-4 trailers a week, and we're looking at \$800 - \$900 a trailer, and at the end of the month I'm looking at a \$29,032 bill that needs to be paid.

Chairman Dornbusch responded he does not see why yard waste has to go to the dump. We can compost that kind of stuff.

Andy Alvarez, Sanitation Director responded we can compost yard waste in small amounts, but he will have to apply through NMED, and the residential owners by the Recycling Center may not want that, so he may have to look at other property due to the odors and such that are produced through composting. He will also need more man power, bigger equipment, and additional equipment. The chipper they were looking at was \$500,000 and then they are looking at two or three more men at the Facility, because it is a big operation. We can reduce the waste going out there, but then you have to look at the cost to do this.

Member Avelar asked how many extra trailers they haul on the Free Trash Day.

Andy Alvarez, Sanitation Director responded they haul 3 extra trailers which is an average of \$800 - \$900 a trailer.

Member Avelar asked if the County could help with the costs since we are helping them out.

Andy Alvarez, Sanitation Director responded this time around they will be open for a full day, and they will have their Arrey, Hillsboro, and Winston site open. They will bring the waste to us, but they are paying for their disposal fees.

Chairman Dornbusch when you do it once a year, people clean their yards and they take a years worth of trash. If you are doing it every month, chances are at the beginning there will be a lot, but after that it will slow down, so he thinks it would be beneficial to everybody because you will have more people interacting with the Sanitation Department when they bring their trash down there. And the more people who recycle, the more we save in transportation costs.

City Manager Madrid noted that the first variable is the cost, and more activity means probably more personell, and more hours. It is definitely less revenue, and that is the biggest unknown factor that we have. Until we can identify what that is, we cant make a recommendation.

Andy Alvarez, Sanitation Director said this is something he needs to look into due to the cost.

Chairman Dornbusch asked that this item be tabled until they have more information to make a decision.

Discussion: Inaccurate Statement on Utility Bill – Ron Pacourek, Member:

Member Pacourek reviewed the back of his utility bill where it says, per city code if you have an electric meter you will be charged trash services. The notice on the back of the utility bills does not show which city code they are referring to. He looked up city code (Section 11-2) and it says that all persons having city water or electricity shall be liable for garbage collection fees, but the back of the utility bill only refers to electric. Another issue is that a referencing code number is not included on the bill. The reason he brought this up is because he heard that there are people who are only paying for water and sewer, and they are not paying trash fees.

The board came to the conclusion that water meters need to be added to the code, and Section 11-2 needs to be added to the statement on the back of the utility bill.

Discussion: Discussion of Ordinance No. 664 - Ron Pacourek, Member:

Member Pacourek reported on the Renewable Energy Ordinance 664 under Section 1-B it states *"the city reserves the right to deny interconnection for over-sized systems and in no case may the renewable energy generation system be sized such that its inverters rated capacity exceeds 90% of the most recent 12 month average of the customers' usage."* He feels that the wording should be changed from *over-sized system* to *any system* so the city is covered, because if we get to a point where there are more people who install solar, there is nothing in this ordinance saying that we cannot deny them solar.

Vice Chairman Williams informed Member Pacourek that the city has the right to refuse any solar connection if it doesn't meet all of the codes and standards.

COMMENTS FROM THE BOARD:

Member Pacourek mentioned that the March 29th newspaper ad said that the City Commission will review Ordinance #701 which is the Wastewater Impact Fee Land Use Assumptions. They haven't had an Impact Fee Board Meeting in a while, so he is wondering why they were not informed of that meeting.

City Clerk Cantin clarified that the meeting in question is to review the the Impact Fee Study which was recommended by this board. The reason why the notice says Land Use Assumption is because we were required to use that wording.

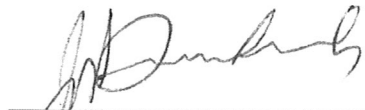
COMMENTS FROM STAFF:

There were no additional comments from staff.

ADJOURNMENT:

There being no further business to come before the Public Utility Advisory Board, Jeff Dornbusch, Chairman, declared the meeting adjourned.

PASSED AND APPROVED this 17th day of June, 2019.



Jeff Dornbusch, Chairman
Public Utility Advisory Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **D.2**

SUBJECT: Acknowledge the Public Arts Board Minutes, November 13, 2018

DEPARTMENT: Clerk's Office

DATE SUBMITTED: June 19, 2019

SUBMITTED BY: Renee Cantin, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: Renee Cantin, Clerk-Treasurer

Summary/Background:

PAAB Minutes as approved by the PAB.

Recommendation:

Approve the minutes.

Attachments:

- Minutes as approved by PAB

Fiscal Impact (Finance): No

[Click here to enter text.](#)

Legal Review (City Attorney): No

None.

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: CC Agendas 2019/06-26-2019/AF-PAB Minutes 11-13-2018

**CITY OF TRUTH OR CONSEQUENCES
PUBLIC ARTS ADVISORY BOARD
TUESDAY, NOVEMBER 13, 2018**

**REGULAR MEETING
Summary Minutes**

Regular meeting of the Public Arts Advisory Board of the City of Truth or Consequences, New Mexico to be held in the Administration Annex Conference Room, 401 McAdoo St., Truth or Consequences, New Mexico, on Tuesday, November 13, 2018 at 4:00 P.M.

PRESIDING OFFICER:

The meeting was called to order at 4:01 PM by Sid Bryan.

PRESENT:

Sid Bryan, Tourism
Andy Underwood, Business Community (Absent)
Cary "Jagger" Gustin
Eduardo Alicea, Art Representative

Note: Interim City Manager, Renee Cantin, was absent due to training.

ALSO PRESENT:

Kristin Saavedra, Executive Assistant
Jim Shiley, The Sentinel

A. APPROVAL OF AGENDA:

Regular Agenda Meeting for November 13, 2018

Sid Bryan called for approval of the minutes.

Cary "Jagger" Gustin made a motion for the approval of the September 18, 2018 minutes as submitted.

Eduardo Alicea seconded the motion. Motion carried unanimously.

B. APPROVAL OF MINUTES:

Regular meeting of Tuesday, September 18, 2018:

Sid Bryan called for approval of the minutes.

- Before approval, Jagger asked Kristin to get a balance of their funds. Kristin agreed to send an email to them tomorrow with the balance

Cary "Jagger" Gustin made a motion for the approval of the September 18, 2018 minutes as submitted.

Eduardo Alicea seconded the motion. Motion carried unanimously.

C. COMMENTS FROM THE PUBLIC:

There were no comments from the public.

- **RESPONSE TO COMMENTS FROM THE PUBLIC:**

There was no response to public comment.

D. Discussion/Conceptual Plan for Student Art Project – Jim Shiley:

Jim Shiley presented the following to the Board

- A year ago during the summer, he was trying to find a way to say thank you to the kids, came up with a T-shirt give away for every student, teacher, and staff. Gave each person a t-shirt for free reflecting the Tiger Logo and thank you wording.
- After that, created a “Tiger Day” on October 20, 2018. Invited all the teams and groups of all schools to participate, along with the community.
- Came up with the idea of an art contest open to all of the students in all of the schools. He spoke with the three instructors in the schools and they all have agreed to be judges, and have spoken with other key people who all agree that this is a good idea.
- The winner of the contest would have their art reproduced onto 4’ x 8’ vinyl billboard material and have that attached to one of the water towers above the schools, above the stadium – presented a current picture and a mock-up picture done by Eric Fernandez, an art teacher at the school, to the board.
- Jim chose the smaller of the two as the one to do the art on, the winner would be the first piece produced, and would be underneath the “Class of 2019,” and underneath the artwork, there would be a rectangle roughly 18” x 5,” that would contain the students name; this would continue on a yearly basis and eventually, the tower would be filled with all of the graduating classes.

Discussion between Jim, Jagger, Eduardo, and Sid in regards to the following:

- Amount of years that would fit on the tower
- Ways to commemorate classes from the past that climbed up there
- Submission suggestions, theme, and possible requirements
- Placement and protection of the art on the tower
- Pricing and bids on what it would cost to reproduce; suggestions on help
- Approval, acceptance, and support of his project.
- Completion date of the art by the 1st of May

The board suggested that he get on the agenda and to bring his project idea and paperwork and to the next City Commission meeting and to meet with Renee first. The PAAB will write a letter of recommendation and support for his project. The board also suggested seeking support from the Art Council and the Chamber of Commerce as well along with some other organizations.

Cary “Jagger” Gustin made a motion - after review and listening to the presentation of Jim Shiley, that we give the endorsement of this board to continue with the project and move forward and we would encourage the City Commission to support it; Eduardo Alicea seconded the motion. Motion carried unanimously.

Discussion between Jagger, Jim, Sid, and Eduardo in regards to different printing places to go to for the art printing, the positive effect the tower will have on the community, the wear and tear on the art from the sun, the letter of recommendation, and sending Jim the minutes.

E. SET TIME, PLACE, AND DATE FOR NEXT MEETING:

The Board decided to meet again in January. The next meeting of the Board will be Tuesday, January 15, 2018 at 4:00 P.M. at the Administration Annex, unless a special meeting is required.

ADJOURNMENT:

There being no further business to come before the Public Arts Advisory Board, Cary “Jagger” Gustin made a motion to adjourn; Eduardo seconded, motion carried. The meeting was adjourned at 4:23 pm.

Minutes were approved on June 11, 2019.

Renee Cantin, Clerk-Treasurer

City Commission Approved:



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **D.3**

SUBJECT: Approve the appointment of City Manager Morris Madrid and Clerk-Treasurer Renee Cantin as Alternate on the SCRDA Board

DEPARTMENT: Clerks Office

DATE SUBMITTED: June 20, 2019

SUBMITTED BY: City Clerk Cantin

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

City Clerk Cantin is the current member appointed by the Commission and Police Chief Aragon is also a member and serving as Vice Chair of the board. We are requesting the Commission to approve the appointment of City Manager Morris Madrid and Clerk-Treasurer Renee Cantin as Alternate on the SCRDA Board. Traci Burnette, also attends and has served as our Proxy in the case that we other commitments.

Recommendation:

Approve the appointment of City Manager Morris Madrid and Clerk-Treasurer Renee Cantin as Alternate on the SCRDA Board as recommended.

Attachments:

- None

-

Fiscal Impact (Finance): N/A

-

Legal Review (City Attorney): No

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Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. [Click here to enter text.](#)

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: D.3 AF SCRDA Board Appointment



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **E.1**

SUBJECT: Discussion/Action: Ordinance No. 705 for publication refunding of PPRF-2246 and new money for infrastructure projects, including the Loan Agreement, Intercept Agreement and closing documents.

DEPARTMENT: City Manager

DATE SUBMITTED: June 21, 2019

SUBMITTED BY: City Clerk Cantin

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

To establish financing capacity for future capital projects and assets that may not be funded by other sources.

Recommendation:

Approve the ordinance for first publication.

Attachments:

- Ordinance No. 705
- Loan Agreement
- Intercept Agreement

Fiscal Impact (Finance): TBD

-

Legal Review (City Attorney): Yes

Documents were provided to legal

Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☒ Legal ☐ Other: Click here to enter text.

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. 705

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: Click here to enter text.

File Name: E.1 AR Ordinance 705 refunding PPRF-2246

STATE OF NEW MEXICO
CITY OF TRUTH OR CONSEQUENCES
SIERRA COUNTY

The City Commission (the "Governing Body") of the City of Truth or Consequences, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Governing Body in the City Commission Chambers, 405 W. 3rd Street, in Truth or Consequences, New Mexico being the meeting place of the Governing Body for the regular meeting held on the 24th day of July, 2019, at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Present:

Absent:

Also Present:

Thereupon, there was officially filed with the City Clerk-Treasurer a copy of a proposed Ordinance in final form.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
ORDINANCE NO. 705

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF \$2,550,147 FOR THE PURPOSE OF REFUNDING FINANCE AUTHORITY LOAN NO. PPRF-2246, FINANCING IMPROVEMENTS TO EXISTING MUNICIPAL BUILDINGS AND PURCHASING NEW VEHICLES AND INFORMATION TECHNOLOGY EQUIPMENT FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$2,550,147, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE STATE SHARED GROSS RECEIPTS TAX REVENUES AUTHORIZED PURSUANT TO SECTIONS 7-1-6.4, NMSA 1978, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF STATE SHARED GROSS RECEIPTS TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

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

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

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

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

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

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to an Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk-Treasurer this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement and Intercept Agreement in the amount and for the purposes set forth herein; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO:

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

"Act" means the general laws of the State, Sections 3-31-1 through 3-31-12 and Sections 7-1-6.4 and 7-1-6.15, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

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

"Authorized Officers" means the Mayor, City Manager and City Clerk-Treasurer of the Governmental Unit.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

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

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

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

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

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

“Finance Authority” means the New Mexico Finance Authority.

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

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

“Governing Body” means the City Commission of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Truth or Consequences, New Mexico.

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

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

“Intercept Agreement” means the Intercept Agreement, between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee.

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

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

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account Deposit on Exhibit “A” to the Loan Agreement, which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

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

“Ordinance” means this Ordinance No. ____ adopted by the Governing Body on July 24, 2019 approving the Loan Agreement and Intercept Agreement as amended from time to time.

“Parity Obligations” means the Loan Agreement and any other obligations, now 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 the Loan Agreement, including those obligations described on the Term Sheet attached as Exhibit “A” to the Loan Agreement.

“Pledged Revenues” means (i) the amounts of money derived from the gross receipts tax imposed by the State of New Mexico on all persons engaging in business in New Mexico, levied pursuant to Section 7-9-4, NMSA 1978, which (a) are distributed monthly by the Revenue Division of the Taxation and Revenue Department of the State of New Mexico to the Governmental Unit as authorized by Sections 7-1-6.1, 7-1-6.4 and 7-1-6.15, NMSA 1978, and (b) which distributions are to equal the product of (i) the quotient of 1.225% divided by the New Mexico gross receipts tax rate imposed by Section 7-9-4, NMSA 1978, and (ii) such taxes paid by taxpayers to the Revenue Division attributable to business locations within the municipal boundaries of the Governmental Unit and on land outside those boundaries owned by the Governmental Unit, for the month for which the distribution is made, subject to any increase or decrease made pursuant to Section 7-1-6.15, NMSA 1978, and after any disbursements for tax audits, refunds, payments of interest and administrative costs. Pledged Revenues also includes (i) the portion of the gross receipts tax distribution to the Governmental Unit be made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of Pledged Revenues set forth in the sentence above that would have been remitted to the Governmental Unit but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978 and (ii) any similar distributions made to the Governmental Unit in lieu of Pledged Revenues, but Pledged Revenues do not include any similar distributions in lieu of any other local

option gross receipts tax revenues. The Pledged Revenues are pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

“Processing Fee” means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on Exhibit “A” to the Loan Agreement.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means the project described in Exhibit “A” to the Loan Agreement.

“State” means the State of New Mexico.

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

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

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the financing of the Project and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby ratified, approved and confirmed.

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

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

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the costs of financing the Project.

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

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

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are

necessary and in the interest of the public health, safety and welfare of the residents of and the public served by the Governmental Unit.

F. The Governmental Unit will finance the Project, in whole or in part, with the net proceeds of the Loan.

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

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and financing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of \$2,550,147, plus interest thereon, and the execution and delivery of the Loan Agreement and Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the Project; (ii) fund the Loan Agreement Reserve Account; (iii) pay the Processing Fee; and (iv) make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the form of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of \$2,550,147, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, beginning on November 1, 2019 at the rates designated in Exhibit "B" to the Loan Agreement.

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

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental

Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

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

A. Program Account, Finance Authority Debt Service Account and Loan Agreement Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account, and the Loan Agreement Reserve Account to be held by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account; (ii) the deposit of funds in the amount of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account; and (iii) the payment of the Processing Fee to the Finance Authority, all as set forth in Exhibit "A" to the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account, the Loan Agreement Reserve Account and the Finance Authority Debt Service Account, and the Processing Fee shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of financing the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will finance the Project with all due diligence.

B. Completion of Financing of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that financing of and payment for the Project have been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

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

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

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, Pledged Revenues shall be paid to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement, including sufficient Pledged Revenues in the Loan Agreement Reserve Account to maintain the Loan Agreement Reserve Requirement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amounts in the Finance Authority Debt Service Account and Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

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

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

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept 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 Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and the Intercept Agreement,

including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance may be supplemented or amended by resolution or ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

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

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance 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 Ordinance.

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

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk-Treasurer of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Ordinance shall be in full force and effect thereafter, in accordance with law.

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

(Form of Summary of Ordinance for Publication)

City of Truth or Consequences, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. ___, duly adopted and approved by the Governing Body of the City of Truth or Consequences, New Mexico, on July 24, 2019. A complete copy of the Ordinance is available for

public inspection during the normal and regular business hours of the City Clerk-Treasurer, 405 W. 3rd Street, Truth or Consequences, New Mexico. The title of the Ordinance is:

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
ORDINANCE NO. _____

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF \$2,550,147 FOR THE PURPOSE OF REFUNDING FINANCE AUTHORITY LOAN NO. PPRF-2246, FINANCING IMPROVEMENTS TO EXISTING MUNICIPAL BUILDINGS AND PURCHASING NEW VEHICLES AND INFORMATION TECHNOLOGY EQUIPMENT FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$2,550,147, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE STATE SHARED GROSS RECEIPTS TAX REVENUES AUTHORIZED PURSUANT TO SECTIONS 7-1-6.4, NMSA 1978, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF STATE SHARED GROSS RECEIPTS TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED this 24th day of July, 2019.

TRUTH OR CONSEQUENCES, NEW MEXICO

By: _____
Sandra Whitehead, Mayor

[SEAL]

ATTEST:

By: _____
Renee Cantin, City Clerk-Treasurer

Commissioner _____ then moved adoption of the foregoing Ordinance, duly seconded by Commissioner _____.

The motion to adopt said Ordinance, 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 said motion, the Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the City Clerk-Treasurer signed the Ordinance upon the records of the minutes of the Governing Body.

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

TRUTH OR CONSEQUENCES, NEW MEXICO

By: _____
Sandra Whitehead, Mayor

[SEAL]

ATTEST:

By: _____
Renee Cantin, City Clerk-Treasurer

EXHIBIT “A”

Meeting Agenda
of the July 24, 2019
City Commission Meeting

(See attached)

STATE OF NEW MEXICO
TRUTH OR CONSEQUENCES
SIERRA COUNTY

I, Renee Cantin, the duly qualified and acting City Clerk-Treasurer of the City of Truth or Consequences, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Commission of the City of Truth or Consequences, New Mexico (the "Governing Body"), constituting the governing body of the Governmental Unit had and taken at a duly called regular meeting held at 405 W. 3rd Street, in Truth or Consequences, New Mexico, on July 24, 2019, at the hour of 9:00 a.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, copies of which are set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the Governmental Unit's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of August, 2019.

TRUTH OR CONSEQUENCES, NEW MEXICO

By: _____
Renee Cantin, City Clerk-Treasurer

[SEAL]

\$2,550,147

LOAN AGREEMENT

dated

August 30, 2019

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

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

LOAN AGREEMENT

THIS LOAN AGREEMENT dated August 30, 2019 is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and the CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

WITNESSETH:

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

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

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of refunding the Refunded Loan and the Improvement Project as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

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

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

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

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the Finance Authority and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the Finance Authority, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

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

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

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

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

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

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

ARTICLE I DEFINITIONS

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

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12, 7-1-6.4 and 7-1-6.15, NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Ordinance.

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

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

“Authorized Officers” means, in the case of the Governmental Unit, Mayor, City Manager and City Clerk-Treasurer, and, in the case of 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.

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

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

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

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

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

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

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

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

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

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

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

“Improvement Project” means the funding of (i) improvements to the Governmental Unit’s existing buildings, (ii) new administration vehicles and (iii) information technology projects to replace servers and computers throughout the offices of the Governmental Unit.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as

supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

“Intercept Agreement” means the Intercept Agreement dated August 30, 2019, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

“Ordinance” means the Governmental Unit Ordinance No. 705 adopted by the Governing Body on July 24, 2019 approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

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

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

“Pledged Revenues” means (i) the amounts of money derived from the gross receipts tax imposed by the State of New Mexico on all persons engaging in business in New Mexico, levied pursuant to Section 7-9-4, NMSA 1978, which (a) are distributed monthly by the Revenue Division of the Taxation and Revenue Department of the State of New Mexico to the Governmental Unit as authorized by Sections 7-1-6.1, 7-1-6.4 and 7-1-6.15, NMSA 1978, and (b) which distributions are to equal the product of (i) the quotient of 1.225% divided by the New Mexico gross receipts tax rate imposed by Section 7-9-4, NMSA 1978, and (ii) such taxes paid by taxpayers to the Revenue Division attributable to business locations within the municipal boundaries of the Governmental Unit and on land outside those boundaries owned by the Governmental Unit, for the month for which the distribution is made, subject to any increase or decrease made pursuant to Section 7-1-6.15, NMSA 1978, and after any disbursements for tax audits, refunds, payments of interest and administrative costs. Pledged Revenues also includes (i) the portion of the gross receipts tax distribution to the Governmental Unit be made pursuant to

Section 7-1-6.46 NMSA 1978, which represents the amount of Pledged Revenues set forth in the sentence above that would have been remitted to the Governmental Unit but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978 and (ii) any similar distributions made to the Governmental Unit in lieu of Pledged Revenues, but Pledged Revenues do not include any similar distributions in lieu of any other local option gross receipts tax revenues.

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

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

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

“Project” means the refunding of the Refunded Loan and the financing of the Improvement Project, both as described on the Term Sheet.

“Refunded Loan” means the Loan Agreement No. PPRF-2246 dated January 23, 2009, as amended April 3, 2009, in the original principal amount of \$2,958,802 from the Finance Authority to the Governmental Unit.

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

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

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

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in

this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

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

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized by the Act to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

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

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Financing and Completion of Project. The Project will consist of the refunding of the Refunded Loan and the financing of the Improvement Project. The Project will be financed and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the financing and completion of the Project and to the use of the Pledged Revenues.

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

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

(i) Loan Agreement Term. The weighted average maturity of 5.517 years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Improvement Project which is _____ years or of the remaining reasonably expected life of the project funded by the Refunded Loan which is _____ years.

(j) Use of Project. During the Loan Agreement Term, the Improvement Project and the project funded by the Refunded Loan will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

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

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

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

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Ordinance, shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and

shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

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

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

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

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

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

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

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement

Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) Pledged Revenues Covenants. Pursuant to Sections 7-1-6.4 and 7-1-6.15, NMSA 1978, as amended, the State collects gross receipts taxes from business locations within the Governmental Unit, on land owned by the State within the exterior boundaries of the Governmental Unit, and outside the exterior boundaries of the Governmental Unit on land owned by the Governmental Unit, and distributes each month to the Governmental Unit an amount equal to the product of the quotient of one and two hundred twenty-five thousandths percent (1.225%) divided by the gross tax rate times the net receipts for the month attributable to the gross receipts taxes from those business locations.

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

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

Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement based upon the Finance Authority's findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is \$26,877, which is less than eighty percent (80%) of the State median household income of \$44,963.

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

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

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

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

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

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

ARTICLE III LOAN AGREEMENT TERM

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

ARTICLE IV LOAN; APPLICATION OF MONEYS

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

- (a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and
- (b) To the Trustee, the amount shown on the Term Sheet as the Loan Agreement Reserve Account deposit shall be deposited in the Governmental Unit's account maintained in the Loan Agreement Reserve Fund by the Trustee pursuant to the Indenture; and
- (c) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof; and
- (d) To the Finance Authority, payment in the amount shown on the Term Sheet as the Processing Fee.

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

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account and the Loan Agreement Reserve Account, such accounts being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan

Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

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

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

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following from the Pledged Revenues received pursuant to the Intercept Agreement from the Governmental Unit, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is

necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is November 1, 2019), and (B) on the first day of each month thereafter, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

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

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

(c) As a second charge and lien on the Pledged Revenues received from the Governmental Unit after deposits in (a) and (b) have been made, the Trustee shall transfer and deposit to the Loan Agreement Reserve Account any amounts necessary to replenish the Loan Agreement Reserve Account to the Loan Agreement Reserve Requirement. Moneys in the Loan Agreement Reserve Account shall be held and administered by the Trustee and shall be used only to prevent deficiencies in the payment of the Principal Component and Interest Component of the Loan Agreement Payments resulting from a failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay debt service requirements on the Loan; provided, that the final two Interest Components and the final Principal Component on the Loan shall be payable from the Loan Agreement Reserve Account. If funds are withdrawn from the Loan Agreement Reserve Account to pay debt service on the Loan, at the direction of the Finance Authority or the Trustee, additional Pledged Revenues shall be deposited into the Loan Agreement Reserve Account in amounts in equal monthly installments sufficient to restore the amount on deposit therein to the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided, that no additional Pledged Revenues shall be intercepted to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Component.

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

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

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

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

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

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

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

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred twenty-five percent (125%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI THE PROJECT

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

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

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the

Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

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

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

ARTICLE VII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

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

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

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

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

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. There is no option to prepay this Loan Agreement in whole or in part, unless as described below.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

ARTICLE IX INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the

Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the Refunding Project or the acquisition or operation of the Improvement Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the Refunding Project or the acquisition or operation of the Improvement Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee 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 Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the

right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

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

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

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

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

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

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

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

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

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

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

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

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

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

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

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, City of Truth or Consequences, 505 Sims Street, Truth or Consequences,

New Mexico 87901, Attention: City Manager; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

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

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

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

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

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

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

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the

same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

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

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

(Signature pages follow)

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on May 23, 2019, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: _____
John Gasparich, Interim Chief Executive Officer

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

By: _____
Suzanne Wood Bruckner

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

By: _____
Daniel C. Opperman
General Counsel

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

[SEAL]

By: _____
Sandra Whitehead, Mayor

ATTEST:

By: _____
Renee Cantin, City Clerk-Treasurer

EXHIBIT "A"

TERM SHEET

New Mexico Finance Authority Loan No. PPRF-4968

Governmental Unit:	City of Truth or Consequences, New Mexico
Project Description:	(i) refund the Loan Agreement No. PPRF-2246 dated January 23, 2009, as amended April 3, 2009, in the original principal amount of \$2,958,802 from the Finance Authority to the Governmental Unit; (ii) make improvements to the Governmental Unit's existing buildings; (iii) purchase new administration vehicles; and (iv) fund information technology projects to replace servers and computers throughout the offices of the Governmental Unit
Loan Agreement Principal Amount:	\$2,550,147
Disadvantaged Funding Amount:	\$228,432
Pledged Revenues:	(i) the amounts of money derived from the gross receipts tax imposed by the State of New Mexico on all persons engaging in business in New Mexico, levied pursuant to Section 7-9-4, NMSA 1978, which (a) are distributed monthly by the Revenue Division of the Taxation and Revenue Department of the State of New Mexico to the Governmental Unit as authorized by Sections 7-1-6.1, 7-1-6.4 and 7-1-6.15, NMSA 1978, and (b) which distributions are to equal the product of (i) the quotient of 1.225% divided by the New Mexico gross receipts tax rate imposed by Section 7-9-4, NMSA 1978, and (ii) such taxes paid by taxpayers to the Revenue Division attributable to business locations within the municipal boundaries of the Governmental Unit and on land outside those boundaries owned by the Governmental Unit, for the month for which the distribution is made, subject to any increase or decrease made pursuant to Section 7-1-6.15, NMSA 1978, and after any disbursements for tax audits, refunds, payments of interest and administrative costs. Pledged Revenues also includes (i) the portion of the gross receipts tax distribution to the Governmental Unit be made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of Pledged Revenues set forth in the sentence above that would have been remitted to the Governmental Unit but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978 and (ii) any similar distributions made to the

Governmental Unit in lieu of Pledged Revenues, but Pledged Revenues do not include any similar distributions in lieu of any other local option gross receipts tax revenues.

Coverage Ratio:	125%
Distributing State Agency:	State of New Mexico Taxation and Revenue Department
Currently Outstanding Parity Obligations:	None
Additional Parity Bonds Test:	125%
Authorizing Legislation:	Ordinance No. _____ adopted on July 24, 2019
Closing Date:	August 30, 2019
Blended Interest Rate:	2.23468%
Funds Received from Refunded Loan:	\$269,553.32 (Debt Service Account) \$18,089.35 (Cash – Debt Servicing)
Program Account Deposits:	\$1,566,646.63 (Refunding of Refunded Loan) \$997,000 (Improvement Project)
Loan Agreement Reserve Account Deposit:	\$255,014.70
Finance Authority Debt Service Account Deposit:	\$2.23
Processing Fee:	\$19,126.11
First Interest Payment Date:	November 1, 2019
First Principal Payment Date:	May 1, 2020
Final Payment Date:	May 1, 2029

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

EXHIBIT "B"

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: \$2,550,147 Loan Agreement by and between the City of Truth or Consequences, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

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

You are hereby authorized to disburse from the Program Account – City of Truth or Consequences, New Mexico (2019 Refunding and New Money Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: PPRF-4968

CLOSING DATE: August 30, 2019

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Truth or Consequences, New Mexico (2019 Refunding and New Money Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Truth or Consequences, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Truth or Consequences, New Mexico, shall, and understands its obligation to, complete the financing of the Project from other legally available funds.

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

DATED: _____

By: _____

Authorized Officer of Borrower

Title: _____

Print Name and Title

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: \$2,550,147 Loan Agreement by and between the City of Truth or Consequences, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

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

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

LOAN NO.: PPRF-4968

CLOSING DATE: August 30, 2019

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

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

DATED: _____

By: _____
Authorized Officer of Governmental Unit

Title: _____
Print Name and Title

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into August 30, 2019, by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "State") under the laws of the State and the CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the "Governmental Unit").

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the refunding of Finance Authority Loan No. PPRF-2246, financing improvements to existing municipal buildings and purchasing new vehicles and IT equipment for the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended (collectively, the "Act"), the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the "Loan Agreement"); and

WHEREAS, the Governmental Unit desires to finance the Project and such financing is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow \$2,550,147 from the Program for the purpose of financing the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Sections 7-1-6.4 and 7-1-6.15, NMSA 1978, as amended, authorize the Governmental Unit to direct that its distribution of State Shared Gross Receipts Tax Revenues (the "Pledged Revenues") from the State Taxation and Revenue Department (the "Distributing State Agency") be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of \$2,550,147 to finance the Project. Pursuant to the Loan Agreement and this Intercept Agreement, the Loan and all Loan Agreement Payments on the Loan made by or on behalf of the Governmental Unit shall be collected by the Finance Authority and remitted to the Trustee. All payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from distributions of the Pledged Revenues pursuant to Sections 7-1-6.4 and 7-1-6.15, NMSA 1978, as amended, ") to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent applicable and to the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Ordinance No. _____, passed and adopted on July 24, 2019 by the Governing Body of the Governmental Unit, which Ordinance is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts. This Intercept 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 6. Further Authorization. The Governmental Unit agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the first distribution of the Pledged Revenues that is to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit distributed in October, 2019.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: _____
John Gasparich, Interim Chief Executive Officer

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

By: _____
Sandra Whitehead, Mayor

(SEAL)

Attest:

By: _____
Renee Cantin, City Clerk-Treasurer

Acknowledged:

By: _____
State Taxation and Revenue Department

Date: _____

5123512.docx

EXHIBIT "A"

INTERCEPT SCHEDULE
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

Payment Dates	Pledged Revenues	Amount
Monthly, beginning October, 2019 through April, 2029	State-Shared Gross Receipts Tax revenues, which consist of: (i) the revenues of the State-Shared Gross Receipts Tax distributed monthly to the Governmental Unit pursuant to Section 7-1-6.4, NMSA 1978 from the New Mexico Department of Taxation and Revenue equal to one and two-hundredths percent (1.225%) of the gross receipts of persons engaging in business within the Governmental Unit, as determined and adjusted under the Gross Receipts Tax Compensating Tax Act, Chapter 7, Article 9 NMSA 1978; and (ii) the portion of the gross receipts tax distribution to the Governmental Unit made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax revenues that would have been remitted to the Governmental Unit but for the deductions (effective January 1, 2005) provided by Sections 7-9-92 and 7-9-93 NMSA 1978 and any similar distributions made to the Governmental unit in lieu of gross receipts tax revenues.	\$ _____



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **E.2**

SUBJECT: Resolution No. 50 18/19 approving the Loan Agreement and closing documents for the refunding of PPRF-1704 and RIP 95-16.

DEPARTMENT: City Manager

DATE SUBMITTED: June 21, 2019

SUBMITTED BY: City Clerk Cantin

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

To establish financing capacity for future capital projects and assets that may not be funded by other sources.

Recommendation:

Approve the Resolution.

Attachments:

- Resolution No. 50 18/19
- Loan Agreement

Fiscal Impact (Finance): Yes

-

Legal Review (City Attorney): Yes

Documents were provided to legal

Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☒ Legal ☐ Other: Click here to enter text.

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. 50 18-19 Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: Click here to enter text.

File Name: E.2 AR Resolution 50 18-19 refunding PPRF-1704

STATE OF NEW MEXICO
CITY OF TRUTH OR CONSEQUENCES
SIERRA COUNTY

The City Commission (the “Governing Body”) of the City of Truth or Consequences, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Governing Body in the City Commission Chambers, 405 W. 3rd Street, in Truth or Consequences, New Mexico being the meeting place of the Governing Body for the regular meeting held on the 26th day of June, 2019, at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Present:

Absent:

Also Present:

Thereupon, there was officially filed with the City Clerk-Treasurer a copy of a proposed resolution in final form.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
RESOLUTION NO. 50 18/19

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF \$500,318 FOR THE PURPOSE OF REFUNDING FINANCE AUTHORITY LOAN NO. PPRF-1704 AND NEW MEXICO ENVIRONMENT DEPARTMENT LOAN NO. RIP 95-16 FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$500,318, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES OF THE GOVERNMENTAL UNIT'S JOINT UTILITY SYSTEM; 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 AGREEMENT.

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

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

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

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

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

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

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

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for

purposes which would cause the Loan Agreement to be deemed a “private activity bond” as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governing Body intends by this Resolution to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO:

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

“Act” means the general laws of the State, Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement, including this Resolution.

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

“Authorized Officers” means the Mayor, City Manager and City Clerk-Treasurer of the Governmental Unit.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

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

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

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

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

“Finance Authority” means the New Mexico Finance Authority.

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

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

“Governing Body” means the City Commission of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Truth or Consequences, New Mexico.

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

Gross Revenues do not include:

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

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

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

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

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

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee.

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

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

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account Deposit on Exhibit “A” to the Loan Agreement, which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

"Parity Obligations" means the Loan Agreement and any other obligations, now 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 the Loan Agreement, including those obligations described on the Term Sheet attached as Exhibit "A" to the Loan Agreement.

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

"Processing Fee" means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on Exhibit "A" to the Loan Agreement.

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

"Project" means the project described in Exhibit "A" to the Loan Agreement.

"Resolution" means this Resolution No. 50 18/19 adopted by the Governing Body on June 26, 2019 approving the Loan Agreement as amended from time to time.

"State" means the State of New Mexico.

"System" means the municipally owned public utility designated as the Governmental Unit's joint water, electric and sanitary sewer utility system consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions enlargements and improvements of or to the joint water, electric and sanitary sewer utility system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the Governmental Unit designated by the Governing Body as part of the joint water, electric and sanitary sewer utility system, whether situated within or without the limits of the Governmental Unit.

"Term Sheet" means Exhibit "A" attached to the Loan Agreement.

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

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Governing Body and officers of the Governmental Unit directed toward the financing of the Project and the execution and delivery of the Loan Agreement are hereby ratified, approved and confirmed.

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

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

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the costs of financing the Project.

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

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

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

F. The Governmental Unit will finance the Project, in whole or in part, with the net proceeds of the Loan.

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

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and financing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of \$500,318, plus interest thereon, and the execution and delivery of the Loan Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the Project; (ii) fund the Loan

Agreement Reserve Account; (iii) pay the Processing Fee; and (iv) make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement shall be in substantially the form of the Loan Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Loan shall be in an original aggregate principal amount of \$500,318, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, beginning on November 1, 2019 at the rates designated in Exhibit "B" to the Loan Agreement.

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

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Resolution and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Resolution or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Resolution, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

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

A. Program Account, Finance Authority Debt Service Account and Loan Agreement Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account, and the Loan Agreement Reserve Account to be held by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account; (ii) the deposit of funds in the amount of the Loan Agreement

Reserve Requirement in the Loan Agreement Reserve Account; and (iii) the payment of the Processing Fee to the Finance Authority, all as set forth in Exhibit "A" to the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account, the Loan Agreement Reserve Account and the Finance Authority Debt Service Account, and the Processing Fee shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of financing the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will finance the Project with all due diligence.

B. Completion of Financing of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that financing of and payment for the Project have been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

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

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

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid directly by the Governmental Unit to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest and other amounts due under the Loan Agreement, including sufficient Pledged Revenues in the Loan Agreement Reserve Account to maintain the Loan Agreement Reserve Requirement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amounts in the Finance Authority Debt Service Account and Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of bonds or obligations subordinate and junior to the Loan

Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

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

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

Section 12. Amendment of Resolution. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Resolution may be supplemented or amended by resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Resolution. This Resolution may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

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

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

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

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk-Treasurer of the Governmental Unit, and the title and general summary of the

subject matter contained in this Resolution (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Resolution shall be in full force and effect thereafter, in accordance with law.

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

(Form of Summary of Resolution for Publication)

City of Truth or Consequences, New Mexico
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. 50 18/19, duly adopted and approved by the Governing Body of the City of Truth or Consequences, New Mexico, on June 26, 2019. A complete copy of the Resolution is available for public inspection during the normal and regular business hours of the City Clerk-Treasurer, 505 Sims Street, Truth or Consequences, New Mexico. The title of the Resolution is:

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
RESOLUTION NO. 50 18/19

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF \$500,318 FOR THE PURPOSE OF REFUNDING FINANCE AUTHORITY LOAN NO. PPRF-1704 AND NEW MEXICO ENVIRONMENT DEPARTMENT LOAN NO. RIP 95-16 FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$500,318, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES OF THE GOVERNMENTAL UNIT'S JOINT UTILITY SYSTEM; 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 AGREEMENT.

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

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED this 26th day of June, 2019.

TRUTH OR CONSEQUENCES, NEW MEXICO

By: _____
Sandra Whitehead, Mayor

[SEAL]

ATTEST:

By: _____
Renee Cantin, City Clerk-Treasurer

Commissioner _____ then moved adoption of the foregoing Resolution,
duly seconded by Commissioner _____.

The motion to adopt said 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 said motion, the
Mayor declared said motion carried and said Resolution adopted, whereupon the Mayor and the
City Clerk-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 on the motion duly made, seconded and unanimously carried, was adjourned.

TRUTH OR CONSEQUENCES, NEW MEXICO

By: _____
Sandra Whitehead, Mayor

[SEAL]

ATTEST:

By: _____
Renee Cantin, City Clerk-Treasurer

EXHIBIT “A”

Meeting Agenda
of the June 26, 2019
City Commission Meeting

(See attached)

STATE OF NEW MEXICO
TRUTH OR CONSEQUENCES
SIERRA COUNTY

I, Renee Cantin, the duly qualified and acting City Clerk-Treasurer of the City of Truth or Consequences, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Commission of the City of Truth or Consequences, New Mexico (the "Governing Body"), constituting the governing body of the Governmental Unit had and taken at a duly called regular meeting held at 405 W. 3rd Street, in Truth or Consequences, New Mexico, on June 26, 2019, at the hour of 9:00 a.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the Governmental Unit's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of August, 2019.

TRUTH OR CONSEQUENCES, NEW MEXICO

By: _____
Renee Cantin, City Clerk-Treasurer

[SEAL]

\$500,318

LOAN AGREEMENT

dated

August 2, 2019

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

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

LOAN AGREEMENT

THIS LOAN AGREEMENT dated August 2, 2019 is entered into by and between the NEW MEXICO FINANCE AUTHORITY ("Finance Authority"), and the CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

WITNESSETH:

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

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

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of refunding the Refunded Loans, as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, the Governmental Unit is permitted and authorized to pay the Loan Agreement Payments through the Net Revenues of the System (the "Pledged Revenues"); and

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

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

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

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

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not

constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

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

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

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

ARTICLE I DEFINITIONS

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

“Act” means the general laws of the State, Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement, including the Resolution.

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

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

“Authorized Officers” means, in the case of the Governmental Unit, the Mayor, City Manager and the City Clerk-Treasurer, and, in the case of the Finance Authority, the Chairperson, Vice-Chairperson 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.

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

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

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

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

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

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

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

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

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

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

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

Gross Revenues do not include:

- (a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;
- (b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and
- (c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption, and except as provided in Section 2.1(ee) of this Loan Agreement.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as

supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

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

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

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

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

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

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

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

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

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of (i) ten percent (10%) of the Loan Agreement Principal Amount, (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement, or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

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

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

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

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

- (a) Legal and overhead expenses of the various Governmental Unit departments directly related and reasonably allocable to the administration of the System;
- (b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;
- (c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;
- (d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;
- (e) The costs of audits of the books and accounts of the System;
- (f) Amounts required to be deposited in any rebate fund;
- (g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and
- (h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

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

“PPRF-1704 Loan” means the Loan Agreement No. PPRF-1704 dated September 20, 2004 in the original principal amount of \$1,625,693 from the Finance Authority to the Governmental Unit.

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

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

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

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

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

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

“Project” means the projects described on the Term Sheet.

“RIP 95-16 Loan” means the Loan Agreement No. RIP 95-16 dated July 26, 1996, as amended, in the amended principal amount of \$504,482.91 from the New Mexico Environment Department to the Governmental Unit.

“Refunded Loans” means the PPRF-1704 Loan and the RIP 95-16 Loan.

“Resolution” means the Governmental Unit Resolution No. 50 18/19, adopted by the Governing Body on June 26, 2019 approving this Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“Service Area” means the area served by the System, whether situated within or without the limits of the Governmental Unit.

“System” means the municipally owned public utility designated as the Governmental Unit’s joint water, electric and sanitary sewer utility system consisting of all properties, real,

personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions enlargements and improvements of or to the joint water, electric and sanitary sewer utility system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the Governmental Unit designated by the Governing Body as part of the joint water, electric and sanitary sewer utility system, whether situated within or without the limits of the Governmental Unit.

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

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

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

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

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

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

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

(c) Authorization of Loan Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is

authorized to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement and the other documents related to the transaction.

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

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Financing and Completion of Project. The Project will consist of refunding the Refunded Loans. The Project will be financed and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the financing and completion of the Project and to the use of the Pledged Revenues.

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

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

(i) Loan Agreement Term. The weighted average maturity of 2.654 years of the Loan Agreement does not exceed 120% of the remaining reasonably expected life of the projects financed with the proceeds of the Refunded Loans which is at least _____ years.

(j) Use of Project. During the Loan Agreement Term, the projects financed with the proceeds of the Refunded Loans will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the

Program Account and used to finance the Project shall be used in the trade or business of a person who is not a “governmental unit” within the meaning of Sections 103 and 141(b)(6) of the Code.

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

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

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

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues.

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

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

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

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably

expected to equal or exceed, one hundred thirty percent (130%) of the maximum Aggregate Annual Debt Service Requirement.

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

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

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

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) Use Charges. The Governmental Unit has established and will continue to charge reasonable rates for services rendered by the Governmental Unit for use of the System taking into account the cost and value of the System, Operation and Maintenance Expenses, proper allowances for depreciation, and the amounts necessary to make debt services payments from Net Revenues of the System. There shall be charged against users, rates and amounts which shall be

increased from time to time, if necessary, and which shall produce Gross Revenues sufficient to pay the annual Operation and Maintenance Expenses and one hundred thirty percent (130%) of the Aggregate Annual Debt Service Requirement payable during the then current Fiscal Year.

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

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

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

(bb) Audits. The Governmental Unit further agrees that, except where the State Auditor of the State performs the audit or where the due date for the audit has been postponed as may otherwise be required by the State Auditor or any other State office or agency with appropriate authority, the Governmental Unit will, within one hundred eighty (180) days following the close of each Fiscal Year, cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant. Each audit will be available for inspection by the Finance Authority. The Governmental Unit will provide the Finance Authority with a copy of each audit promptly upon the request of the Finance Authority. All expenses incurred in the making of the audits and reports required by this Section shall be regarded and paid as an Operation and Maintenance Expense.

(cc) Billing Procedure. Bills for joint water and sanitary sewer utility services or facilities, or any combination, furnished by or through the System, shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the Governmental Unit. If permitted by law, if a bill is not paid within the period of time required by such ordinance, water, electric and sanitary sewer utility services shall be discontinued as required by such ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Water, electric and sanitary sewer utility services may be billed jointly with each other, provided that each such joint bill shall show separately the water, electric and sanitary sewer utility charges.

(dd) Charges and Liens Upon System. The Governmental Unit will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the System and will observe and comply

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

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

(ff) Alienating System. The Governmental Unit will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the System, or any part thereof, including any and all extensions and additions that may be made thereto, until this Loan Agreement shall have been paid in full, including the Principal Component and the Interest Component, except that the Governmental Unit may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of this Loan Agreement, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues of the System as provided herein.

(gg) Competent Management. The Governmental Unit shall employ or contract for experienced and competent personnel to manage the System.

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

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

(jj) Completion Bonds. In order to insure the completion of the Project, the Governmental Unit will require that the contractor to whom is given any contract for construction appertaining to the Project supply a completion bond or bonds satisfactory to the Governmental Unit, and that any sum or sums derived from said completion 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.

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

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

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

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

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

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

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

ARTICLE III LOAN AGREEMENT TERM

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

ARTICLE IV LOAN; APPLICATION OF MONEYS

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

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

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

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

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

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

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority;

(iii) the Program Account and the Loan Agreement Reserve Account, such accounts being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and the Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

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

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

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following from the Pledged Revenues received from the Governmental Unit, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. Monthly, (A) beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is November

1, 2019), and (B) on the first day of each month thereafter, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

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

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

(c) As a second charge and lien on the Pledged Revenues received from the Governmental Unit after the deposits in (a) and (b) have been made, the Trustee shall transfer and deposit to the Loan Agreement Reserve Account any amounts necessary to fully replenish the Loan Agreement Reserve Account to the Loan Agreement Reserve Requirement. Moneys in the Loan Agreement Reserve Account shall be held and administered by the Trustee and shall be used only to prevent deficiencies in the payment of the Principal Component and Interest Component of the Loan Agreement Payments resulting from a failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay debt service requirements on the Loan; provided, that the final two Interest Components and the final Principal Component on the Loan shall be payable, from the Loan Agreement Reserve Account. If funds are withdrawn from the Loan Agreement Reserve Account to pay debt service on the Loan, at the direction of the Finance Authority or the Trustee, the Governmental Unit shall pay to the Trustee additional Pledged Revenues which shall be deposited into the Loan Agreement Reserve Account in amounts in equal monthly installments sufficient to restore the amount on deposit therein to the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided, that no additional Pledged Revenues shall be deposited to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Component.

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

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

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address

designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

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

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI THE PROJECT

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

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

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

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

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

ARTICLE VII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

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

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

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

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

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. There is no option to prepay this Loan Agreement in whole or in part, unless as described below.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

ARTICLE IX INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the operation of the projects financed by the Refunded Loans during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the operation of the projects financed by the Refunded Loans in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

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

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

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, City of Truth or Consequences, 505 Sims Street, Truth or Consequences, New Mexico 87901, Attention: City Manager; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 1775 Sherman Street, Suite 2775, Denver, Colorado 80203. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

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

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

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee,

director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

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

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

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

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

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

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

[Signature pages follow]

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on May 23, 2019, has executed this Loan Agreement, in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: _____
John Gasparich, Interim Chief Executive Officer

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

Sutin, Thayer & Browne A Professional Corporation
As Loan Counsel

By: _____
Suzanne Wood Bruckner

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

Daniel C. Opperman, General Counsel

TRUTH OR CONSEQUENCES, NEW MEXICO

[SEAL]

By: _____
Sandra Whitehead, Mayor

ATTEST:

By: _____
Renee Cantin, City Clerk-Treasurer

EXHIBIT "A"

TERM SHEET

Finance Authority Loan No. PPRF-4967

Governmental Unit:	Truth or Consequences, New Mexico
Project Description:	Refund the Loan Agreement No. PPRF-1704 dated September 20, 2004 in the original principal amount of \$1,625,693 from the Finance Authority to the Governmental Unit and the Loan Agreement No. RIP 95-16 dated July 26, 1996, as amended, in the amended principal amount of \$504,482.91 from the New Mexico Environment Department to the Governmental Unit
Loan Agreement Principal Amount:	\$500,318
Disadvantaged Funding Amount:	\$0
Pledged Revenues:	The Net Revenues of the System
Coverage Ratio:	130%
Currently Outstanding Parity Obligations:	Finance Authority Loan No. DW-0442, maturing in 2021; Finance Authority Loan No. PPRF-2737, maturing in 2033; Finance Authority Loan No. PPRF-2613, maturing in 2032.
Additional Parity Bonds Test:	130%
Authorizing Legislation:	Resolution No. 50 18/19, adopted on June 26, 2019
Closing Date:	August 2, 2019
Blended Interest Rate:	1.427413%
Refunded Loan Contributions:	\$128,242.31 from PPRF-1704 Loan Debt Service Reserve Fund \$54,458.77 from PPRF-1704 Loan Debt Service Account
Program Account Deposit:	\$629,234.47 (\$531,847.89 for PPRF-1704; \$97,386.58 for RIP 95-16)
Loan Agreement Reserve Account Deposit:	\$50,031.80
Processing Fee:	\$3,752.39
Finance Authority Debt Service Account Deposit:	\$0.42

First Interest Payment Date: November 1, 2019

First Principal Payment Date: May 1, 2020

Final Payment Date: May 1, 2024

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A
LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE
AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

EXHIBIT “B”

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: \$500,318 Loan Agreement by and between the City of Truth or Consequences, New Mexico, and the Finance Authority (the "Loan Agreement").

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

You are hereby authorized to disburse from the Program Account – Truth or Consequences (2019 Refunding Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO. PPRF-4967

CLOSING DATE: AUGUST 2, 2019

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

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

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Truth or Consequences, New Mexico, is not in breach of any of the covenants contained therein.

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

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

DATED: _____

By: _____

Authorized Officer

Title: _____

(Print Name and Title)

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: \$500,318 Loan Agreement by and between the City of Truth or Consequences, New Mexico, and the Finance Authority (the "Loan Agreement").

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

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

LOAN NO.: PPRF-4967

CLOSING DATE: August 2, 2019

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

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

DATED: _____

By: _____
Authorized Officer of Governmental Unit

Title: _____
Print Name and Title



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **E.3**

SUBJECT: Resolution No. 47 18/19 Authorizing Acceptance of Colonias Infrastructure Fund Project No. 4927-CIF; Water Infrastructure Project, T or C Municipal Water System PER From New Mexico Finance Authority

DEPARTMENT: Community Development

DATE SUBMITTED: June 18, 2019

SUBMITTED BY: Traci Burnette

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

City Commission adopted Resolution No. 17 18/19 authorizing and approving submission of a completed application for financial assistance and project approval to the NMFA for the Colonias Infrastructure Fund for a complete T or C municipal water system PER on 10/24/2018. NMFA has recommended and approved the funding award of a 10% loan in the amount of \$9,000.00, and a 90% grant in the amount of \$81,000.00 and a cash match is required as part of the funding structure in the amount of \$10,000.00

Recommendation:

Approve Resolution No. 47 18/19

Attachments:

- Resolution 47 18/19
- NMFA Award Letter
- Monthly Drawdown Schedule

Fiscal Impact (Finance): Yes

Project has been reviewed and approved at Finance Level

Legal Review (City Attorney): Yes

Resolution and documents were provided to Legal.

Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☒ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. 47 18/19 Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: E.3 AR Resolution 47 18-19 for CIF



May 24, 2019

Via First Class Mail and Email

City of Truth or Consequences
Attn: Sandra Whitehead, Mayor
505 Sims St
Truth or Consequences, NM 87901
sandra.whitehead@torcnm.org

RE: Colonias Infrastructure Fund Project No. 4927-CIF; Water Infrastructure Project,
TorC Municipal Water System PER

Dear Mayor Whitehead:

The Board of Directors of the New Mexico Finance Authority ("NMFA") met on May 23, 2019, to approve the final terms, structure and conditions of Colonias Infrastructure Funding in the amount of \$90,000 to the City of Truth or Consequences ("City") for its Water Infrastructure Project. This action is a result of the Colonias Infrastructure Board recommendations approved on April 30, 2019.

The approved funding structure consists of a 10% loan in the amount of \$9,000, and a 90% grant in the amount of \$81,000. The loan component is a 20-year term at 0% interest rate. In addition, a match is required as part of the funding structure. The loan and grant are to be used by the City for the Planning of TorC Municipal Water System PER.

To secure the funding agreement for the award, the City must submit the following Readiness to Proceed items **no later than September 10, 2019** by email only to Colonias@nmfa.net.

SUBMISSION OF READINESS TO PROCEED ITEMS

This funding is conditional and the City must submit the following Readiness to Proceed ("RTP") items, as applicable, before the loan/grant agreement can be scheduled to close:

1. A monthly draw-down schedule of project expenditures;
2. Verification of match component in the amount of \$10,000.
Items that may be submitted to fulfill this include signed funding agreements with local or federal entities (no state funds may be used for match), minutes of the City's meeting in which action was taken to authorize the match component, and copy of line-item budget showing designation of local funds for match;
3. All contingencies must be satisfied **no later September 10, 2019**; and
4. Any additional information requested by the NMFA Board or Colonias Infrastructure Board.

City of Truth or Consequences
May 24, 2019
Page 2

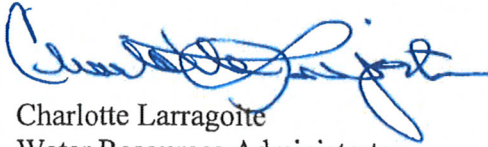
Compliance with the RTP process is required to secure the funding for this project. To prevent any delays in securing the funding, please begin preparing the RTP information upon receipt of this notice. When all of the RTP criteria have been submitted, outside counsel for NMFA will draft the funding agreement and will contact the City directly for closing arrangements.

As part of the technical oversight of Colonias funds, all project documentation (design and construction plans, contracts, bids, etc.), must be reviewed and approved by the New Mexico Environment Department, Construction Programs Bureau. Please contact Steven Deal, Project Manager, (575) 915-1108, steven.deal@state.nm.us, to confirm technical requirements for this project.

The New Mexico Finance Authority will provide information and training for entities whose projects were awarded funding in the 2019 Colonias Infrastructure Board application cycle. The purpose of the training is to provide detailed information for submittal of 2019 readiness to proceed items, requests for reimbursement, quarterly project status reports, and other project information. Please see the enclosed flyer for dates and location.

Please contact me at Colonias@nmfa.net or (505) 992-9655 if you have any questions regarding the RTP information.

Sincerely,



Charlotte Larragoite
Water Resources Administrator

cc: Morris Madrid, City Manager, mmadrid@torcnm.org
Traci Burnette, Grant/Projects Coordinator,
Melissa Torres, Finance Director, mtorres@torcnm.org



RESOLUTION NO. 47 18/19

AUTHORIZING ACCEPTANCE OF COLONIAS INFRASTRUCTURE FUND PROJECT NO. 4927-CIF; WATER INFRASTRUCTURE PROJECT, T OR C MUNICIPAL WATER SYSTEM PER FROM NEW MEXICO FINANCE AUTHORITY

WHEREAS, the City Commission of the City of Truth or Consequences adopted Resolution No. 17 18/19 Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to The New Mexico Finance Authority for The Colonias Infrastructure Fund for a Complete T or C Municipal Water System Improvements Plan; and

WHEREAS, the New Mexico Finance Authority (" Authority") has recommended and approved the funding award; and

WHEREAS, the approved funding structure consists of a 10% loan in the amount of \$9,000.00, and a 90% grant in the amount of \$81,000.;nd;

WHEREAS, a match is required as part of the funding structure.

NOW THEREFORE, BE IT RESOLVED THAT, the Governing Body of the City of Truth or Consequences, New Mexico, hereby accepts the NMFA CIF award of 10% loan in the amount of \$9,000.00, and a 90% grant in the amount of \$81,000.00 and approves the required cash match in the amount of \$10,000.00; and approves that City Manager Morris Madrid is hereby designated as the City's representative on behalf of the NMFA Colonias Infrastructure Fund Project No. 4927-CIF and is authorized as signatory authority and has designated the City Clerk as signatory authority in his absence and shall work with staff to execute, sign and submit required documentation.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2019.

Sandra Whitehead, Mayor

ATTEST:

Renee L. Cantin, City Clerk -Treasurer



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **E.4**

SUBJECT: Resolution No. 48 18/19 Designating Signatory Authority For New Mexico Finance Authority Drinking Water State Revolving Loan Fund Related Documentation

DEPARTMENT: Community Development

DATE SUBMITTED: June 18, 2019

SUBMITTED BY: Traci Burnette

WHO WILL PRESENT THE ITEM: Morris Madrid

Summary/Background:

The City of T or C has applied for and received grant/loan funds from NMFA DWSRLF for Water Infrastructure Improvements and will be required to execute various documents related to the specific project.

Recommendation:

Approve Resolution 48 18/19

Attachments:

- Resolution No. 48 18/19
- -

Fiscal Impact (Finance): Yes

Legal Review (City Attorney): Yes

City Attorney Rubin was included in the distribution of draft documents.

Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. 48 18/19 Ordinance No. -

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: [Click here to enter text.](#)



RESOLUTION NO. 48 18/19

**DESIGNATING SIGNATORY AUTHORITY FOR NEW MEXICO FINANCE
AUTHORITY DRINKING WATER STATE REVOLVING LOAN FUND RELATED
DOCUMENTATION**

WHEREAS, The City of Truth or Consequences is in need of funds for Infrastructure Improvements;

WHEREAS, The City of Truth or Consequences has applied for and received grant/loan funds from New Mexico Finance Authority Drinking Water State Revolving Loan Fund for Infrastructure Improvements.

WHEREAS, the City of Truth or Consequences is required to execute New Mexico Finance Authority Drinking Water State Revolving Loan Fund project specific documentation including but not limited to pay applications, reimbursement requests, change orders and other project related documents.

NOW, THEREFORE, BE IT RESOLVED THAT, the Governing Body of the City of Truth or Consequences, New Mexico, approves that City Manager Morris Madrid is hereby designated as the City's representative on behalf of the New Mexico Finance Authority Drinking Water State Revolving Loan Fund Project and is authorized as signatory authority and has designated the City Clerk as signatory authority in his absence and shall work with staff to execute, sign and submit required documentation.

PASSED, APPROVED AND ADOPTED this 26th day of June, 2019.

Sandra Whitehead, Mayor

ATTEST:

Renee Cantin, City Clerk-Treasurer



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **E.5**

SUBJECT: Resolution 49 18/19 Budget Adjustments

DEPARTMENT: Finance

DATE SUBMITTED: June 20, 2019

SUBMITTED BY: Morris Madrid, City Manager

WHO WILL PRESENT THE ITEM: City Manager

Summary/Background:

Reconciling Budget Adjustments request (based on Chapter 6, Article 6 NM Statue) needed for increased expenses as listed below.

Recommendation:

See attached document.

Attachments:

- Resolution
- Schedule of Adjustment

Fiscal Impact (Finance): No

Legal Review (City Attorney): Yes

Resolution

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☐ Legal ☐ Other: Click here to enter text.

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: Click here to enter a date. Referred To: Click here to enter text.

☐ Approved ☐ Denied ☐ Other: Click here to enter text.

File Name:



**State of New Mexico
City of Truth or Consequences
RESOLUTION NO. 49 18/19**

**A RESOLUTION REQUESTING FINAL BUDGET
ADJUSTMENTS FOR FISCAL YEAR 2018-2019.**

WHEREAS, the final budget for was approved by the City Commission of the City of Truth or Consequences, New Mexico, pursuant to Chapter 6, Article 76 NMSA 1978; and

WHEREAS, said budget was adjusted on the basis of need and through cooperation with all user departments, other department supervisors, and elected officials; and

WHEREAS, the official meeting for the review of said documents was duly advertised in compliance with the State Open Meetings Act; and

WHEREAS, it is the majority opinion of the City Commission that the adjusted budget meets the requirements as currently determined for Fiscal Year 2018-2019.

NOW THEREFORE, BE IT RESOLVED that the City Commission of the City of Truth or Consequences, State of New Mexico hereby adopts the final budget adjustment as presented and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

PASSED, ADOPTED AND APPROVED this 26^h day of June, 2019.

Sandra Whitehead, Mayor

ATTEST:

Reneé L. Cantin, CMC, City Clerk-Treasurer

Close Federal Seizure Share Bank Account - Zero Balance

Close LEDA Bank Account - Zero Balance

Close Recreation Bank Account - Transfer Balance to General Fund

217-1703-49930	\$	19,210	Transfer Out
101-1099-39935	\$	19,210	Transfer In

Close Veterans Wall Perpetual Care Bank Account - Transfer Balance to Veteran's Wall

293-5103-49930	\$	13,692	Transfer Out
303-4703-39935	\$	13,692	Transfer In

Close PD Confidential Bank Account - Transfer Balance to PD Donations Account

297-2203-49930	\$	1,695	Transfer Out
298-2103-39935	\$	1,695	Transfer In

Close Senior Grant Bank Account - Transfer Balance to General Fund & Street

304-4903-49930	\$	68,170	Transfer Out
101-1099-39935	\$	45,670	Transfer In
216-4503-39935	\$	22,500	Transfer In

Close Capital Improvement General Bank Account - Transfer Balance to General Fund

305-6003-49930	\$	68	Transfer Out
101-1099-39935	\$	68	Transfer In

Close Joint Utility Emergency Bank Account - Transfer Balance to Emergency Repair Reserve Account

310-8003-49930	\$	62,439	Transfer Out
316-9103-39935	\$	62,439	Transfer In

Close R&R Water Bank Account - Transfer Balance to Emergency Repair Reserve Account

313-8503-49930	\$	1,887	Transfer Out
316-9103-39935	\$	1,887	Transfer In

Transfer Turner Enterprises Donation for McAdoo Street Project to Correct Account (\$26,000 Deposited 6/15/2018)

101-1099-49930	\$	26,000.00	Transfer Out
216-4503-39935	\$	26,000.00	Transfer In

Increase Revenue & Expense Grant Line items in State Fire for Fire Protection Grant that was awarded FY 18/19

209-1603-38387	\$	79,820.00	Rev: Grant Council
209-1603-60815	\$	79,820.00	EXP: Grant Council

Correction to Resolution No. 18 18/19 CDBG needs to have Revenue increase to balance our revenues received and so DFA will approve

314-8603-31397	\$	176,342.00	Rev: WW Manhole Rehab
314-8603-60841	\$	(150,000.00)	EXP: Construction Costs (CDBG Grant)
314-8603-49930	\$	326,342.00	Transfer Out
504-3803-39935	\$	276,342.00	Transfer In
506-4005-39935	\$	50,000.00	Transfer In

Increase Expense from ending cash Balance

293-5103-44810 \$ 200.00 EXP: Columbarium Exp

Increase Revenue & Expense for USDA Grant - Police Vehicles

296-2403-31375 \$ 89,500.00 Rev: Federal Grants/Loans

296-2403-80845 \$ 103,092.00 EXP: Other Capital Purchases

Increase Expense from ending cash balance- Legal Settlement

301-3503-45607 \$ 30,000.00 EXP: Settlements

Decrease Electrical Construction Transfer In & Expense -Cielo Vista & Substation Project paid from Electric Budget

302-4603-39935 \$ (420,000.00) Transfer In

302-4603-80810 \$ (420,000.00) EXP: Other Capital Purchases

Increase Capital Improvement General Fund Expenses

305-6003-43815 \$ 6,814.00 EXP: Software Lic/Software Update

305-6003-60820 \$ 1,382.00 EXP: Animal Shelter STB Grant

Increase Revenue & Expense

312-8403-31393 \$ 146,761.00 Rev: Airport Fuel Farm Grant

312-8403-60403 \$ 22,767.00 EXP: Taxiway A Pavement

312-8403-60599 \$ 59,382.00 EXP: Airport Fuel Farm Grant

Increase Electric Expenses from ending cash balance Cielo Vista & Substation Project

503-3702-80845 \$ 323,026.00 EXP: Other Capital Purchases

Increase Airport Expense from ending cash balance

509-4403-48599 \$ 8,300.00 EXP: Other Contractual Services



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **F.1**

SUBJECT: Re-appointment of Sid Bryan, Cary (Jagger) Gustin, Andy Underwood, and Eduardo Alicea to the Public Arts Board.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: June 20, 2019

SUBMITTED BY: Renee Cantin, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: Renee Cantin, Clerk-Treasurer

Summary/Background:

On June 11, 2019 the Public Arts Board unanimously voted to recommend the re-appointment of Sid Bryan, Cary (Jagger) Gustin, Andy Underwood, and Eduardo Alicea to serve another term on the Public Arts Board.

Recommendation:

Re-appointment of Sid Bryan, Cary (Jagger) Gustin, Andy Underwood, and Eduardo Alicea to the Public Arts Board.

Attachments:

- Applications
- [Click here to enter text.](#)

Fiscal Impact (Finance): Choose an item.

[Click here to enter text.](#)

Legal Review (City Attorney): Choose an item.

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. [Click here to enter text.](#)

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: CC Agendas 2019/06-26-2019/ Re-appointment to PAB



City of Truth or Consequences City Board Application

Please type or print legibly.

Name: Sidney S. Bryan
Address: 108 Main St
Tor C, Nm 87901
Phone: 505-690-4321 Cell: _____
E-mail: _____

I am interested in serving as a member of the _____ **Public Art**
Board.

My qualifications are:

I am the owner of the Pelican Spa Hotel
with 32 units. I also own Grapes Gallery.
I am currently the Tourism Representative
on the Board.

Reason why you are interested in serving on this Board:

I am in a good position to represent
tourism

Additional Comments:

I have lived in the commercial district
of downtown Tor C for 22 years.

Signature: Sidney S. Bryan Date: 6/11/2019



City of Truth or Consequences City Board Application

Name: CARY "JAgger" GUSTIN
Address: 203 MAIN street
TORC, NEW MEXICO 87901
Phone: N/A Cell: 575-312-2050
E-mail: TAILORHANS3@YAHOO.COM

I am interested in serving as a member of the Public Art
Board.

My qualifications are:

- Life long Resident of TORC
- Very familiar with city, Sienna County, Village of Williamsburg and Elephant Butte officials
- Board of Directors experience - CHAMBAUT COMMART, MAIN STREET TORC, ARTS COUNCIL, Sienna County Lodging Tax
- Serving as film liaison to NM Film office for TORC/Sienna city

Reason why you are interested in serving on this Board:

FAMILIAR WITH AREA ARTISTS, GALLERIES, ART STUDIOS
WORKED WITH LOCAL PUBLIC ART PROJECTS

Additional Comments:

MY BOARD SEAT IS AUTOMATIC WITH APPOINTMENT
FROM SIENNA COUNTY ARTS COUNCIL BOARD OF DIRECTORS
YEARLY

Signature: Cary Gustin Date: JUNE 11, 2019



City of Truth or Consequences City Board Application

Please type or print legibly.

Name: Andy Underwood
Address: P.O. Box 31
T.O.C. N.M.
Phone: _____ Cell: 575-740-7158
E-mail: clillwood11c@gmail.com

I am interested in serving as a member of the
Board.

Public Art

My qualifications are:

I have served last year on this board
as a rep for the business community. I think
my experience as a commercial contractor will be
valuable to this board.

Reason why you are interested in serving on this Board:

Keeping public art safe & code compliant

Additional Comments:

Signature: Sh Date: 6-11-2019



City of Truth or Consequences City Board Application

Please type or print legibly.

Name: **Eduardo Alicea**

Address: **110 N. Broadway Avenue**

Truth or Consequences, NM 87901

Phone: **575-894-0572**

Cell:

E-mail: **riobravofa@gmail.com**

I am interested in serving as a member of the _____ **Public Art**
Board.

My qualifications are:

**Art Degree, Gallery Owner, Former Art Teacher, Dealing with the
local Art Community for 20 years.**

Reason why you are interested in serving on this Board:

To help improve The community through the arts.

Additional Comments:

Signature: _____

Date: _____

7 June, 2019



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: June 26, 2019

Agenda Item #: **F.2**

SUBJECT: MainStreet Truth or Consequences MOU extension

DEPARTMENT: Clerk's Office

DATE SUBMITTED: June 19, 2019

SUBMITTED BY: Linda DeMarino

WHO WILL PRESENT THE ITEM: Renee Cantin, Clerk-Treasurer

Summary/Background:

The current contract expires on June 30, 2019. We are requesting to extend the MOU to June 30, 2020.

Recommendation:

Approve the extension of contract.

Attachments:

- Extension Agreement.

Fiscal Impact (Finance): No

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☒ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: CC Agendas 2019/06-26-2019/AF-MainStreet Extension Agreement



Biennial Memorandum of Understanding (MOU)
July 1, 2017 – June 30, 2019 Extension Agreement

The National Main Street Center, Inc, (NMSC), (the licensing and accreditation organization of the New Mexico MainStreet Coordinating Program and sub-licenser of local Main Street America programs), is in the process of revising both its National Accreditation Standards and assessment process. This amendment is to extend the current period of the MOU already executed for the period of July 1, 2017 through June 30, 2019 while the NMSC finalizes the new accreditation process. This extension will ensure technical assistance, services and resources remain available to local affiliates. The current assessment and National Accreditation standards will remain the same for both this year's assessment process in the fall of 2019 and the assessment for fall of 2020. A new MOU will be developed next spring based once the new NMSC assessment and Accreditation criteria are instituted.

Amended and active, upon full execution through
June 30, 2020

Between

New Mexico MainStreet Program,

The City of Truth or Consequences and MainStreet Truth or Consequences

Restatement of Purpose of MOU

The state of New Mexico's Economic Development Department seeks to increase the number of jobs and businesses, sustain and expand existing businesses, mitigate commercial leakage, support local entrepreneurs in start-ups, and improve property values within traditional and historic commercial districts. To that end, it has dedicated resources, professional assistance and services to partnering municipalities and a local non-profit organization representing stakeholders within the designated commercial district through the New Mexico MainStreet, New Mexico Arts & Cultural District, Frontier Communities Initiative and Historic Theaters Initiative programs. The partners of this MOU agree to dedicate collaborative resources, adopt local governing body economic growth and revitalization tools, and establish economic development

funding for operations and program implementation to restore economic vitality within the MainStreet economic redevelopment district.

New Mexico MainStreet (NMMS) is a designated "Main Street America Coordinating Program" of the National Main Street Center, Inc. (NMSC), a program of the National Trust for Historic Preservation. The New Mexico Economic Development Department (NMEDD) is licensed and accredited annually to administer the NMSC's *Main Street Four-Point Approach*® downtown revitalization. It does so through NMSC's "Economic Transformation Strategies." The New Mexico MainStreet (NMMS) program is an economic development partnership program with local, eligible communities. NMMS, by New Mexico State Statute (3-60B-1 to 3-60B-4 NMSA 1978, as amended 2013), is authorized to select programs to participate in the Accelerator Process based on the standards and principles set forth by the NMSC and when legislative appropriation allows. Local partners (the local revitalization organization and the local governing body), join their resources (human, social and financial) to directly support the economic development of the district.

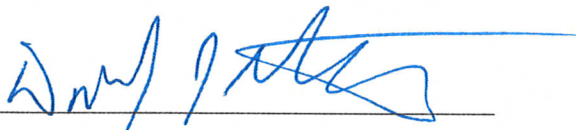
As a NMSC Main Street America Coordinating Program, NMMS provides local designated state MainStreet organizations, revitalization partners and local governing body partners with resources, training, and technical services that enhance local culture and heritage, and build the economic vitality of each participating community's downtown, village plaza, town center, courthouse square, historic commercial corridor or traditional neighborhood central business district.

The local government partner (municipal, county or tribal government) financially supports the work of community economic development partnership within the dedicated MainStreet district for both operations and program implementation through a services contract with the local, state-designated MainStreet organization.

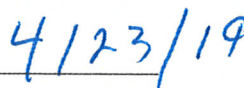
The local MainStreet organization is an economic development organization comprised of downtown stakeholders, whose programs, projects, and activities enhance the local downtown economy and contribute to the quality of life of its citizens. The organization builds local partnerships to leverage resources and buy-in for the revitalization of the district.

Therefore, based upon the foregoing, the existing MOU (with effective dates of July 1, 2017 through June 30, 2019) is extended until June 30, 2020.

As agreed to by:



New Mexico MainStreet Director



Date

Chair/President of local MainStreet Program

Date

Local Government Partner (Mayor, Manager)

Date