

FIRST AMENDMENT

to

\$358,000

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

Dated

June 7, 2013

By and Among the

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

and the

**COUNTY OF SANTA FE, NEW MEXICO
as Borrower/Grantee**

Finance Authority Grant No. 257-WTB

**Date of First Amendment:
June 3, 2016**

FIRST AMENDMENT TO LOAN/GRANT AGREEMENT

THIS FIRST AMENDMENT TO THE WATER PROJECT FUND LOAN/GRANT AGREEMENT (the "First Amendment") dated June 3, 2016, is made and entered into by and among the **NEW MEXICO WATER TRUST BOARD** (the "Water Trust Board") and the **NEW MEXICO FINANCE AUTHORITY** (the "Finance Authority") (collectively, the "Lenders/Grantors"), and the **COUNTY OF SANTA FE**, New Mexico (the "Borrower/Grantee").

WITNESSETH:

WHEREAS, the Water Trust Board is a public body duly organized and created under and pursuant to the laws of the State of New Mexico (the "State"), particularly NMSA 1978, §§ 72-4A-1 through 72-4A-10, as amended; and

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

WHEREAS, the Borrower/Grantee, is a legally and regularly created, established, organized and existing county under the general laws of the State and more specifically, Section 4-62-1 through 4-62-10 NMSA 1978, as amended, and is a qualifying entity under the Act and is qualified for financial assistance as defined by the Board Rules; and

WHEREAS, on June 7, 2013, the Lenders/Grantors and the Borrower/Grantee entered into a Water Project Fund Loan/Grant Agreement (the "Loan/Grant Agreement") under which the Lenders/Grantors granted to the Borrower/Grantee and the Borrower/Grantee accepted from the Lenders/Grantors a loan in the amount of \$35,800 and a grant in the amount of \$322,200, for a total of \$358,000 (the "Loan/Grant Amount"), subject to the terms and conditions set forth in the Loan/Grant Agreement; and

WHEREAS, under the terms of the Loan/Grant Agreement, the Loan/Grant Amount was to be expended no later than June 7, 2016, that being the date that was three (3) years after the Effective Date of the Loan/Grant Agreement; and

WHEREAS, a staff shortfall and turnover as well as unanticipated easements delayed the design portion of the Project, and, therefore, the Project could not be completed and the Loan/Grant Amount could not be expended by June 7, 2016; and

WHEREAS, there is \$314,508.19 ("Unspent Proceeds") remaining of the Loan/Grant Amount as of the date of this First Amendment; and

WHEREAS, the Borrower/Grantee has requested that the Lenders/Grantors authorize that the time for completion of the Project and expenditure of the Unspent Proceeds be extended to September 30, 2016; and

WHEREAS, the Borrower/Grantee now anticipates that the Project can be completed and the Unspent Proceeds can be expended by September 30, 2016; and

WHEREAS, at its duly called regular meeting on April 13, 2016, the Water Trust Board authorized the amendment of the Loan/Grant Agreement as provided herein; and

WHEREAS, this First Amendment does not affect the terms of payment of the Loan Amount component of the Loan/Grant Agreement; and

WHEREAS, by the signature of its Authorized Officer, the Finance Authority consents to the amendment of the Loan/Grant Agreement as provided herein; and

WHEREAS, the Borrower/Grantee by all necessary and appropriate action of its officers and Governing Body has authorized this First Amendment as provided herein; and

NOW, THEREFORE, for and in consideration of the foregoing premises and their mutual promises and covenants herein contained pursuant to Section 11.4 of the Loan/Grant Agreement, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms in this First Amendment shall have the same meaning as those terms have in the Loan/Grant Agreement, unless a different meaning is expressly stated in this First Amendment, or is clearly required by the Board Rules, or the context clearly requires otherwise.

Section 2. Representations, Covenants and Warranties. The Borrower/Grantee represents, covenants and warrants that the representations, covenants and warranties contained in Section 2.1 of the Loan/Grant Agreement, and each of them, remain true and correct as of the date hereof. The Lenders/Grantors represent, covenant and warrant that the representations, covenants and warranties contained in Section 2.2 of the Loan/Grant Agreement, and each of them, remain true and correct as of the date hereof.

Section 3. Extension of Loan/Grant Agreement. The parties agree that the time for the Borrower/Grantee to expend the Unspent Proceeds pursuant to Section 7.5 of the Loan/Grant Agreement shall be extended from the date which is three (3) years from the Effective Date of the Loan/Grant Agreement, June 7, 2016, to September 30, 2016.

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

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

Section 6. Execution in Counterparts. This First Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7. Applicable Law. This First Amendment shall be governed by and construed in accordance with the laws of the State.

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

[Remainder of page intentionally left blank.]

[Signature pages follow.]

IN WITNESS WHEREOF, the Water Trust Board, on behalf of itself, has executed this First Amendment, which was approved by the Water Trust Board on April 13, 2016, and the Finance Authority, on behalf of itself, has consented to this First Amendment, each in their respective corporate names by their duly authorized officers; and the Borrower/Grantee has caused this First Amendment to be executed and attested by duly authorized officers thereof. All of the above are effective as of the date first above written.

LENDERS/GRANTORS:

NEW MEXICO FINANCE AUTHORITY

By 

Chief Executive Officer

NEW MEXICO WATER TRUST BOARD

By 

Chairman or Co-Chairman

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

SUTIN, THAYER & BROWNE
A Professional Corporation
As Loan/Grant Counsel

By 

Suzanne Wood Bruckner

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

By 

Daniel C. Opperman
Finance Authority General Counsel

BORROWER/GRANTEE:

COUNTY OF SANTA FE, NEW MEXICO

By Katherine Miller
Katherine Miller
Santa Fe County Manager

ATTEST:

By Geraldine Salazar
Geraldine Salazar, County Clerk

Approved as to form
Santa Fe County Attorney

By: [Signature]
Date: 5/25/16

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ACKNOWLEDGMENT

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

This instrument was acknowledged before me on 6/2/16 by Geraldine
Salazar

Theresa Atencio
NOTARY PUBLIC

My Commission Expires: 7/25/17

