

RESOLUTION OF THE  
BUDGET AND FINANCE COMMITTEE  
OF THE NAVAJO NATION COUNCIL

23<sup>RD</sup> NAVAJO NATION COUNCIL - Third Year, 2017

AN ACTION

RELATING TO THE BUDGET AND FINANCE COMMITTEE; APPROVING THE  
LOAN AND LOAN DOCUMENTS BETWEEN THE NAVAJO NATION, ACTING BY  
AND THROUGH THE BUDGET AND FINANCE COMMITTEE, AS THE LENDER,  
AND THE NAVAJO TRIBAL UTILITY AUTHORITY, AS THE BORROWER, TO  
FUND THE SIHASIN FUND BULK WATER & WASTEWATER DEVELOPMENT  
PROJECTS ASSIGNED TO THE NAVAJO TRIBAL UTILITY AUTHORITY  
PURSUANT TO NAVAJO NATION COUNCIL RESOLUTION CJA-12-16

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Budget and Finance Committee of the Navajo Nation Council was established to exercise oversight authority over, including but not limited to, budget, finance, investment, bonds, contracting, insurance, audits, accounting, taxes and loans and is specifically empowered to coordinate and review all fiscal, financial and investment activities of the Navajo Nation and its enterprises. 2 N.N.C. §§ 300(C) and 301(B)(5).
- B. Navajo Nation Council Resolution No. CJA-12-16, signed by the President of the Navajo Nation February 21, 2016, delegated to the Budget and Finance Committee the responsibility and authority to approve a Loan Agreement to the Navajo Tribal Utility Authority from the Sihasin Fund to implement the Sihasin Fund Bulk Water & Wastewater Development Expenditure Plan. CJA-12-16, section Three. Subsection D.

SECTION TWO. FINDINGS

- A. The Navajo Nation Breach of Trust Settlement Act of 2014 (hereinafter "2014 Act"), CD-68-14, mandated that the net proceeds and earnings thereon received by the Navajo Nation from the settlement of *Navajo Nation v. United States*, No. 06-945L, be deposited into the Navajo Nation

Sihasin Fund and managed and invested to provide financial support and/or financing for (1) the planning and development of regional infrastructure supporting economic and community development, including housing, within the Navajo Nation; and/or(2) education opportunities for members of the Navajo Nation. See 12 N.N.C. § 2501 and § 2502(A).

- B. The 2014 Act also established the "leveraging of the [Sihasin] Fund by way of guaranteeing loans, match funding, direct funding in part and other weighted uses of the Fund shall be favored over direct funding in whole". 12 N.N.C. § 2502(B).
- C. The Navajo Nation Council determined that the lack of a comprehensive nationwide bulk water delivery system or infrastructure, as well as wastewater treatment facilities, delays and impedes true sustainable economic, community and housing development throughout Navajo Nation.
- D. The Navajo Nation Council further determined that it was in the best long-term interests of the Navajo people collectively to utilize a portion of the Sihasin Funds to provide the financial support necessary to plan, develop and construct an integrated nationwide bulk water supply and wastewater treatment infrastructure sufficient to support sustainable economic, community and housing development and growth throughout the Navajo Nation.
- E. The Navajo Nation Council requested that the Navajo Tribal Utility Authority ("NTUA"), Navajo Nation Water Management Branch ("WMB") and Indian Health Services("IHS") collectively and collaboratively submit a five-year proposal, hereinafter referred to as the "Bulk Water & Wastewater Development Expenditure Plan", subsequently adopted as CJA-12-16 Exhibit A, to take maximum advantage of federal, state and private funding opportunities and partnerships to subsidize Navajo Nation bulk water delivery and wastewater development projects pursuant to cost-sharing, multi-agency contribution and reimbursement strategies as part of a cohesive global Navajo Nation water supply plan targeting five interrelated project categories:

1. The establishment of bulk water capacity and the treatment and transmission of that bulk water to the delivery systems.
  2. The improvement of existing water systems through renovation, upgrade and capacity increase to accommodate the delivery of new bulk water.
  3. The construction of new plants, as well as the upsizing or replacement of existing plants, to process new bulk water.
  4. The development and construction of bridge water projects, such as new ground water wells, to bridge the capacity until the larger capacity reaches certain areas that are farthest from the bulk water sources.
  5. The interconnection of lines that will network water systems together to move water from system to system and eventually create the flow path to move bulk water to the farthest reaches and isolated communities.
- F. Prior to the final adoption of CJA-12-16, the Navajo Nation Council, as well as assigned Standing Committees, debated a version of the Bulk Water & Wastewater Development Expenditure Plan wherein NTUA was to receive \$85,445,972 in direct funding to plan, develop and construct bulk water and wastewater projects; however, during the committee debates, in an effort to further leverage the Sihasin Fund dollars and replenish the principle, NTUA was asked if it could absorb loan funding of \$63,945,972 with direct funding limited to \$21,500,000.
- G. In the spirit of the collaborative collective effort necessary to plan, develop and construct a cohesive integrated nationwide bulk water supply and wastewater treatment infrastructure, NTUA agreed to absorb the loan funding of \$63,945,972, if the terms of the loan were no less favorable than the terms it would receive if borrowing the dollars through the United States Department of Agriculture Rural Services Utilities' loan program.
- H. The Navajo Nation Council adopted Resolution No. CJA-12-16 ON January 27, 2016 incorporating a loan to NTUA in the amount of \$63,945,972 with direct funding limited to \$21,500,000 with loan terms no less favorable than the

terms NTUA would receive if borrowing the dollars through the United States Department of Agriculture Rural Services Utilities' loan program.

- I. Pursuant to CJA-12-16, The Loan Agreement, attached as **Exhibit A** and incorporated herein, between the Nation and NTUA is to be approved by the Budget and Finance Committee.
- J. NTUA, the Navajo Nation Controller and the Navajo Nation Department of Justice, along with the Nation's outside bond legal counsel, have negotiated and agreed upon the substantive provisions of the Loan Agreement, including the supporting documents and schedules, attached as **Exhibit A**.
- K. The Budget and Finance Committee hereby determines that the Loan Agreement, including all supporting schedules and documents, meets the intents and purposes CJA-12-16 and is the appropriate agreement to fund the projects assigned to NTUA under the Sihasin Fund Bulk Water & Wastewater Development Expenditure Plan as part of the collaborative collective effort necessary to plan, develop and construct a cohesive integrated nationwide bulk water supply and wastewater treatment infrastructure throughout the Navajo Nation.

### SECTION THREE. APPROVAL

- A. The Navajo Nation hereby approves the Loan Agreement, including all supporting schedules and documents, attached as **Exhibit A**, and hereby authorizes and directs such other actions by the Office of the Controller and Office of the President & Vice President as may hereafter be necessary and appropriate to carry out the obligations of the Nation under the Loan Agreement.
- B. The Navajo Nation hereby authorizes the Controller and the President of the Navajo Nation to finalize and execute the Loan Agreement and any and all documents necessary to effectuate the intent and purpose of this Resolution.



CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting held at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor and 0 opposed, this 14<sup>th</sup> day of April, 2017.



Seth Damon, Chairperson  
Budget and Finance Committee

Motion: Honorable Leonard Tsosie  
Second: Honorable Tom T. Chee

**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0127-17

**DATE:** April 5, 2017

**TITLE OF RESOLUTION:** AN ACTION RELATING TO BUDGET AND FINANCE COMMITTEE; APPROVING THE LOAN AND LOAN DOCUMENTS BETWEEN THE NAVAJO NATION, ACTING BY AND THROUGH THE BUDGET AND FINANCE COMMITTEE, AS THE LENDER, AND THE NAVAJO TRIBAL UTILITY AUTHORITY, AS THE BORROWER, TO FUND THE SIHASIN FUND BULK WATER & WASTEWATER DEVELOPMENT PROJECTS ASSIGNED TO THE NAVAJO TRIBAL UTILITY AUTHORITY PURSUANT TO NAVAJO NATION COUNCIL RESOLUTION CJA-12-16

**PURPOSE:** This legislation approves the loan documents and loan from the Navajo Nation to the Navajo Tribal Utility Authority from the Sihasin Fund for the Bulk Water and Wastewater Development Projects as approved in CJA-12-16.

**This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.**

5-DAY BILL HOLD PERIOD: 5/20/17  
Website Posting Time/Date: 4:23pm 4/5/17  
Posting End Date: 4/10/2017  
Eligible for Action: 4/11/2017

PROPOSED STANDING COMMITTEE RESOLUTION  
23<sup>rd</sup> NAVAJO NATION COUNCIL – THIRD YEAR, 2017

INTRODUCED BY

(Primary Sponsor)

TRACKING NO. 0127-17

AN ACTION

RELATING TO BUDGET AND FINANCE COMMITTEE; APPROVING THE LOAN  
AND LOAN DOCUMENTS BETWEEN THE NAVAJO NATION, ACTING BY AND  
THROUGH THE BUDGET AND FINANCE COMMITTEE, AS THE LENDER, AND  
THE NAVAJO TRIBAL UTILITY AUTHORITY, AS THE BORROWER, TO FUND  
THE SÍHASIN FUND BULK WATER & WASTEWATER DEVELOPMENT  
PROJECTS ASSIGNED TO THE NAVAJO TRIBAL UTILITY AUTHORITY  
PURSUANT TO NAVAJO NATION COUNCIL RESOLUTION CJA-12-16

BE IT ENACTED:

**Section One. Authority**

- A. The Budget and Finance Committee of the Navajo Nation Council was established to exercise oversight authority over, including but not limited to, budget, finance, investment, bonds, contracting, insurance, audits, accounting, taxes and loans and is specifically empowered to coordinate and review all fiscal, financial and investment activities of the Navajo Nation and its enterprises. 2 N.N.C. §§ 300 (C) and 301 (B) (5).
- B. Navajo Nation Council Resolution No. CJA-12-16, signed by the President of the Navajo Nation on February 21, 2016, delegated to the Budget and Finance Committee

1 the responsibility and authority to approve a Loan Agreement to the Navajo Tribal  
2 Utility Authority from the Síhasin Fund to implement the Síhasin Fund Bulk Water &  
3 Wastewater Development Expenditure Plan. CJA-12-16, Section Three, Subsection  
4 D.

5  
6 **Section Two. Findings**

- 7 A. The Navajo Nation Breach of Trust Settlement Act of 2014 (hereinafter “2014 Act”),  
8 CD-68-14, mandated that the net proceeds and earnings thereon received by the  
9 Navajo Nation from the settlement of *Navajo Nation v. United States*, No. 06-945L,  
10 be deposited into the Navajo Nation Síhasin Fund and managed and invested to  
11 provide financial support and/or financing for (1) the planning and development of  
12 regional infrastructure supporting economic and community development, including  
13 housing, within the Navajo Nation; and/or (2) education opportunities for members of  
14 the Navajo Nation. *See* 12 N.N.C § 2501 and § 2502 (A).
- 15 B. The 2014 Act also established that “leveraging of the [Síhasin] Fund by way of  
16 guaranteeing loans, match funding, direct funding in part and other weighted uses of  
17 the Fund shall be favored over direct funding in whole”. 12 N.N.C § 2502 (B).
- 18 C. The Navajo Nation Council determined that the lack of a comprehensive nationwide  
19 bulk water delivery system or infrastructure, as well as wastewater treatment  
20 facilities, delays and impedes true sustainable economic, community and housing  
21 development throughout the Navajo Nation.
- 22 D. The Navajo Nation Council further determined that it was in the best long-term  
23 interests of the Navajo people collectively to utilize a portion of the Síhasin Funds to  
24 provide the financial support necessary to plan, develop and construct an integrated  
25 nationwide bulk water supply and wastewater treatment infrastructure sufficient to  
26 support sustainable economic, community and housing development and growth  
27 throughout the Navajo Nation.
- 28 E. The Navajo Nation Council requested that the Navajo Tribal Utility Authority  
29 (“NTUA”), Navajo Nation Water Management Branch (“WMB”) and Indian Health  
30 Services (“IHS”) collectively and collaboratively submit a five-year proposal,



hereinafter referred to as the "Bulk Water & Wastewater Development Expenditure Plan", subsequently adopted as CJA-12-16 Exhibit A, to take maximum advantage of federal, state and private funding opportunities and partnerships to subsidize Navajo Nation bulk water delivery and wastewater development projects pursuant to cost-sharing, multi-agency contribution and reimbursement strategies as part of a cohesive global Navajo Nation water supply plan targeting five interrelated project categories:

1. The establishment of bulk water capacity and the treatment and transmission of that bulk water to the delivery systems.
  2. The improvement of existing water systems through renovation, upgrade and capacity increase to accommodate the delivery of new bulk water.
  3. The construction of new plants, as well as the upsizing or replacement of existing plants, to process new bulk water.
  4. The development and construction of bridge water projects, such as new ground water wells, to bridge the capacity until the larger capacity reaches certain areas that are farthest from the bulk water sources.
  5. The interconnection of lines that will network water systems together to move water from system to system and eventually create the flow path to move bulk water to the farthest reaches and isolated communities.
- F. Prior to the final adoption of CJA-12-16, the Navajo Nation Council, as well as assigned Standing Committees, debated a version of the Bulk Water & Wastewater Development Expenditure Plan wherein NTUA was to receive \$85,445,972 in direct funding to plan, develop and construct bulk water and wastewater projects; however, during the committee debates, in an effort to further leverage the Sihasin Fund dollars and replenish the principle, NTUA was asked if it could absorb loan funding of \$63,945,972 with direct funding limited to \$21,500,000.
- G. In the spirit of the collaborative collective effort necessary to plan, develop and construct a cohesive integrated nationwide bulk water supply and wastewater treatment infrastructure, NTUA agreed to absorb the loan funding of \$63,945,972, if the terms of the loan were no less favorable than the terms it would receive if

1 borrowing the dollars through the United States Department of Agriculture Rural  
2 Services Utilities' loan program.

3 H. The Navajo Nation Council adopted Resolution No. CJA-12-16 on January 27, 2016  
4 incorporating a loan to NTUA in the amount of \$63,945,972 with direct funding  
5 limited to \$21,500,000 with loan terms no less favorable than the terms NTUA would  
6 receive if borrowing the dollars through the United States Department of Agriculture  
7 Rural Services Utilities' loan program.

8 I. Pursuant to CJA-12-16, the Loan Agreement, attached as **Exhibit A** and incorporated  
9 herein, between the Nation and NTUA is to be approved by the Budget and Finance  
10 Committee.

11 J. As set forth in the Bond Financing Act, 12 N.N.C. § 1330 (A)(2) (c), the Controller of  
12 the Navajo Nation has approved the Loan Agreement, including the supporting  
13 schedules and documents, as an NTUA general obligation bond.

14 K. Despite CJA-12-16 and the underlying loan to NTUA being under review with the  
15 Navajo Nation Department of Justice for over one year, the Office of the Attorney  
16 General has failed to issue guidance identifying any *legal* matters prohibiting  
17 NTUA's issuance of a general obligation bond; the long-standing lack of action by  
18 the Office of the Attorney General is interpreted as approval of NTUA's issuance of  
19 the general obligation bond pursuant to 12 N.N.C. § 1330 (A)(2) (c).

20 L. The Budget and Finance Committee hereby determines that the Loan Agreement,  
21 including all supporting schedules and documents, meets the intents and purposes of  
22 CJA-12-16 and is the appropriate agreement to fund the projects assigned to NTUA  
23 under the Síhasin Fund Bulk Water & Wastewater Development Expenditure Plan as  
24 part of the collaborative collective effort necessary to plan, develop and construct a  
25 cohesive integrated nationwide bulk water supply and wastewater treatment  
26 infrastructure throughout the Navajo Nation.

### 27 28 **Section Three. Approval**

29 A. The Navajo Nation hereby approves the Loan Agreement, including all supporting  
30 schedules and documents, attached as **Exhibit A**, and hereby authorizes and directs

1 such other actions by the Office of the Controller and Office of the President & Vice-  
2 President as may hereafter be necessary and appropriate to carry out the obligations  
3 of the Nation under the Loan Agreement.

- 4 B. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute  
5 any and all documents necessary to effectuate the intent and purpose of this  
6 Resolution.



# **LOAN AGREEMENT**

**(Síhasin Fund Water & Wastewater Projects)**

**Dated as of \_\_\_\_\_, 2017**

**between**

**NAVAJO TRIBAL UTILITY AUTHORITY,  
as the Borrower,**

**and**

**NAVAJO NATION (LISTED IN THE FEDERAL  
REGISTER AS NAVAJO NATION, ARIZONA, NEW  
MEXICO & UTAH),  
as the Lender**



Table of Contents

ARTICLE 1	DEFINITIONS AND ACCOUNTING TERMS .....	2
1.1	Defined Terms .....	2
1.2	Use of Defined Terms .....	7
1.3	References.....	7
1.4	Time .....	7
1.5	Interpretation.....	7
1.6	Role of the Controller .....	8
ARTICLE 2	THE LOAN; DISBURSEMENT OF NON-REPAYMENT APPROPRIATIONS .....	8
2.1	The Loan .....	8
2.2	Request for Advances .....	9
2.3	Disbursement of Non-Repayment Appropriations.....	9
ARTICLE 3	PAYMENTS AND FEES .....	10
3.1	Principal and Interest .....	10
3.2	Prepayment .....	10
3.3	Late Charge .....	10
3.4	Computation of Interest and Fees; Non-Business Days .....	11
3.5	Manner and Treatment of Payments .....	11
3.6	Failure to Charge Not Subsequent Waiver .....	11
ARTICLE 4	REPRESENTATIONS AND WARRANTIES OF THE BORROWER .....	11
4.1	Existence and Qualification; Power; Compliance with Laws.....	11
4.2	Authority; Compliance with Other Agreements and Instruments and Government Regulations .....	11
4.3	No Governmental Approvals Required .....	12
4.4	Financial Statements of the Borrower; No Material Adverse Effect; No Default.....	12
4.5	Brokerage Commissions .....	12
4.6	Litigation.....	12
4.7	Binding Obligations .....	13
4.8	Disclosure .....	13
4.9	Tax Liability.....	13

Table of Contents  
(continued)

	Page
4.10 Employee Matters .....	13
4.11 Hazardous Materials .....	13
4.12 Statutory Limitation on Borrower's Long-Term Debt; Government Regulation of Incurrence of Debt .....	13
4.13 Bond Financing Act .....	14
ARTICLE 5 AFFIRMATIVE COVENANTS OF THE BORROWER.....	14
5.1 Payment of Taxes and Other Potential Liens.....	14
5.2 Maintenance of Properties .....	14
5.3 Maintenance of Insurance .....	14
5.4 Compliance with Laws .....	15
5.5 Preservation of Licenses and Permits .....	15
5.6 Keeping of Records and Books of Account; Inspection.....	15
5.7 Compliance with Material Documents and Other Agreements .....	15
5.8 Use of Proceeds.....	15
5.9 Project Accounting and Reporting.....	15
ARTICLE 6 NEGATIVE COVENANTS OF THE BORROWER.....	16
6.1 Disposition of Assets; Sale of Assets.....	16
6.2 Business of the Borrower .....	16
6.3 Expenditures .....	16
6.4 Accounting Changes .....	16
6.5 Hazardous Materials Laws.....	16
ARTICLE 7 INFORMATION AND REPORTING REQUIREMENTS .....	17
7.1 Financial and Business Information.....	17
ARTICLE 8 CONDITIONS .....	18
8.1 Loan Closing.....	18
8.2 Each Advance .....	19
ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES UPON EVENT OF DEFAULT .....	19
9.1 Events of Default .....	19
9.2 Remedies upon Event of Default .....	21
ARTICLE 10 MISCELLANEOUS .....	22

Table of Contents  
(continued)

	Page
10.1 Cumulative Remedies; No Waiver .....	22
10.2 Amendments; Consents .....	22
10.3 Costs, Expenses and Taxes; Indemnification.....	22
10.4 Nature of the Lender's Obligations.....	23
10.5 Survival of Representations and Warranties.....	23
10.6 Notices .....	23
10.7 Execution of Loan Documents.....	24
10.8 Binding Effect; Assignments .....	24
10.9 No Third Parties Benefited .....	24
10.10 Further Assurances.....	24
10.11 Integration.....	25
10.12 Governing Law .....	25
10.13 Severability of Provisions.....	25
10.14 Headings .....	25
10.15 Time of the Essence .....	25
10.16 Arbitration.....	25
10.17 Purported Oral Amendments .....	26
10.18 Waiver of Right to Trial by Jury.....	26
10.19 Lender's Statutory Rights and Remedies; Borrower's Limited Waiver of Sovereign Immunity; Consent to Jurisdiction.....	26
10.20 Waiver of Punitive Damages; Etc.....	27
EXHIBIT A—FORM OF PROMISSORY NOTE .....	A-1
EXHIBIT B—REQUEST FOR ADVANCE .....	B-1
EXHIBIT C—APPROPRIATIONS AUTHORIZED AND SCHEDULE OF ADVANCES ....	C-1
SCHEDULE 3.1—DEBT SERVICE SCHEDULE .....	S-1

**LOAN AGREEMENT**  
**(Sihasin Fund Water & Wastewater Projects)**

This LOAN AGREEMENT (the "Agreement"), dated as of \_\_\_\_\_, 2017 is entered into by and between the **NAVAJO TRIBAL UTILITY AUTHORITY**, an instrumentality and enterprise of the Nation (defined below), as the borrower ("NTUA" or the "Borrower"), and the **NAVAJO NATION** (listed in the Federal Register as NAVAJO NATION, ARIZONA, NEW MEXICO & UTAH), a federally recognized Indian tribe, as the lender (the "Nation" or the "Lender").

**RECITALS**

WHEREAS, the Navajo Nation enacted Resolution No. CJA-12-16 on February 21, 2016 (the "Act") which Act adopted the Sihasin Fund "Bulk Water & Wastewater Development Expenditure Plan" (the "Expenditure Plan") for the purpose of maximizing the use of federal, state and private funding to subsidize bulk water delivery and wastewater development projects; and

WHEREAS, the Sihasin Fund was created and established by the Nation under Resolution No. CD-68-14, enacted on December 31, 2014, and was funded with the proceeds from the settlement of Navajo Nation v. United States, No. 06-945L (United States Court of Federal Claims); and

WHEREAS, the Expenditure Plan authorized by the Act set forth funding amounts for NTUA over a five-year period equaling \$85,445,972 from the Sihasin Fund and disbursed to NTUA for the Projects (as defined herein) as follows: (i) \$9,270,000 in the 2016 fiscal year of the Lender, (ii) \$13,850,000 in the 2017 fiscal year of the Lender, (iii) \$16,225,972 in the 2018 fiscal year of the Lender, (iv) \$12,550,000 in the 2019 fiscal year of the Lender, (v) \$12,050,000 in the 2020 fiscal year of the Lender, (vi) \$10,000,000 for the NTUA Emergency Reserve and Replacement Fund, (vii) \$10,000,000 for the NTUA O&M Fund and (viii) \$1,500,000 for Administrative and Project Management Costs; and

WHEREAS, the Act specifically excluded from repayment by Borrower the \$10,000,000 appropriated to the Borrower for the NTUA Emergency Reserve and Replacement Fund, \$10,000,000 appropriated for the NTUA O&M Fund as well as Administrative and Project Management Costs of \$1,500,000 for a total non-repayment amount of \$21,500,000; and

WHEREAS, notwithstanding the NTUA Emergency Reserve and Replacement Fund, NTUA O&M Fund, and NTUA Administrative and Project Management Costs, the Act provides that the "annual allocations and appropriations to NTUA shall be repaid through a loan agreement(s) between NTUA and the Navajo Nation approved by the Budget & Finance Committee with loan terms at least equivalent to and no less favorable than the terms NTUA would receive if borrowing the dollars through the United States Department of Agriculture Rural Services Utilities' loan program"; and

WHEREAS, the Maximum Loan Amount (as defined herein) to be repaid hereunder is \$63,945,972; and



WHEREAS, the Act provides that the non-repayment portion of the Expenditure Plan will be appropriated from the Sihasin Funds and disbursed to NTUA over a 5-year period, which disbursements will occur as set forth in Exhibit C hereto; and

WHEREAS, the Act provides that the annual appropriation for NTUA Water and Wastewater Development Projects set forth in Exhibit A of the Act shall be "released to NTUA by the end of the second quarter of the respective Navajo Nation Fiscal Year through a single distribution and shall not lapse on an annual basis pursuant to 12 N.N.C. §820(N) or otherwise be returned to or deposited in the Sihasin Fund principal or Navajo Nation General Fund" until such time as all NTUA projects listed in Exhibit A of the Act, as revised, are fully completed; and

WHEREAS, the Loan (as defined herein) provided to the Borrower by the Lender under this Agreement is intended to provide the funding for the following projects described in the Expenditure Plan: (i) establishment of bulk water capacity and the treatment and transmission of that bulk water to the delivery system, (ii) the improvement of existing water systems through renovation, upgrade and capacity increase to accommodate the delivery of new bulk water, (iii) the construction of new plants, as well as the upsizing or replacement of existing plants, to process new bulk water, (iv) the development and construction of bridge water projects, such as new ground water wells, to bridge the capacity until the larger capacity reaches certain areas that are farthest from the bulk water sources, and (v) interconnection of lines that will network water systems together to move water from system to system and eventually create the flow path to move bulk water to the farthest reaches and isolated communities (collectively, the "Projects"), as further set forth on Appendix A.

NOW THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS**

**1.1 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

"Advance" means a cash advance made by the Lender to Borrower of proceeds of the Loan, which have been approved by Lender pursuant to the terms and conditions of this Agreement.

"Affiliate" means, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (and the correlative terms, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise). The Nation (except in its capacity as the Lender under the Loan Documents) shall be deemed to be an affiliate of the Borrower.

"Agreement" means this Loan Agreement, as the same may be amended or supplemented by the written agreement of the Lender and the Borrower from time to time.

"Bankruptcy Code" means the Federal Bankruptcy Reform Act of 1978, as amended.

"Bond Financing Act" means 12 N.N.C. § 1300, et seq., as amended from time to time.

"Borrower" means the Navajo Tribal Utility Authority, an instrumentality and enterprise of the Navajo Nation.

"Business Day" means any day other than a Saturday, a Sunday, or days when commercial banks in Window Rock, Arizona are closed for a legal holiday or by government directive

"Capital Expenditure" means any expenditure that is considered a capital expenditure under GAAP, consistently applied.

"Capital Lease" means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any Property by a Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

"Closing Date" means the date on which closing occurs.

"Controller" means the Person appointed as the controller of the Nation pursuant to 12 N.N.C. § 201, et seq., and serving in such capacity as contemplated by 12 N.N.C. § 201, et seq. The Controller is solely responsible to the Navajo Nation Council and the Budget and Finance Committee concerning the propriety of financial transactions, and compliance with Council or committee directives to 12 N.N.C. § 203(B). As of the Closing Date, the Controller is Ms. Pearlene Kirk

"Council" means the Navajo Nation Council established pursuant to 2 N.N.C. § 101, et seq.

"Debtor Relief Laws" means the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

"Default" means any event that, with the giving of any applicable notice or passage of time, or both, would constitute an Event of Default.

"Disposition" means the sale, lease, conveyance or other disposition of Property.

"Event of Default" has the meaning given to such term in Section 9.1.

"Expenditure Plan" has the meaning set forth in the recitals hereto.

"Fiscal Year" means a fiscal year of the Lender consisting of a twelve month fiscal period ending on each 30th day of September.

"GAAP" means, as of any date of determination, accounting principles set forth as generally accepted in the United States of America in currently effective opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and in statements of the Financial Accounting Standards Board, together with interpretive rulings and

bulletins issued in connection therewith. The term “consistently applied,” as used in connection therewith, means that the accounting principles applied are consistent in all material respects to those applied at prior dates or for prior periods.

“Governmental Agency” means (a) any international, foreign, federal, tribal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court, administrative tribunal or public utility, or (d) any arbitration tribunal or other non-governmental authority to whose jurisdiction a Person has consented.

“Hazardous Materials” means substances defined as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., or as hazardous, toxic or pollutant pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or in any other applicable Hazardous Materials Law, in each case as such laws are amended from time to time.

“Hazardous Materials Laws” means all federal, tribal, applicable state or applicable local laws, ordinances, rules or regulations governing the disposal of Hazardous Materials, to the extent applicable.

“Indebtedness” means, as to any Person on any date of determination, without duplication, (a) all indebtedness of such Person for borrowed money (including obligations to repurchase receivables and other assets sold with recourse), (b) that portion of the obligations of such Person under Capital Leases (c) any obligation of such Person that is evidenced by a promissory note or other instrument representing an extension of credit to such Person, whether or not for borrowed money, (d) any obligation of such Person for the deferred purchase price of Property or services (other than trade or other accounts payable in the ordinary course of business in accordance with customary terms not exceeding 90 days past the date of invoice), (e) any obligation of such Person that is secured by a Lien on assets of such Person, whether or not that Person has assumed such obligation or whether or not such obligation is nonrecourse to the credit of such Person, (f) obligations of such Person arising under acceptance facilities or under facilities for the discount of accounts receivable of such Person, (g) face amount of all letters of credit issued for the account of such Person.

“Late Charge” has the meaning given to such term in Section 3.3.

“Laws” means, collectively, all international, foreign, federal, tribal, applicable state and applicable local constitutions, statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents.

“Lender” has the meaning given to such term in the first paragraph of this Agreement.

“Lender’s Office” means the Lender’s address as set forth on the signature pages of this Agreement, or such other address as the Lender hereafter may designate by written notice to the Borrower.



“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, lien or charge of any kind, whether voluntarily incurred or arising by operation of Law or otherwise, affecting any Property, including any agreement to grant any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and/or the filing of or agreement to give any financing statement under the Navajo Nation UCC or comparable Law of any jurisdiction with respect to any Property.

“Loan” means the loan made by the Lender to the Borrower pursuant to the terms and conditions of this Agreement.

“Loan Documents” means, collectively, this Agreement, the Note, and all other agreements of any type or nature heretofore or hereafter executed and delivered by the Borrower to the Lender in any way relating to or in furtherance of this Agreement.

“Management Board” means the Management Board of the Borrower.

“Material Adverse Effect” means any circumstance or event or any set of circumstances or events which (a) could have any material adverse effect whatsoever upon the validity or enforceability of any provision of any Loan Document, (b) may reasonably be expected to be material and adverse to the business, Property, operations, condition (financial or otherwise) or the prospects of the Borrower, (c) materially impairs or could materially impair the ability of the Borrower to perform its Obligations under the Loan Documents, (d) materially impairs or could materially impair the ability of the Lender to enforce any of the Obligations or any of the benefits intended to be created and conveyed by the Loan Documents.

“Maturity Date” means 30 years from the date that the proceeds of any Advance is deposited into the Borrower’s designated account.

“Maximum Loan Amount” means an aggregate principal amount of \$ 63,945,972 which amount may be borrowed by the Borrower in the following maximum annual amounts for the applicable Navajo Nation Fiscal Year:

<b>Fiscal Year</b>	<b>Maximum Loan Amount</b>
2016	\$9,270,000
2017	\$13,850,000
2018	\$16,225,972
2019	\$12,550,000
2020	\$12,050,000

“Nation” has the meaning given to such term in the first paragraph of this Agreement.

“Navajo Nation UCC” means the Navajo Uniform Commercial Code, codified at 5A N.N.C. §1-101, et seq.



"Negative Pledge" means any covenant binding on the Borrower that prohibits the creation of Liens on any of its Property.

"Net Available Proceeds" means: (a) in the case of any Disposition, the aggregate amount of all cash payments, and the fair market value of any non-cash consideration, received by the Borrower directly or indirectly in connection with such Disposition; provided, that such cash payments and non-cash consideration shall be net of the amount of any reasonable legal, title and recording expenses, and commissions paid by the Borrower in connection with such Disposition; and (b) in the case of any casualty event, the aggregate amount of proceeds of insurance, condemnation awards and other compensation received in respect of such casualty event net of the amount of any reasonable legal, title and recording expenses, and commissions paid by the Borrower in connection therewith.

"Note" means the promissory note made by the Borrower and payable to the order of the Lender in substantially the form attached hereto as Exhibit A evidencing the Loan.

"Obligations" means and includes all loans, advances, debts, liabilities and obligations, howsoever arising, owed or owing by the Borrower to the Lender of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of any of the Loan Documents or relating to other Indebtedness of Borrower to Lender, including without limitation all interest (including interest that accrues after the commencement of any bankruptcy or other insolvency proceeding by or against the Borrower, whether or not allowed or allowable), fees, charges, expenses, attorneys' fees and accountants' fees chargeable to and payable by the Borrower hereunder and thereunder.

"Payment Date" means the last Business Day of the first full fiscal quarter occurring after the Closing Date and the last Business Day of each quarter of the Fiscal Year thereafter through the Maturity Date.

"Person" means any entity, whether an individual, trustee, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, instrumentality, enterprise (including the Borrower), firm, joint venture, Governmental Agency, or otherwise.

"Project Costs" means all costs, expenses and fees for the design, planning and construction of the Projects.

"Projects" means the projects of the Borrower to be financed with the Loan as set forth in Appendix A hereto.

"Property" means any interest in any kind of property or asset within the water and wastewater utilities, whether real, personal or mixed, or tangible or intangible.

"Request for Advance" means a written request for an Advance under the Loan, substantially in the form of Exhibit B, signed by an authorized officer of the Borrower and properly completed to provide all information required to be included therein.

"Requirement of Law" means, as to any Person, the formation document, the articles or certificate of incorporation and bylaws, the partnership agreement and any related certificate of partnership, or other organizational or governing documents of such Person, and any Law, or judgment, order, award, decree, writ or determination of a Governmental Agency, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Senior Officer" means, the Chairperson of the Management Board of Borrower and the General Manager of Borrower, or any other individual specifically authorized in a resolution adopted by the Borrower to the extent authorized therein; provided, that, with respect to anyone so authorized, the Lender receives (i) an incumbency certificate which identifies such individual(s) and (ii) a copy of such resolution(s). Subject to the preceding sentence, each Senior Officer shall be conclusively presumed to be authorized to act on behalf of the Borrower with respect to the transactions contemplated by the Loan Documents.

**1.2 Use of Defined Terms.** Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any one or more of the members of the relevant class.

**1.3 References.**

(a) References in this Agreement to "Recitals," "Sections," "Exhibits" and "Schedules" are to recitals, sections, exhibits and schedules herein and hereto unless otherwise indicated. A matter disclosed on any schedule shall be deemed disclosed on all schedules.

(b) References in this Agreement or any other Loan Document to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof if such replacement is permitted hereby, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, restated, modified, extended and supplemented from time to time and in effect at any given time if such amendment, restatement, modification, extension or supplement is permitted hereby.

(c) References in this Agreement or any other Loan Document to any Law (i) shall include any successor Law, (ii) shall include all rules and regulations promulgated under such Law (or any successor Law), and (iii) shall mean such Law (or successor Law) and such rules and regulations, as amended, modified, codified or reenacted from time to time and in effect at any given time.

(d) References in this Agreement or any other Loan Document to any Person in a particular capacity (i) shall include any successors to and permitted assigns of such Person in that capacity and (ii) shall exclude such Person individually or in any other capacity.

**1.4 Time.** All references in this Agreement and each of the other Loan Documents to a time of day shall mean Window Rock, Arizona time, unless otherwise indicated.

**1.5 Interpretation.** In this Agreement, unless otherwise indicated, the singular includes the plural and plural the singular; words importing any gender include the other gender; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to this Agreement; references to Persons include their respective permitted successors and assigns and, in the case of governmental Persons, Persons succeeding to their respective functions and capacities; the term "or" is disjunctive; the term "and" is conjunctive; the term "shall" is mandatory; and the term "may" is permissive.

**1.6 Role of the Controller.** Notwithstanding anything to the contrary herein, no action, approval, waiver, consent, amendment, modification or other function to be performed by the Lender under the Loan Documents shall be valid unless such action, approval, waiver, consent, amendment, modification or other function is performed, provided or executed (as applicable) by (a) the Controller, on behalf of the Lender, or (b) such other Person expressly designated by the Controller in writing, to the extent of such designation.

## **ARTICLE 2**

### **THE LOAN; DISBURSEMENT OF NON-REPAYMENT APPROPRIATIONS**

#### **2.1 The Loan.**

(a) The Lender, on the terms and subject to the conditions set forth in this Agreement, agrees to make the Loan to the Borrower. The Loan shall be evidenced by the Note and will be disbursed in Advances throughout the term of the Loan as described in Exhibit C. All or any portion of the Loan which are repaid or prepaid may not be reborrowed.

(b) The Loan shall be a general obligation of the Borrower, backed by the full faith and credit of the Borrower and payable from all legally available revenues of the Borrower.

(c) Notwithstanding any other provision herein, the Lender shall have no obligation of any nature to fund any Advance until and unless (i) no Event of Default has occurred and is continuing; (ii) all representations and warranties of the Borrower in each Loan Document are true and correct; (iii) all conditions set forth in Section 8.1 as conditions to the effectiveness of this Agreement (unless waived in connection with the execution of this Agreement) shall have been satisfied; (iv) for any Advance, all conditions set forth in Section 8.2 shall have been satisfied; and (v) after giving effect to such Advance, the original principal amount of all Advances will not exceed the Maximum Loan Amount.

(d) The Navajo Nation Code, 2 N.N.C. § 223 (A), requires that any contract involving the expenditure of funds executed on behalf of the Navajo Nation shall expressly state that "the liability of the Navajo Nation under such contract is contingent upon the



availability of appropriations by the the Navajo Nation Council to carry out the same” and that language is incorporated herein. Notwithstanding the foregoing, the Lender and Borrower stipulate and agree that, under all applicable laws, the Navajo Nation Council and President of the Navajo Nation have fully appropriated repayment amounts to the Borrower totaling \$63,945,972 and non-repayment amounts to the Borrower totaling \$21,500,000 pursuant to the Act, i.e., CJA-12-16, and that no further action is necessary to effectuate the availability of the appropriations.

(e) Borrower shall use the proceeds of the Loan solely for Project Costs.

(f) Borrower shall have the ability to make changes to the disbursement of funds for Projects within the Expenditure Plan to account for (i) Projects which run over budget, (ii) Projects which run under budget and (iii) with the approval of the Naabik’iyati Committee of the Navajo Nation Council, Projects whose priority has moved ahead of the date of disbursement of funds within the Expenditure Plan for that specific Project. Notwithstanding the above, the Loan disbursement amount for each Fiscal Year shall not be greater than as set forth in the Expenditure Plan.

(g) Borrower is responsible for identifying ways to leverage the Loan funds appropriated under the Act and any costs saved, reduced or reimbursed through leveraging shall remain in the respective continuing account and be expended to design, plan or construct the Projects listed under Exhibit A or, with the approval of the Naabik’iyati Committee of the Navajo Nation Council, subsequently eligible water and wastewater projects.

(h) In the event Borrower is leveraging Loan funds to reduce the cost of a Project and the agency providing financial assistance is requesting that all money be available for disbursement for a Project, NTUA shall have the right, upon approval by the Naabik’iyati Committee of the Navajo Nation Council, to advance funds within the Expenditure Plan for such Project.

**2.2 Request for Advances.** The initial Advance for Fiscal Year 2016 shall be made on the Closing Date. Each Advance, other than initial Advance to be made on the Closing Date, shall be made pursuant to a Request for Advance to the Controller in the form of Exhibit B hereto which shall: (i) be delivered to the Controller at least 10 calendar days before the requested date of disbursement, and (ii) specify the principal amount of such Advance. Pursuant to the Act, each Advance shall be released to Borrower by no later than the end of the second quarter of the respective Navajo Nation Fiscal Year through a single distribution. Unless the Lender otherwise consents, no Request for Advance may be revoked by the Borrower after its submission to the Lender. In the event that the Lender consents to the revocation of any Request for Advance submitted by the Borrower, the Borrower agrees that it shall reimburse the Lender for any loss, cost, damage or expense associated with any redeployment of funds caused by such revocation.

**2.3 Disbursement of Non-Repayment Appropriations.** Pursuant to the Act, the annual disbursement of the non-repayment amounts, as set forth in Exhibit C, shall be released to Borrower by no later than the end of the second quarter of the respective Navajo Nation Fiscal Year through a single distribution and Lender agrees that a Request for Advance shall not be



necessary for the release of such funds.

### **ARTICLE 3 PAYMENTS AND FEES**

#### **3.1 Principal and Interest.**

(a) Borrower shall pay interest only payments during the initial five (5) year period following each Advance of the Loan. Thereafter, and beginning on the sixth year of each Advance, through the Maturity Date, Borrower shall pay principal and interest payments based on a twenty five (25) year amortization schedule, as set forth in the debt service schedule that will be provided by the Lender to the Borrower, attached hereto as Schedule 3.1 and as supplemented and updated by the Lender with each Advance to reflect the total amount loaned to the Borrower and the consolidated repayment schedule. The Borrower will make an aggregate payment on each Payment Date based upon the principal payments due under all Advances then outstanding, as evidenced by Schedule 3.1, as such Schedule is updated and amended from time to time by Lender.

(b) Interest on the outstanding principal of each Advance shall accrue from the date on which the respective Advance is made to the date on which such principal is paid and shall accrue and be payable as set forth herein before and after Default, before maturity, before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(c) The principal amount of each Advance shall bear interest at the prevailing Federal Financing Bank (FFB) quarterly rates, at the time of such Request for Advance, as published on the USDA Rural Utilities web site at <http://www.rd.usda.gov/programs-services/services/rural-utilities-loan-interest-rates> and pursuant to Section 6(b) of the Federal Financing Bank Act of 1973, as amended (codified at 12 U.S.C. 2281 et. seq.) in effect from time to time (the "FFB Rate").

(d) Determinations of interest and principal payments on each Advance made by Lender shall be conclusive and binding on Borrower in the absence of manifest error.

**3.2 Prepayment.** The Loan may be prepaid in whole or in part in amounts of not less than \$50,000, on any Payment Date, upon not less than fifteen (15) days prior written notice to Lender by the Borrower.

**3.3 Late Charge.** In the event that any payment required hereunder is not paid within ten (10) Business Days after the due date thereof, the Borrower agrees to pay a late charge of one percent (1%) of the unpaid payment to defray the costs of the Lender incident to collecting such late payment. (the "Late Charge"). This Late Charge shall apply individually to each payment past due and there will be no daily pro rata adjustment. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights the Lender may have including the right to declare the entire unpaid principal amount of the Loan together with interest immediately due and payable.

**3.4 Computation of Interest and Fees; Non-Business Days.** Computation of interest and fees (if any) payable under this Agreement shall be calculated on the basis of a year of 360 days and actual days elapsed. If any payment to be made by the Borrower under any Loan Document shall come due on a day other than a Business Day, payment shall instead be considered due on the next succeeding Business Day and the extension of time shall be reflected in computing fees and interest.

**3.5 Manner and Treatment of Payments.** Each payment hereunder or under any other Loan Document shall be made, without setoff, counterclaim or deduction of any kind, to the Lender, at the Lender's Office in immediately available funds not later than 11:00 a.m. on the day of payment (which must be a Business Day). All later payments shall be deemed received on the next succeeding Business Day. Lender shall use its best efforts to keep a record of Advances made by it and payments received by it with respect to its Notes and such record shall be presumptive evidence of the amounts owing. Notwithstanding the foregoing sentence, Lender shall not be liable to any party for any failure to keep such a record, and no such failure shall affect the amount of the Obligations hereunder.

**3.6 Failure to Charge Not Subsequent Waiver.** Any decision by the Lender not to require payment of any interest (including Late Charge interest), fee, cost or other amount payable under any Loan Document, or to calculate any amount payable by a particular method, on any occasion shall in no way limit or be deemed a waiver of the Lender's right to require full payment of any interest (including Late Charge interest), fee, cost or other amount payable under any Loan Document, or to calculate an amount payable by another method, on any other or subsequent occasion.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to the Lender that:

**4.1 Existence and Qualification; Power; Compliance with Laws.** The Borrower is an instrumentality and enterprise of the Nation. To the extent required by Law, the Borrower is qualified to do business and is in good standing under the Laws of each jurisdiction in which it is required to be qualified by reason of the location or the conduct of the business of the Borrower. The Borrower has all requisite power and authority to conduct its business, to own and lease its Property, to execute and deliver each Loan Document to which it is a party and to perform its Obligations. The General Manager's office of the Borrower is located at the address for notices set forth on the signature pages hereto. The Borrower is in compliance with all applicable Laws and other legal requirements applicable to its existence and its business, has obtained all authorizations, consents, approvals, orders, licenses and permits from, and has accomplished all filings, registrations and qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Agency that are necessary for the transaction of its business, except where the failure so to file, register, qualify or obtain exemptions could not constitute a Material Adverse Effect.

**4.2 Authority; Compliance with Other Agreements and Instruments and Government Regulations.** The execution, delivery and performance by the Borrower of the Loan



Documents have been duly authorized by all necessary Management Board and other action, and do not: (a) require any consent or approval not heretofore obtained of any enrolled tribal member, Management Board member, other tribal body, security holder or creditor; (b) violate or conflict with any provision of the governing documents of the Borrower; (c) result in or require the creation or imposition of any Lien upon or with respect to any of the Borrower's Property now owned or leased or hereafter acquired; (d) violate any Law or Requirement of Law, applicable to the Borrower; (e) constitute a "transfer of an interest" or an "obligation incurred" by the Borrower that is avoidable by a trustee under Section 548 of the Bankruptcy Code, or constitute a "fraudulent conveyance," "fraudulent obligation" or "fraudulent transfer" by the Borrower within the meanings of the Uniform Fraudulent Conveyances Act or Uniform Fraudulent Transfer Act, as enacted in any applicable jurisdiction; (f) result in a material breach of or default under, or would, with the giving of notice or the lapse of time or both, constitute a material breach of or default under, or cause or permit the acceleration of any obligation owed under, any mortgage, indenture or loan or credit agreement or any other contractual obligation to which the Borrower is a party or by which the Borrower or any of its Property is bound or affected; or (g) require any consent or approval of any Governmental Agency, or any notice to, registration or qualification with any Governmental Agency, not heretofore obtained or obtained concurrently with the Closing Date.

**4.3 No Governmental Approvals Required.** No authorization, consent, approval, order, license or permit from, or filing, registration or qualification with, any Governmental Agency is required to authorize or permit under applicable Laws the execution, delivery and performance by the Borrower of the Loan Documents to which it is a party, except for those which have been made or heretofore obtained and are in full force and effect (including those required by the Bond Financing Act and 21 N.N.C. §1 *et. seq.*

**4.4 Financial Statements of the Borrower; No Material Adverse Effect; No Default.** All financial statements of the Borrower provided to the Lender are complete and correct and fairly present the financial condition of the Borrower as of the date indicated in such financial statements and the results of operations for the fiscal period ended on such date, all in accordance with GAAP and in conformity with accounting principles generally accepted in the United States of America as applied to governmental units.. Since the date of the latest financial statements, there has been no material adverse change in the business, assets, liabilities (actual or contingent), Property, operations, condition (financial or otherwise) or prospects of the Borrower. No event or circumstance exists or has occurred and is continuing that is a Default or an Event of Default.

**4.5 Brokerage Commissions.** No Person is entitled to receive any brokerage commission, finder's fee or similar fee or payment in connection with the extensions of credit contemplated by this Agreement as a result of any agreement entered into by the Borrower. No brokerage or other fee, commission or compensation is to be paid by the Lender with respect to the extensions of credit contemplated hereby as a result of any agreement entered into by the Borrower.

**4.6 Litigation.** There are no legal or arbitral actions, suits, proceedings or investigations by or before any arbitrator or Governmental Agency now pending or (to the Borrower's knowledge) threatened against the Borrower or any of its Property which, if adversely determined, could have a Material Adverse Effect.

**4.7 Binding Obligations.** The Loan Documents to which the Borrower is a party have been duly executed and delivered by the Borrower and constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their terms, and each Loan Document hereafter executed will, when executed and delivered by the parties thereto, constitute the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms. The provisions of Section 10.16 and Section 10.19 of this Agreement are specifically enforceable against the Borrower.

**4.8 Disclosure.** No written statement made by or on behalf of the Borrower to the Lender in connection with this Agreement, or in connection with the Loan, contains any untrue statement of a material fact or omits a material fact necessary in order to make the statement made not misleading in light of all the circumstances existing at the date the statement was made. There is no fact known to the Borrower (other than matters of a general economic nature) which could constitute a Material Adverse Effect.

**4.9 Tax Liability.** The Borrower has filed all tax returns which are required to be filed, and has paid, or made provision for the payment of, all taxes with respect to the periods, Property or transactions covered by said returns, or pursuant to any assessment received by the Borrower, except such taxes, if any, as are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established and maintained.

**4.10 Employee Matters.** There are no disputes presently subject to arbitration or litigation under any of the collective bargaining agreements, employment contracts or employee welfare or incentive plans to which the Borrower is a party, and there are no strikes, lockouts, work stoppages or slowdowns, or, to the best knowledge of the Borrower, jurisdictional disputes or organizing activities occurring or threatened, in each case, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**4.11 Hazardous Materials.** Neither the Borrower nor to the best knowledge of each Senior Officer of the Borrower, any predecessor in title or any third person at any time occupying or present on the real property underlying the Projects or any other operations of the Borrower at any time, has disposed of, discharged, released or threatened the release of any material amount of Hazardous Materials on, from or under such real property in any manner that violates any Hazardous Materials Law. No condition exists that violates any Hazardous Material Law affecting the real property underlying the Projects or any other operations of the Borrower except for such violations that could not individually or in the aggregate have a Material Adverse Effect. The real property underlying the Projects or any other operations of the Borrower and each portion thereof is not and has not been utilized by the Borrower as a site for the manufacture of any Hazardous Materials and is in compliance in all material respects with all applicable Hazardous Materials Laws. To the extent that any Hazardous Materials have been, or are, used, generated or stored by the Borrower on any real property underlying the Projects or any other operations of the Borrower, or transported to or from such real property underlying the Projects or any other operations of the Borrower by the Borrower, such use, generation, storage and transportation have been and are, in compliance in all material respects with all applicable Hazardous Materials Laws.

**4.12 Statutory Limitation on Borrower's Long-Term Debt; Government Regulation of Incurrence of Debt.** After the incurrence of the Loan made hereunder, the



Borrower will not be in violation of 21 N.N.C. § 7(B)(12) which provides that the total outstanding long-term indebtedness of the Borrower at any one time shall not exceed \$500,000,000. Other than as set forth in the Bond Financing Act and 21 N.N.C. § 7(B)(12), the Borrower is not subject to regulation under any law limiting or regulating its ability to incur indebtedness for money borrowed or to otherwise incur the indebtedness hereunder or perform its obligations hereunder.

**4.13 Bond Financing Act.** The Loan made hereunder constitutes a bond obligation of the Borrower under the Bond Financing Act.

## **ARTICLE 5**

### **AFFIRMATIVE COVENANTS OF THE BORROWER**

So long as the Loan remains unpaid, or any other Obligation remains unpaid or unperformed, the Borrower shall, unless the Lender otherwise consents:

**5.1 Payment of Taxes and Other Potential Liens.** Pay and discharge promptly all applicable taxes, assessments and governmental charges or levies imposed upon the Borrower or its Property or any part thereof, upon its income or profits or any part thereof or any applicable tax assessment, governmental charges or levies imposed upon any right or interest of the Lender under any Loan Document, except that the Borrower shall not be required to pay or cause to be paid any tax, assessment, charge or levy that is not yet delinquent, or is being contested in good faith by appropriate proceedings, so long as the Borrower has established and maintained adequate reserves for the payment of the same and by reason of such nonpayment and contest no material item or portion of the Borrower's Property is in jeopardy of being seized, levied upon or forfeited.

**5.2 Maintenance of Properties.** Maintain, preserve and protect all of the Property of the Borrower in good order and condition, subject to wear and tear in the ordinary course of business, and not permit any waste of such Properties, except that the failure to maintain, preserve and protect a particular item of Property that is not of significant value, either intrinsically or to the operations of the Borrower shall not constitute a violation of this covenant, and maintain its ownership of all intellectual property and licenses thereof necessary for the operation of the business of the Borrower.

**5.3 Maintenance of Insurance.** Secure, pay for and maintain without interruption, (i) insurance during the term of this Agreement of the types and in the amounts customarily carried from time to time by others engaged in substantially the same business as the Borrower and operating in the same or similarly situated geographic area as the Borrower, including, but not limited to, fire, public liability and property damage and (ii) such additional insurance as the Lender may reasonably request from time to time. To the extent that any policy is acquired directly by the Borrower (and not obtained through a risk management program sponsored by the Nation), each policy for such insurance shall be with (i) a company which is rated A or better by A.M. Best and Company at the time such policy is placed and at the time of each annual renewal thereof or (ii) any other insurer which is satisfactory to the Lender; provided, however, that if the Borrower shall fail to maintain insurance in accordance with this Section, the Lender shall have the right (but shall be under no obligation) to procure such insurance and the Borrower agrees to reimburse the Lender for all costs and expenses of procuring such insurance.

**5.4 Compliance with Laws.** Comply with all Requirements of Laws in all material respects.

**5.5 Preservation of Licenses and Permits.** Preserve and maintain all authorizations, rights, franchises, privileges, consents, approvals, orders, licenses, permits, or registrations from any Governmental Agency that are necessary for the transaction of the business of the Borrower, and qualify and remain qualified to transact business in each jurisdiction in which such qualification is necessary in view of the business of the Borrower or the ownership or leasing of its Property except where the failure to preserve and maintain any such authorizations, rights, franchises, privileges, consents, approvals, orders, licenses, permits or registrations or to so qualify or remain qualified could not constitute a Material Adverse Effect.

**5.6 Keeping of Records and Books of Account; Inspection.** The Borrower shall:

(a) Keep adequate records and books of account reflecting all financial transactions in conformity with GAAP and in material conformity with all applicable requirements of any Governmental Agency having regulatory jurisdiction over the Borrower.

(b) Permit the Lender to inspect the Projects, books and financial records of the Borrower related to the Projects, to examine the books of accounts and other financial records of the Borrower related to the Projects, and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, the Borrower's officers at such reasonable times and intervals as the Lender may designate.

(c) At all times comply with the terms of the Act relating to the administration, accounting and reporting required for the amounts advanced to Borrower hereunder, including ensuring that the funds advanced hereunder are kept and accounted for separately from the Borrower's other funds and accounts.

**5.7 Compliance with Material Documents and Other Agreements.** Promptly and fully perform and comply with all of its obligations under all the Loan Documents, the Act and all other material agreements, indentures, leases and instruments to which it is a party, whether such material agreements, indentures, leases or instruments are with the Lender or another Person, to the extent that non-compliance could constitute a Material Adverse Effect.

**5.8 Use of Proceeds.** In accordance with the Act, the proceeds of the Loan shall be used solely for Project Costs.

**5.9 Project Accounting and Reporting.** The Borrower shall account for all Project Costs and the use of all funds advanced hereunder. The Borrower shall segregate Loan proceeds from all other funds and accounts of the Borrower and shall maintain separate accounting and financial records therefor as required by the Act. The Borrower shall report the status of the Projects and use of proceeds of the Loan to the Lender's Resources and Development Committee on a quarterly basis, as required by the Act.



## **ARTICLE 6**

### **NEGATIVE COVENANTS OF THE BORROWER**

So long as the Loan remains unpaid, or any other Obligation remains unpaid or unperformed, the Borrower shall not, unless the Lender otherwise consents:

#### **6.1 Disposition of Assets; Sale of Assets.**

(a) Sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all of the Borrower's Property to any Person.

(b) Make any substantial Disposition of the Borrower's Property (including any transfer to the Navajo Nation government), whether now owned or hereafter acquired, other than any transaction in which the Net Available Proceeds of such Disposition are applied to the acquisition of Property substantially similar in nature or functionally equivalent to the Property subject to the transaction within 90 days of such Disposition.

**6.2 Business of the Borrower.** Engage directly or indirectly in any business other than as stated in NTUA's Plan of Operations, 21 N.N.C. § 1. et. seq., including any business reasonably related thereto.

**6.3 Expenditures.** Use any of the Borrower's Property for a purpose which is not related to the business of the Borrower or specifically contemplated hereby, expend any of the Borrower's Property for any purpose which does not directly or indirectly benefit the Borrower, or make any Capital Expenditure, except to add to, further improve, maintain, repair, restore or refurbish the Borrower's Property.

**6.4 Accounting Changes.** Change (a) its Fiscal Year or (b) its accounting practices except as required by GAAP.

**6.5 Hazardous Materials Laws.** Keep and maintain the real property underlying the Projects and other operations of the Borrower and each portion thereof in compliance in all material respects with all applicable Hazardous Materials Laws and promptly advise the Lender in writing of, and indemnify the Lender from, (a) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing pursuant to any applicable Hazardous Materials Laws, (b) any and all claims made or threatened in writing, and received by the Borrower, by any third party against the Borrower or the real property underlying the Projects and other operations of the Borrower relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials and (c) discovery by any Senior Officer of the Borrower of any occurrence or condition on any real property adjoining or in the vicinity of the real property underlying the Projects and other operations of the Borrower that could cause the real property underlying the Projects and other operations of the Borrower or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Real Property underlying the Projects and other operations of the Borrower under any applicable Hazardous Materials Laws.

## ARTICLE 7 INFORMATION AND REPORTING REQUIREMENTS

**7.1 Financial and Business Information.** So long as the Loan remains unpaid, or any other Obligation remains unpaid or unperformed, the Borrower shall, unless the Lender otherwise consents, deliver or caused to be delivered to the Lender, at the Borrower's sole expense:

(a) As soon as available and in any event within one hundred and fifty (150) days after the end of each Fiscal Year, (i) the consolidated audited balance sheet of the Borrower as of the end of such Fiscal Year, and (ii) the consolidated audited statements of income and fund balances and of cash flow of the Borrower as of the end of such Fiscal Year, all in reasonable detail and setting forth in each case in comparative form the corresponding year-to-date figures for the preceding Fiscal Year and the corresponding period in the applicable projections. Such financial statements shall be prepared in accordance with GAAP, consistently applied, and such balance sheet and statements shall be accompanied by a report and opinion of independent public accountants of recognized standing selected by the Borrower and reasonably satisfactory to the Lender, which report shall be based on an audit conducted in accordance with generally accepted auditing standards as of such date, and which opinion shall be an unqualified opinion without additional explanatory or nonstandard wording and with no limitation as to the scope of their audit and such balance sheet and statements shall be accompanied by any management letters of such accountants addressed to the Borrower;

(b) Promptly following receipt by the Borrower, copies of any detailed audit reports or recommendations submitted to the Borrower by independent accountants in connection with the accounts or books of the Borrower or any audit of the Borrower;

(c) Promptly upon a Senior Officer of the Borrower becoming aware that (i) any Person has commenced a legal proceeding with respect to a claim against the Borrower that is, in the reasonable opinion of their independent legal counsel, \$500,000 or more in excess of the amount thereof that is fully covered by insurance (subject to applicable deductibles and retentions), (ii) any creditor or lessor under a written credit agreement with respect to Indebtedness in excess of \$500,000 or lease involving unpaid rent in excess of \$500,000 has asserted a default thereunder on the part of the Borrower, (iii) any labor union has notified the Borrower of its intent to strike the Borrower on a date certain, (iv) the occurrence of any Default or Event of Default, or (v) any other event or circumstance occurs or exists that could constitute a Material Adverse Effect, in each case a written notice describing the pertinent facts relating thereto and what action the Borrower is taking or proposes to take with respect thereto; and

(d) If requested by the Lender, such income tax returns, if any, (including the related schedules and exhibits), and other data and information concerning the Borrower, the Borrower's business and operations, the financial condition, credit standing, and business affairs of the Borrower as from time to time may be reasonably requested by the Lender. The Lender is authorized to disclose the information and documents delivered in connection with this Agreement and the other Loan Documents to the Lender's attorneys, accountants, auditors, examiners, and regulatory agencies. The Lender also is authorized



to disclose such information and documents to any insurance company or insurance agent in connection with any application for insurance or any claim made under an insurance policy.

## **ARTICLE 8 CONDITIONS**

**8.1 Loan Closing.** The Closing Date and the obligation of the Lender to make the initial Advance are subject to the following conditions precedent, each which shall be satisfied prior to the making of the initial Advance (unless the Lender, in its sole and absolute discretion, shall agree otherwise).

(a) The Lender shall have received all of the following, each of which shall be originals (except where only evidence is required) unless otherwise specified, each properly executed by each party thereto, each dated as of the Closing Date and each in form and substance satisfactory to the Lender and its legal counsel (unless otherwise specified or, in the case of the date of any of the following, unless the Lender otherwise agrees or directs):

(i) a resolution of the Management Board of the Borrower authorizing and approving this Agreement, the Loan, the Loan Documents;

(ii) executed counterparts of this Agreement and the Loan Documents, sufficient in number for distribution to the Lender and the Borrower;

(iii) the Note for the Loan executed by the Borrower in favor of the Lender;

(iv) the favorable written legal opinion of counsel to the Borrower, together with copies of all factual certificates and legal opinions upon which such counsel have relied;

(v) such documentation as the Lender may reasonably require to confirm the authority of the Borrower to execute, deliver and perform any Loan Documents, such as the identity, authority and capacity of each Senior Officer authorized to act on its behalf, including the Borrower's resolutions, incumbency certificates, certificates of Senior Officers, and the like;

(vi) evidence that all applications, certifications, consents, approvals and other actions required under the Bond Financing Act in connection with the transactions contemplated by the Loan Documents shall have been made, received and taken, as applicable; and

(vii) a certificate signed by a Senior Officer of the Borrower confirming that the conditions specified herein have been satisfied, and such other assurances, certificates, documents, consents or opinions as the Lender may reasonably require.

(b) The Borrower and any other parties shall be in compliance with all the terms and provisions of this Agreement and the Loan Documents, and no Default or Event of Default shall have occurred and be occurring.

(c) There shall have been no material adverse change in the business, Property, operations, condition (financial or otherwise) or the prospects of the Borrower subsequent to latest audited financial statements of the Borrower provided to the Lender.

(d) No material litigation shall be pending or threatened against the Borrower as of the Closing Date that could have a Material Adverse Effect or impair the closing of the transactions contemplated by this Agreement.

(e) The representations and warranties of the Borrower contained in this Agreement and the Loan Documents shall be true and correct as of the date hereof.

(f) The Borrower shall have received all required consents from the Management Board, tribal commissions, federal, state, tribal and other governing entities, and counterparties to material contracts, which consents shall be satisfactory to the Lender in form and substance.

(g) Such other conditions as the Lender may reasonably require.

**8.2 Each Advance.** The obligation of the Lender to make any Advance is subject to the following conditions precedent, each which shall be satisfied prior to the making of such Advance (unless the Lender, in its sole and absolute discretion, shall agree otherwise):

(a) Each representation or warranty by Borrower contained herein or in any other Loan Document shall be true or correct in all material respects.

(b) No Default or Event of Default shall have occurred and be continuing or could reasonably be expected to result after giving effect to such Advance.

(c) After giving effect to such Advance, the original principal amount of all Advances made hereunder shall not exceed the Maximum Loan Amount.

## **ARTICLE 9**

### **EVENTS OF DEFAULT AND REMEDIES UPON EVENT OF DEFAULT**

**9.1 Events of Default.** The existence or occurrence of any one or more of the following events, whatever the reason therefor and under any circumstances whatsoever, shall constitute an Event of Default (each, an "Event of Default"):

(a) The Borrower fails to pay any interest on or the principal of the Loan, or any portion thereof, when due, subject to any cure period, but no less than fifteen (15) days;  
or

(b) The Borrower fails to pay any other amounts payable to the Lender under any Loan Document, or any portion thereof, within three (3) Business Days after the same becomes due; or

(c) The Borrower fails to perform or observe any of the other covenants contained in this Agreement, and such default shall continue for thirty (30) days after written notice thereof has been sent to the Borrower by the Lender for any default that can be reasonably cured within thirty (30) days, and a reasonable period of time for a default not reasonably capable of cure within thirty (30) days provided Borrower diligently commences and continues a course of action to so cure; or

(d) The Borrower fails to make any payment, or perform or observe any covenant or agreement contained in the Loan Documents or the Act and such default shall continue after all notice and cure periods provided for thereunder; or

(e) Any representation or warranty made in any Loan Document, or in any certificate delivered pursuant to any Loan Document, proves to have been intentionally incorrect in any material respect when made or reaffirmed; or

(f) At any time (i) the Borrower fails to pay the principal, or any principal installment, of or interest on any present or future Indebtedness of \$100,000 or more, when due (or within any stated grace period), whether at the stated maturity, upon acceleration, by reason of required prepayment or otherwise or (ii) the Borrower fails to perform or observe any other term, covenant or agreement on its part to be performed or observed, or suffers any event to occur, in connection with any present or future Indebtedness of \$100,000 or more if as a result of such failure or sufferance (x) any holder or holders thereof (or an agent or trustee on its or their behalf) has the right to declare such Indebtedness due, or has the right to cause the Borrower to purchase, redeem or otherwise acquire such Indebtedness, or (y) such Indebtedness automatically becomes due, before the date on which it otherwise would become due, or such Indebtedness shall automatically become subject to purchase, redemption or other acquisition; or

(g) Any Loan Document, at any time after its execution and delivery and for any reason other than satisfaction in full of all the Obligations, ceases to be in full force and effect or is declared by a court or tribunal which purports to be of competent jurisdiction to be null and void, invalid or unenforceable which, in any such event in the reasonable opinion of the Lender, is materially adverse to the interests of the Lender; or the Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind the same or any provision thereof; or

(h) (i) a judgment against the Borrower is entered for the payment of money in excess of \$500,000 over the amount thereof that is fully covered by a reputable and solvent insurance company (subject to applicable deductibles and retentions); or (ii) a judgment against the Borrower is entered that could result in a Lien on any Property of the Borrower that is funded by the Loan; or (iii) any delay in payment of any judgment against the Borrower that could reasonably be expected to have a Material Adverse Effect and, absent



procurement of a stay of execution, any such judgment (under clause (i), (ii) or (iii)) remains unbonded or unsatisfied for 30 calendar days after the date of entry of judgment, or in any event later than 30 days prior to the date of any proposed sale thereunder; or

(i) The Borrower institutes or consents to any proceeding under a Debtor Relief Law relating to it or to all or any part of its Property, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any part of its Property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of the Borrower and the appointment continues undischarged or unstayed for thirty (30) calendar days; or any proceeding under a Debtor Relief Law relating to the Borrower or to all or any part of its Property is instituted without its consent and continues undismissed or unstayed for thirty (30) calendar days; or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against all or any material part of the Borrower's Property and is not released, vacated or fully bonded within thirty (30) calendar days after its issue or levy; or any order for relief is entered under any Debtor Relief Law; or

(j) The occurrence of an Event of Default (as such term is or may hereafter be specifically defined in any other Loan Document) under any other Loan Document or under any other Indebtedness of Borrower to Lender; or

(k) The actual or attempted revocation, replacement, or change to any Loan Document (not consented to by the Nation) which is materially adverse to the Lender or could constitute a Material Adverse Effect; or

(l) The occurrence of a change in the business, Property, operations, condition (financial or otherwise) or the prospects of the Borrower which could constitute a Material Adverse Effect; or

(m) Construction of Project(s) are abandoned prior to completion in excess of 30 working days without preceding reports to the Nabikayati Committee of the Navajo Nation Council and the President of the Navajo Nation.

**9.2 Remedies upon Event of Default.** Without limiting any other rights or remedies of the Lender provided for elsewhere in this Agreement, or the Loan Documents, or by applicable Law, or in equity, or otherwise:

(a) Upon the occurrence, and during the continuance, of any Event of Default other than an Event of Default described in Section 9.1(i), the Lender may (in its sole and absolute discretion) declare all or any part of the unpaid principal of the Loan, all interest accrued and unpaid thereon and all or any part of other amounts payable under the Loan Documents to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by the Borrower.

(b) Upon the occurrence of any Event of Default described in Section 9.1(i):



(i) all other obligations of the Lender and all rights of the Borrower and any other parties under the Loan Documents shall terminate without notice to or demand upon the Borrower, which are expressly waived by the Borrower;

(ii) the unpaid principal of the Loan, all interest accrued and unpaid thereon and all other amounts payable under the Loan Documents shall be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by the Borrower.

(c) Upon the occurrence and during the continuance of any Event of Default, the Lender, without notice to or demand upon the Borrower, which are expressly waived by the Borrower, may proceed in accordance with applicable Laws to protect, exercise and enforce the rights and remedies of the Lender under the Loan Documents against the Borrower and such other rights and remedies as are provided in such Loan Documents or by Law or equity, including the right of setoff in accordance with 12 N.N.C. §1507. The order and manner in which the Lender's rights and remedies are to be exercised shall be determined by the Lender in its sole and absolute discretion, and all payments received after the occurrence of any Default or Event of Default by the Lender shall be applied in such manner and order as the Lender may determine in its sole and absolute discretion.

## **ARTICLE 10 MISCELLANEOUS**

**10.1 Cumulative Remedies; No Waiver.** The rights, powers, privileges and remedies of the Lender provided herein and in the other Loan Documents are cumulative and not exclusive of any right, power, privilege or remedy provided by Law or equity. No failure or delay on the part of the Lender in exercising any right, power, privilege or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of the same or any other right, power, privilege or remedy.

**10.2 Amendments; Consents.** No amendment, modification, supplement, extension, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, and no consent to any departure by the Borrower therefrom, may in any event be effective unless in writing signed by the Lender and the Borrower, and then only in the specific instance and for the specific purpose given.

### **10.3 Costs, Expenses and Taxes; Indemnification.**

(a) The Borrower and Lender stipulate and agree that they will each be responsible for their own costs and expenses in connection with the negotiation, preparation, closing, execution and delivery of the Loan Documents, including the fees and expenses of their respective outside legal counsel, and any and all applications, certifications, consents, approvals and other actions under the Bond Financing Act that are related to the transactions contemplated by the Loan Documents and that such stipulation and agreement satisfies the application fee contemplated by 12 N.N.C. § 1330 (A)(3) and (4).

(b) The Borrower agrees to pay all costs and expenses of Lender incurred in connection with each refinancing, restructuring, reorganization (including a bankruptcy reorganization) and enforcement or attempted enforcement of the Loan Documents or with the preparation for such enforcement if Lender has reasonable grounds to believe that such enforcement may be necessary, including filing fees, recording fees, title insurance fees (to the extent applicable) appraisal fees, search fees and other out-of-pocket expenses and the fees and out-of-pocket expenses of any outside legal counsel to the Lender, independent public accountants and other outside experts retained by the Lender, and including any costs, expenses or fees incurred or suffered by the Lender in connection with or during the course of any bankruptcy or insolvency proceedings of the Borrower.

(c) To the extent authorized by law, the Borrower agrees to indemnify, save and hold harmless the Lender and its officials, affiliates, directors, officers, agents, attorneys and employees (collectively the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action which may be asserted by a third party against any Indemnitee by reason of claims that such Indemnitee is obligated or has undertaken to perform or discharge any obligation of Borrower with respect to any Project; (ii) any and all claims, demands, actions or causes of action by a third party if the claim, demand, action or cause of action arises out of or relates to the Loan, the use or contemplated use of proceeds of any Advance, the relationship of the Borrower and the Lender under this Agreement or any transaction contemplated by the Loan Documents; (iii) any administrative or investigative proceeding by any Governmental Agency arising out of or related to a claim, demand, action or cause of action described in clauses (i) or (ii) above; (iv) any and all liabilities, losses, costs (including settlement costs) or expenses (including reasonable attorneys' fees and disbursements and other professional services) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action or cause of action; and (v) any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for Indemnites) in connection with, or as a result of (A) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or (B) any Advance or the use or proposed use of the proceeds therefrom.

**10.4 Nature of the Lender's Obligations.** Nothing contained in this Agreement or any other Loan Document and no action taken by the Lender pursuant hereto or thereto may, or may be deemed to make the Lender a partnership, an association, a joint venture or other entity, with the Borrower or any Affiliate of the Borrower.

**10.5 Survival of Representations and Warranties.** All representations and warranties contained herein or in any other Loan Document, or in any certificate or other writing delivered by or on behalf of any one or more of the parties to any Loan Document, will survive the making of the Loan and the execution and delivery of the Loan Documents, and have been or will be relied upon by the Lender, notwithstanding any investigation made by the Lender or on its behalf.

**10.6 Notices.** Except as otherwise expressly provided in the Loan Documents (a) all notices, requests, demands, directions and other communications provided for hereunder or under



any other Loan Document must be in writing and must be mailed, telegraphed, telecopied, electronically submitted, delivered or sent by recognized overnight courier service, to the appropriate party at the address set forth on the signature pages of this Agreement or other applicable Loan Document or, as to any party to any Loan Document, at any other address as may be designated by it in a written notice sent to all other parties to such Loan Document in accordance with this Section; and (b) any notice, request, demand, direction or other communication given by telecopier or electronically must be confirmed within 48 hours by letter mailed or delivered to the appropriate party at its respective address. Except as otherwise expressly provided in any Loan Document, if any notice, request, demand, direction or other communication required or permitted by any Loan Document is given by mail it will be effective on the earlier of receipt or the third Business Day after deposit in the United States mail with first class or airmail postage prepaid; if given by telegraph or cable, when delivered to the telegraph company with charges prepaid; if given by telex, telecopier or electronically, when sent; or if given by personal delivery, when delivered.

**10.7 Execution of Loan Documents.** Unless the Lender otherwise specifies with respect to any Loan Document, this Agreement and any other Loan Document may be executed in any number of counterparts and any party hereto or thereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Agreement or any other Loan Document, as the case may be, when taken together will be deemed to be but one and the same instrument. The execution of this Agreement or any other Loan Document by any party hereto or thereto will not become effective until counterparts hereof or thereof, as the case may be, have been executed by all the parties hereto or thereto.

**10.8 Binding Effect; Assignments.** This Agreement and the other Loan Documents shall be binding upon and shall inure to the benefit of the parties hereto and thereto and their respective successors and assigns, except that the Borrower may not assign its rights hereunder or thereunder or any interest herein or therein without the prior written consent of the Lender. Any assignment by the Borrower without the prior written consent of the Lender shall be null and void; provided, that no Person other than the Lender shall have any rights under this sentence. The Lender may assign its interest under the Loan Documents (or any portion thereof) without the prior written consent of the Borrower; provided that (i) the Lender agrees to use commercially reasonable efforts to provide the Borrower with at least five Business Days' prior written notice of such assignment and (ii) the failure of the Lender to provide such notice shall not have any effect on the obligations of the Borrower under the Loan Documents or the rights and remedies of the Lender under the Loan Documents or result in any liability for the Lender).

**10.9 No Third Parties Benefited.** This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of the Borrower and the Lender in connection with the Loan, and is made for the sole benefit of the Borrower, the Lender, and any of their successors and assigns. Except as expressly provided in Sections 10.8, no other Person shall have any rights of any nature hereunder or by reason hereof.

**10.10 Further Assurances.** The Borrower shall, at its sole expense and without expense to the Lender, execute and deliver such further acts and documents as the Lender from time to time reasonably requires for the assuring and confirming unto the Lender of the rights hereby created

or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of any Loan Document.

**10.11 Integration.** This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes all prior agreements, written or oral, on the subject matter hereof. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control and govern; provided that the inclusion of supplemental rights or remedies in favor of the Lender in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

**10.12 Governing Law.** This Agreement and the Loan Documents shall be governed by, construed and enforced in accordance with the internal law of the Nation. The Borrower and each other party hereto each hereby consents to the application of civil law of the Nation to the construction, interpretation and enforcement of this Agreement and the other Loan Documents, and to the application of civil law of the Nation to the procedural aspects of any suit, action or proceeding relating thereto, including, but not limited to, legal process, execution of judgments, enforcement of any arbitration award and other legal remedies, except for any procedural matters governed by or relating to the conduct of arbitration under Section 10.16. This Agreement and the Loan Documents shall be construed in accordance with their intent and with the fair meaning of its provisions and without regard to any presumption or other rule requiring construction against the party which caused the same to be drafted.

**10.13 Severability of Provisions.** Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

**10.14 Headings.** Article and Section headings in this Agreement and the other Loan Documents are included for convenience of reference only and are not part of this Agreement or the other Loan Documents for any other purpose.

**10.15 Time of the Essence.** Time is of the essence of the Loan Documents.

**10.16 Arbitration.** The Lender or the Borrower may require that any dispute be settled by binding arbitration pursuant to and in accordance with arbitration procedures referenced in the Navajo Nation Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. ("Arbitration"), and judgment on any arbitration award may be entered in the Nation court. No provision hereof shall limit the right of any party to this Agreement to exercise self-help remedies such as setoff, foreclosure against or sale of any real or personal property collateral or security, or to obtain provisional or ancillary remedies, including injunctive relief, sequestration, attachment, garnishment or the appointment of a receiver, from a court of the Nation before, after or during the pendency of any arbitration or other proceeding; provided, that the right to compel arbitration



and the remedies referred to herein shall be available only to the parties to this Agreement and no other parties. The exercise of any such remedy shall not waive the right of any party to compel arbitration hereunder. Each party to this Agreement severally represents and warrants to the other parties that this Section 10.16 is specifically enforceable against such party by the other parties. The Arbitration shall be conducted in accordance with the rules of the American Arbitration Association (AAA) except to the extent as modified by the following:

(a) Unless otherwise agreed upon, all Arbitration proceedings shall be held on the Nation;

(b) The arbitration shall be conducted by an arbitration panel consisting of three AAA available arbitrators, with at least one arbitrator possessing at least 10 years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third arbitrator;

(c) The prevailing party in any action or proceeding shall be entitled to recover its costs of collection including reasonable attorney's fees.

**10.17 Purported Oral Amendments.** THE BORROWER AND THE LENDER EXPRESSLY ACKNOWLEDGE THAT THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY ONLY BE AMENDED OR MODIFIED, OR THE PROVISIONS HEREOF OR THEREOF WAIVED OR SUPPLEMENTED, BY AN INSTRUMENT IN WRITING THAT COMPLIES WITH SECTION 10.2. EACH PARTY AGREES THAT IT WILL NOT RELY ON ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR ORAL OR WRITTEN STATEMENTS BY ANY OTHER PARTY THAT DOES NOT COMPLY WITH SECTION 10.2 TO EFFECT AN AMENDMENT, MODIFICATION, WAIVER OR SUPPLEMENT TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

**10.18 Waiver of Right to Trial by Jury.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO.

**10.19 Lender's Statutory Rights and Remedies; Borrower's Limited Waiver of Sovereign Immunity; Consent to Jurisdiction.**

(a) The Lender shall have the statutory rights and remedies of a noteholder to enforce this Agreement and any Loan Document as set forth in 21 N.N.C. § 26, which is incorporated herein by reference.

(b) Nothing in this Agreement shall be construed as limiting or waiving Borrower's sovereign immunity rights except to the limited extents provided in 21 N.N.C. § 26 and the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §551 *et seq.*

(c) The obligations of the Borrower under this Agreement are a general

obligation of the Borrower. For the avoidance of doubt, the obligations of the Borrower under this Agreement in no way constitute the obligation or agreement of the Lender.

(d) The Borrower hereby expressly submits and consents to the jurisdiction of the courts of the Nation, including all Nation courts to which decisions of the courts of the Nation can be appealed, with respect to any dispute or controversy arising out of this Agreement or any Loan Document, including any amendment or supplement which may be made hereto or thereto or to any transaction in connection herewith or therewith and the enforcement of any arbitration award.

(e) The waivers and consents described in this Section shall inure solely to the benefit of the Lender and each other person who is entitled to the benefits of this Agreement, including without limitation the Indemnitees referred to in Section 10.3. The Lender and such other persons shall have and be entitled to all available legal and equitable remedies, including the right to specific performance, money damages, injunctive or declaratory relief, and the remedies provided for in 21 N.N.C. § 26. The limited waivers of sovereign immunity and consents to jurisdiction contained in this Section are irrevocable.

**10.20 Waiver of Punitive Damages; Etc.** Notwithstanding anything to the contrary contained in this Agreement, the Borrower hereby agrees that it shall not seek from the Lender punitive, consequential or exemplary damages under any theory of liability. Notwithstanding anything to the contrary contained in this Agreement, the Lender hereby agrees that it and each other person who is entitled to the benefits of this Agreement, including without limitation the Indemnitees referred to in Section 10.3, shall not seek from the Borrower punitive, consequential or exemplary damages under any theory of liability.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**“Borrower”:**

**NAVAJO NATION TRIBAL UTILITY  
AUTHORITY**

By: \_\_\_\_\_  
Name: Walter W. Haase, P.E.  
Title: General Manager

Address for Notices:

Navajo Tribal Utility Authority  
North Hwy Route 12  
Fort Defiance, AZ 86504  
Attention: General Manager's Office  
Email: arashm@ntua.com  
Telephone: (928) 729-6126  
Telecopier: (928) 729-2135



**“Lender”:**

**NAVAJO NATION** (listed in the Federal Register as NAVAJO NATION, ARIZONA, NEW MEXICO & UTAH), acting by and through the Budget and Finance Committee of the Navajo Nation Council.

By: \_\_\_\_\_  
Russell Begaye, President

Address for Notices:

Office of the Controller  
P.O. Box 3150  
Window Rock, Arizona 86515  
Attention: Pearlene Kirk, Controller  
Email:

\_\_\_\_\_  
Telephone: (928) 871-6327  
Telecopier: (928) 871-6026

**EXHIBIT A**  
**FORM OF PROMISSORY NOTE**

**PROMISSORY NOTE**

\$63,945,972

\_\_\_\_\_, 2017

FOR VALUE RECEIVED, the undersigned promises to pay to the **NAVAJO NATION** (listed in the *Federal Register* as Navajo Nation, Arizona, New Mexico & Utah), acting by and through the Budget and Finance Committee of the Navajo Nation Council, the principal sum of Sixty Three Million Nine Hundred Forty Five Thousand Nine Hundred Seventy Two Dollars (\$63,945,972) or such lesser aggregate amount as may be advanced by Lender pursuant to the Loan Agreement, payable as set forth herein. The undersigned also promises to pay interest on the principal amount outstanding from time to time from the date hereof until the date of payment in full both before and after Default and before and after maturity and judgment, payable as set forth below.

Reference is made to the Loan Agreement, dated as of even date herewith, by and between the undersigned, as Borrower, and the Lender (as the same may from time to time be supplemented, modified, amended, restated or extended, the "Loan Agreement"). Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement. This Promissory Note is the Note referred to in the Loan Agreement, and the Lender and any subsequent rightful holder hereof (collectively, the "Holder") is entitled to all of the rights, remedies, benefits and privileges provided for in the Loan Agreement as originally executed or as it may from time to time be supplemented, modified or amended. The Loan Agreement, among other things, contains provisions for binding arbitration and acceleration of the maturity hereof upon the happening of certain stated events upon the terms and conditions therein specified.

The principal indebtedness evidenced by this Note shall be payable as provided in the Loan Agreement.

Interest shall be payable on the outstanding daily unpaid principal amount advanced to the Borrower under the Loan Agreement until payment in full and shall accrue and be payable at the rates and on the dates set forth in the Loan Agreement, both before and after Default and before and after maturity and judgment, with interest on overdue principal and interest to bear interest at the rate set forth in Sections 3.1 of the Loan Agreement, to the fullest extent permitted by applicable Law.

The undersigned shall make all payments hereunder to the Lender as indicated in the Loan Agreement in lawful money of the United States by delivery of a check at the Lender's Office or by wire transfer or other immediately available funds.

The Lender shall keep a record (which may be in electronic or other intangible form) of all advances made by it and payments of principal received by it with respect to this Note, and such record shall be presumptive evidence of the amounts owing under this Note, provided that nothing herein shall prevent the Holder from presenting their books and records as evidence of the outstanding amount of the Obligations.

The undersigned hereby promises to pay all costs and expenses of any rightful Holder hereof incurred in collecting the undersigned's obligations hereunder or in enforcing or attempting to enforce any of such Holder's rights hereunder, including attorneys' fees and disbursements and the other costs and expenses described in Section 10.3 of the Loan Agreement, whether or not an action is filed in connection therewith.

The undersigned hereby waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest and any other notice or formality, to the fullest extent permitted by applicable Laws.

This Note is a Loan Document as defined in the Loan Agreement, and the sovereign immunity waiver, jurisdictional waivers and consents, governing law and other provisions of the Loan Agreement generally applicable to Loan Documents are applicable hereto and incorporated herein by this reference and this Note shall be interpreted, construed and enforced as if all such provisions were set forth in full in this Note.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]



**NAVAJO TRIBAL UTILITY AUTHORITY**

By: \_\_\_\_\_  
Name: Walter W. Haase  
Title: General Manager

**EXHIBIT B**  
**REQUEST FOR ADVANCE**

[Date]

Office of the Controller  
The Navajo Nation  
PO Box 3150  
Window Rock, AZ 86515

1. This Request for Advance is executed and delivered by an authorized officer of the Navajo Tribal Utility Authority (the "Borrower") to the Controller of the Navajo Nation, as lender under Section 2.2 of that certain Loan Agreement (Water Projects) dated as of [\_\_\_\_\_, 2017] (the "Loan Agreement") between the Borrower and the Navajo Nation (the "Nation"). Any terms used herein and not defined herein shall have the meanings set forth for such terms in the Loan Agreement.

2. The Borrower hereby requests that the Controller make an Advance of the Loan in accordance with the Loan Agreement as follows:

(a) Amount of Advance: \$[\_\_\_\_\_]

(b) Requested Date of Advance (which is not less than 10 days after the date of this Request for Advance as set forth in Section 2.2 of the Loan Agreement):  
[\_\_\_\_\_]

3. The aggregate amount of Advances outstanding after the Advance requested herein will be \$[\_\_\_\_\_].

4. The proceeds of the Advance will be used for Project Costs as required by the Loan Agreement.

5. The Borrower hereby requests that the Controller prepare an updated debt service schedule that incorporates the requested Advance of the Loan Agreement, which will update Schedule 3.1 of the Loan Agreement.

6. The Borrower hereby represents and warrants that:

(a) Each representation or warranty by Borrower contained herein or in any other Loan Document shall be true or correct in all material respects;

(b) No Default or Event of Default has occurred and is continuing or could reasonably be expected to result after giving effect to such Advance; and

(c) After giving effect to the Advance requested herein, the original principal amount of all Advances made hereunder does not exceed the Maximum Loan Amount.

7. This Request for Advance is executed on [\_\_\_\_\_, 2017], by an authorized officer of the Borrower. The undersigned, in such capacity, hereby certifies each and every matter contained herein to be true and correct.



IN WITNESS WHEREOF, the Borrower has executed this Request for Advance on the date set forth above.

**NAVAJO TRIBAL UTILITY AUTHORITY**

By: \_\_\_\_\_  
Walter W. Haase, P.E.  
General Manager

**EXHIBIT\_C**  
**APPROPRIATIONS AUTHORIZED AND SCHEDULE OF ADVANCES**

	Maximum Loan	Administration (non-repayment)	O&M Fund (non-repayment)	Emergency/Replacement Fund (non-repayment)
Fiscal Year	Project Costs	Costs		
2016	\$9,270,000	\$300,000	\$2,000,000	\$2,000,000
2017	\$13,850,000	\$300,000	\$2,000,000	\$2,000,000
2018	\$16,225,972	\$300,000	\$2,000,000	\$2,000,000
2019	\$12,550,000	\$300,000	\$2,000,000	\$4,000,000
2020	\$12,050,000	\$300,000	\$2,000,000	
	\$63,945,972	\$1,500,000	\$10,000,000	\$10,000,000

SCHEDULE 3.1  
DEBT SERVICE SCHEDULE



# Advance

#1

	Sum of Principal	Sum of Interest	Sum of Payment
2017	(0)	72,584	72,584
2018	0	101,507	101,507
2019	0	101,507	101,507
2020	(0)	101,785	101,785
2021	(0)	101,507	101,506
2022	241,906	100,839	342,746
2023	326,172	97,510	423,682
2024	329,569	94,187	423,756
2025	333,524	90,300	423,823
2026	337,255	86,632	423,888
2027	341,028	82,924	423,952
2028	344,629	79,397	424,026
2029	348,709	75,385	424,093
2030	352,608	71,550	424,158
2031	356,549	67,673	424,222
2032	360,364	63,933	424,297
2033	364,575	59,790	424,365
2034	368,648	55,781	424,429
2035	372,767	51,728	424,494
2036	376,804	47,765	424,569
2037	381,152	43,485	424,637
2038	385,408	39,294	424,703
2039	389,712	35,057	424,768
2040	393,983	30,861	424,844
2041	398,474	26,439	424,914
2042	402,923	22,058	424,980
2043	407,421	17,627	425,048
2044	411,938	13,188	425,127
2045	416,583	8,618	425,201
2046	421,255	4,013	425,268
2047	106,042	282	106,325
Grand Total	9,270,000	1,845,204	11,115,204

Advance  
#2

	Sum of Principal	Sum of Interest	Sum of Payment
2017	(0)	108,446	108,445.50
2018	0	151,657	151,657.51
2019	(0)	151,657	151,657.50
2020	0	152,073	152,073.00
2021	0	151,657	151,657.50
2022	361,424	150,661	512,085.04
2023	487,323	145,687	633,009.46
2024	492,398	140,722	633,119.70
2025	498,307	134,914	633,220.41
2026	503,882	129,435	633,316.39
2027	509,518	123,894	633,412.44
2028	514,899	118,624	633,522.99
2029	520,994	112,630	633,624.01
2030	526,819	106,901	633,720.31
2031	532,709	101,108	633,816.71
2032	538,408	95,520	633,927.70
2033	544,699	89,330	634,029.16
2034	550,785	83,341	634,125.94
2035	556,938	77,284	634,222.88
2036	562,971	71,363	634,334.58
2037	569,467	64,970	634,436.79
2038	575,826	58,708	634,534.41
2039	582,256	52,377	634,632.35
2040	588,637	46,108	634,745.49
2041	595,347	39,502	634,849.32
2042	601,993	32,956	634,948.97
2043	608,713	26,336	635,049.73
2044	615,464	19,704	635,167.74
2045	622,404	12,875	635,278.94
2046	629,384	5,996	635,379.52
2047	158,434	422	158,856.28
Grand Total	13,850,000	2,756,858	16,606,858.27

### Advance #3

	Sum of Principal	Sum of Interest	Sum of Payment
2017	0	0	0
2018	0	89,567	89,567
2019	(0)	177,674	177,674
2020	0	178,161	178,161
2021	0	177,674	177,674
2022	0	177,674	177,674
2023	298,595	177,263	475,858
2024	603,220	172,393	775,613
2025	610,458	165,278	775,736
2026	617,288	158,566	775,854
2027	624,193	151,778	775,971
2028	630,785	145,322	776,107
2029	638,252	137,979	776,230
2030	645,388	130,960	776,348
2031	652,603	123,864	776,467
2032	659,585	117,018	776,603
2033	667,292	109,435	776,727
2034	674,747	102,098	776,845
2035	682,286	94,679	776,964
2036	689,676	87,425	777,101
2037	697,634	79,593	777,226
2038	705,424	71,922	777,346
2039	713,301	64,165	777,466
2040	721,119	56,485	777,604
2041	729,339	48,392	777,732
2042	737,481	40,373	777,854
2043	745,713	32,264	777,977
2044	753,983	24,139	778,122
2045	762,485	15,773	778,258
2046	771,036	7,345	778,381
2047	194,072	517	194,589
Grand Total	16,225,952	3,115,777	19,341,729

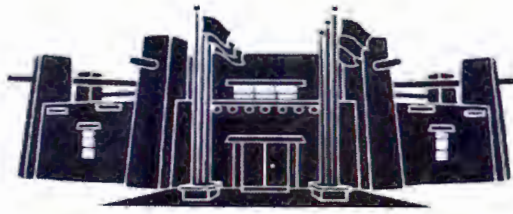


**Advance #4**

	Sum of Principal	Sum of Interest	Sum of Payment
2017	0	0	0
2018	0	0	0
2019	(0)	69,276	69,276
2020	0	137,799	137,799
2021	(0)	137,422	137,422
2022	0	137,422	137,423
2023	0	137,422	137,423
2024	242,533	137,465	379,998
2025	490,284	132,742	623,026
2026	495,769	127,351	623,120
2027	501,315	121,899	623,215
2028	506,609	116,714	623,323
2029	512,607	110,816	623,423
2030	518,338	105,180	623,518
2031	524,132	99,480	623,612
2032	529,740	93,982	623,722
2033	535,930	87,892	623,822
2034	541,918	81,999	623,917
2035	547,972	76,040	624,012
2036	553,907	70,215	624,122
2037	560,298	63,924	624,223
2038	566,555	57,763	624,319
2039	572,881	51,534	624,415
2040	579,160	45,366	624,526
2041	585,763	38,866	624,628
2042	592,301	32,425	624,727
2043	598,913	25,912	624,826
2044	605,555	19,387	624,942
2045	612,383	12,668	625,051
2046	619,251	5,899	625,150
2047	155,862	415	156,277
Grand Total	12,549,979	2,335,277	14,885,256

**Advance #5**

	Sum of Principal	Sum of Interest	Sum of Payment
2017	0	0	0
2018	0	0	0
2019	0	0	0
2020	0	66,516	66,516
2021	0	131,947	131,948
2022	0	131,947	131,948
2023	(0)	131,947	131,947
2024	(0)	132,309	132,309
2025	245,022	131,610	376,632
2026	495,257	127,219	622,477
2027	500,798	121,773	622,571
2028	506,086	116,594	622,680
2029	512,077	110,702	622,779
2030	517,803	105,071	622,874
2031	523,591	99,377	622,968
2032	529,193	93,885	623,077
2033	535,376	87,801	623,177
2034	541,358	81,914	623,272
2035	547,406	75,962	623,368
2036	553,335	70,142	623,477
2037	559,720	63,858	623,578
2038	565,970	57,704	623,674
2039	572,290	51,480	623,770
2040	578,562	45,319	623,881
2041	585,158	38,826	623,983
2042	591,690	32,392	624,081
2043	598,295	25,885	624,180
2044	604,929	19,367	624,296
2045	611,751	12,655	624,406
2046	618,611	5,893	624,504
2047	155,701	415	156,116
Grand Total	12,049,979	2,170,512	14,220,491



## MEMORANDUM

**TO:** Hon. LoRenzo C. Bates  
23<sup>rd</sup> Navajo Nation Council

**FROM:**   
Levon B. Henry, Chief Legislative Counsel  
Office of Legislative Counsel

**DATE:** April 5, 2017

**SUBJECT:** AN ACTION RELATING TO BUDGET AND FINANCE COMMITTEE;  
APPROVING THE LOAN AND LOAN DOCUMENTS BETWEEN THE  
NAVAJO NATION, ACTING BY AND THROUGH THE BUDGET AND  
FINANCE COMMITTEE, AS THE LENDER, AND THE NAVAJO  
TRIBAL UTILITY AUTHORITY, AS THE BORROWER, TO FUND THE  
SÍHASIN FUND BULK WATER & WASTEWATER DEVELOPMENT  
PROJECTS ASSIGNED TO THE NAVAJO TRIBAL UTILITY  
AUTHORITY PURSUANT TO NAVAJO NATION COUNCIL  
RESOLUTION CJA-12-16

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

The Office of Legislative Counsel confirms the appropriate standing committee review based on the standing committees powers outlined in 2 N.N.C. § 301. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.



THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0127-17\_\_\_\_\_

SPONSOR: LoRenzo C. Bates

**TITLE: An Action Relating To Budget and Finance Committee; Approving the Loan and Loan Documents Between the Navajo Nation, Acting By and Through the Budget and Finance Committee, As The Lender, and the Navajo Tribal Utility Authority, As The Borrower, To Fund the Sihasin Fund Bulk Water & Wastewater Development Projects Assigned to the Navajo Tribal Utility Authority Pursuant to Navajo Nation Council Resolution CJA-12-16**

***Date posted: April 5, 2017 at 6:23pm***

**Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)**

**Written comments may be mailed to:**

**Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7590**

**Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.**

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.:** 0127-17

**SPONSOR:** Honorable LoRenzo C. Bates

**TITLE: An Action Relating To Budget and Finance Committee; Approving the Loan and Loan Documents Between the Navajo Nation, Acting By and Through the Budget and Finance Committee, As The Lender, and the Navajo Tribal Utility Authority, As The Borrower, To Fund the Sihasin Fund Bulk Water & Wastewater Development Projects Assigned to the Navajo Tribal Utility Authority Pursuant to Navajo Nation Council Resolution CJA-12-16**

**Posted:** April 5, 2017 at 6:23 PM

**5 DAY Comment Period Ended:** April 10, 2017

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing</b>	<i>None</i>
<b>Inclusive Comments</b>	<i>None</i>



**Policy Analyst  
Office of Legislative Services**

4/11/17 8:00am

**Date/Time**

## 23<sup>rd</sup> NAVAJO NATION COUNCIL

Third Year 2017

Mr. Speaker:

The **BUDGET & FINANCE COMMITTEE** to whom has been assigned

### NAVAJO LEGISLATIVE BILL # 0127-17:

An Action Relating to Budget and Finance Committee; Approving the Loan and Loan Documents between the Navajo Nation, Acting by and through the Budget and Finance Committee, as the Lender and the Navajo Tribal Utility Authority, as the Borrower, to fund the Sihasin Fund Bulk Water & Wastewater Development Projects Assigned to the Navajo Tribal Utility Authority pursuant to Navajo Nation Council Resolution CJA-12-16 Sponsored by LoRenzo C. Bates and Leonard Tsosie, Council Delegates

has had it under consideration and reports the same with the recommendation that It **Do Pass** with 1 amendment:

1. Replace Exhibit A with the new Loan Agreement.
2. On page 4, delete lines 11 through 19.
3. On page 4, line 11, insert a new J.:

J. "NTUA, the Navajo Nation Controller and the Navajo Nation Department of Justice, along with the Nation's outside bond legal counsel, have negotiated and agreed upon the substantive provisions of the Loan Agreement, including the supporting documents and schedules, attached as Exhibit A."

4. On page 5, line 4, after the word "authorizes", insert "the Controller and"; and after the words "Nation to", insert "finalize and"; and after the word "execute", insert "the Loan Agreement and". After the amendment, the paragraph will read as follows:

"The Navajo Nation hereby authorizes the Controller and the President of the Navajo Nation to finalize and execute the Loan Agreement and any and all documents necessary to effectuate the intent and purpose of this Resolution."

Respectfully submitted,

  
Seth Damon, Chairman

Adopted: 

Legislative Advisor

Not Adopted: \_\_\_\_\_

Legislative Advisor

**14 April 2017**

The vote was 4 in favor 0 opposed

Absent: Lee Jack, Sr.



**LOAN AGREEMENT**  
**(Sihasin Fund Water & Wastewater Projects)**

**Dated as of \_\_\_\_\_, 2017**

**between**

**NAVAJO TRIBAL UTILITY AUTHORITY,**  
**as the Borrower,**

**and**

**NAVAJO NATION (LISTED IN THE FEDERAL**  
**REGISTER AS NAVAJO NATION, ARIZONA, NEW**  
**MEXICO & UTAH),**  
**as the Lender**



## Table of Contents

ARTICLE 1	DEFINITIONS AND ACCOUNTING TERMS .....	2
1.1	Defined Terms .....	2
1.2	Use of Defined Terms .....	7
1.3	References .....	7
1.4	Time .....	8
1.5	Interpretation .....	8
1.6	Role of the Controller .....	8
ARTICLE 2	THE LOAN; DISBURSEMENT OF NON-REPAYMENT AMOUNTS .....	8
2.1	The Loan and Non-Repayment Amounts .....	8
2.2	Request for Advances and Non-Repayment Amounts .....	9
ARTICLE 3	PAYMENTS AND FEES .....	10
3.1	Principal and Interest .....	10
3.2	Prepayment .....	11
3.3	Late Charge .....	11
3.4	Computation of Interest and Fees; Non-Business Days .....	11
3.5	Manner and Treatment of Payments .....	11
3.6	Failure to Charge Not Subsequent Waiver .....	11
ARTICLE 4	REPRESENTATIONS AND WARRANTIES OF THE BORROWER .....	11
4.1	Existence and Qualification; Power; Compliance with Laws .....	12
4.2	Authority; Compliance with Other Agreements and Instruments and Government Regulations .....	12
4.3	No Governmental Approvals Required .....	12
4.4	Financial Statements of the Borrower; No Material Adverse Effect; No Default .....	12
4.5	Brokerage Commissions .....	13
4.6	Litigation .....	13
4.7	Binding Obligations .....	13
4.8	Disclosure .....	13
4.9	Tax Liability .....	13
4.10	Employee Matters .....	13
4.11	Hazardous Materials .....	14

Table of Contents  
(continued)

	Page
4.12 Statutory Limitation on Borrower's Long-Term Debt; Government Regulation of Incurrence of Debt .....	14
4.13 Bond Financing Act .....	14
ARTICLE 5 AFFIRMATIVE COVENANTS OF THE BORROWER.....	14
5.1 Payment of Taxes and Other Potential Liens.....	14
5.2 Maintenance of Properties .....	15
5.3 Maintenance of Insurance .....	15
5.4 Compliance with Laws .....	15
5.5 Preservation of Licenses and Permits .....	15
5.6 Keeping of Records and Books of Account; Inspection.....	15
5.7 Compliance with Material Documents and Other Agreements .....	16
5.8 Use of Proceeds.....	16
5.9 Project Accounting and Reporting.....	16
ARTICLE 6 NEGATIVE COVENANTS OF THE BORROWER.....	16
6.1 Disposition of Assets; Sale of Assets.....	16
6.2 Business of the Borrower.....	16
6.3 Expenditures .....	16
6.4 Accounting Changes .....	17
6.5 Hazardous Materials Laws.....	17
ARTICLE 7 INFORMATION AND REPORTING REQUIREMENTS .....	17
7.1 Financial and Business Information.....	17
ARTICLE 8 CONDITIONS .....	18
8.1 Loan Closing.....	18
8.2 Each Advance .....	20
ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES UPON EVENT OF DEFAULT .....	20
9.1 Events of Default .....	20
9.2 Remedies upon Event of Default .....	22
ARTICLE 10 MISCELLANEOUS .....	23
10.1 Cumulative Remedies; No Waiver .....	23
10.2 Amendments; Consents .....	23

Table of Contents  
(continued)

	Page
10.3 Costs, Expenses and Taxes; Indemnification.....	23
10.4 Nature of the Lender's Obligations.....	24
10.5 Survival of Representations and Warranties.....	24
10.6 Notices .....	24
10.7 Execution of Loan Documents.....	25
10.8 Binding Effect; Assignments .....	25
10.9 No Third Parties Benefited .....	25
10.10 Further Assurances.....	25
10.11 Integration .....	25
10.12 Governing Law .....	26
10.13 Severability of Provisions .....	26
10.14 Headings .....	26
10.15 Time of the Essence .....	26
10.16 Arbitration.....	26
10.17 Purported Oral Amendments .....	27
10.18 Waiver of Right to Trial by Jury.....	27
10.19 Lender's Statutory Rights and Remedies; Consent to Jurisdiction.....	27
10.20 Waiver of Punitive Damages; Etc.....	28
10.21 No Lender Liability for Project Costs.....	28
10.22 No Restrictions on Future Borrowing or Grants.....	28
EXHIBIT A FORM OF PROMISSORY NOTE.....	A-1
EXHIBIT B REQUEST FOR ADVANCE AND NON-REPAYMENT AMOUNTS ....	B-1
EXHIBIT C APPROPRIATIONS AUTHORIZED AND SCHEDULE OF ADVANCES AND NON-REPAYMENT AMOUNTS .....	C-1
EXHIBIT D DESCRIPTION OF PROJECTS .....	D-1
SCHEDULE 3.1 INITIAL INTEREST PAYMENT SCHEDULE.....	S-1

## **LOAN AGREEMENT (Water Projects)**

This LOAN AGREEMENT (the "Agreement"), dated as of [\_\_\_\_], 2017 is entered into by and between the **NAVAJO TRIBAL UTILITY AUTHORITY**, an instrumentality and enterprise of the Nation (defined below), as the borrower ("NTUA" or the "Borrower"), and the **NAVAJO NATION** (listed in the Federal Register as NAVAJO NATION, ARIZONA, NEW MEXICO & UTAH), a federally recognized Indian tribe, as the lender (the "Nation" or the "Lender").

### **RECITALS**

WHEREAS, the Navajo Nation enacted Resolution No. CJA-12-16 on February 21, 2016 (the "Act") which Act adopted the Síhasin Fund "Bulk Water & Wastewater Development Expenditure Plan" (the "Expenditure Plan") for the purpose of maximizing the use of federal, state and private funding to subsidize bulk water delivery and wastewater development projects; and

WHEREAS, the Síhasin Fund was created and established by the Nation under Resolution No. CD-68-14, enacted on December 31, 2014, and was funded with the proceeds from the settlement of Navajo Nation v. United States, No. 06-945L (United States Court of Federal Claims); and

WHEREAS, the Expenditure Plan authorized by the Act set forth funding amounts for the Borrower over a five-year period equaling \$85,445,972 from the Síhasin Fund and disbursed to the Borrower for the Projects (as defined herein) as follows: (i) \$9,270,000 in the 2016 fiscal year of the Lender, (ii) \$13,850,000 in the 2017 fiscal year of the Lender, (iii) \$16,225,972 in the 2018 fiscal year of the Lender, (iv) \$12,550,000 in the 2019 fiscal year of the Lender, (v) \$12,050,000 in the 2020 fiscal year of the Lender, (vi) \$10,000,000 for the NTUA Emergency Reserve and Replacement Fund, (vii) \$10,000,000 for the NTUA O&M Fund and (viii) \$1,500,000 for Administrative and Project Management Costs; and

WHEREAS, the Act specifically excluded from repayment by Borrower the \$10,000,000 appropriated to the Borrower for the NTUA Emergency Reserve and Replacement Fund, \$10,000,000 appropriated for the NTUA O&M Fund as well as Administrative and Project Management Costs of \$1,500,000 for a total non-repayment amount of \$21,500,000; and

WHEREAS, notwithstanding the NTUA Emergency Reserve and Replacement Fund, NTUA O&M Fund, and NTUA Administrative and Project Management Costs, the Act provides that the "annual allocations and appropriations to NTUA shall be repaid through a loan agreement(s) between NTUA and the Navajo Nation approved by the Budget & Finance Committee with loan terms at least equivalent to and no less favorable than the terms NTUA would receive if borrowing the dollars through the United States Department of Agriculture Rural Services Utilities' loan program;" and

WHEREAS, the Maximum Loan Amount (as defined herein) to be repaid hereunder is \$63,945,972; and



WHEREAS, the Act provides that the non-repayment portion of the Expenditure Plan will be appropriated from the Síhasin Funds and disbursed to NTUA over a 5-year period, which disbursements will occur as set forth in Exhibit C hereto; and

WHEREAS, the Act provides that the annual appropriation for NTUA Water and Wastewater Development Projects set forth in Exhibit A of the Act shall be "released to NTUA by the end of the second quarter of the respective Navajo Nation Fiscal Year through a single distribution and shall not lapse on an annual basis pursuant to 12 N.N.C. §820(N) or otherwise be returned to or deposited in the Síhasin Fund principal or Navajo Nation General Fund" until such time as all NTUA projects listed in Exhibit A of the Act, as revised, are fully completed; and

WHEREAS, the Loan (as defined herein) provided to the Borrower by the Lender under this Agreement is intended to provide the funding for the following projects described in the Expenditure Plan: (i) establishment of bulk water capacity and the treatment and transmission of that bulk water to the delivery system, (ii) the improvement of existing water systems through renovation, upgrade and capacity increase to accommodate the delivery of new bulk water, (iii) the construction of new plants, as well as the upsizing or replacement of existing plants, to process new bulk water, (iv) the development and construction of bridge water projects, such as new ground water wells, to bridge the capacity until the larger capacity reaches certain areas that are farthest from the bulk water sources, and (v) interconnection of lines that will network water systems together to move water from system to system and eventually create the flow path to move bulk water to the farthest reaches and isolated communities (collectively, the "Projects"), as further set forth on Exhibit D.

NOW THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS

**1.1 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

"Advance" means a cash advance made by the Lender to Borrower of proceeds of the Loan, which have been approved by Lender pursuant to the terms and conditions of this Agreement.

"Affiliate" means, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (and the correlative terms, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise). The Nation (except in its capacity as the Lender under the Loan Documents) shall be deemed to be an affiliate of the Borrower.

"Agreement" means this Loan Agreement, as the same may be amended or supplemented by the written agreement of the Lender and the Borrower from time to time.

"Bankruptcy Code" means the Federal Bankruptcy Reform Act of 1978, as amended.

"Bond Financing Act" means 12 N.N.C. § 1300, et seq., as amended from time to time.

"Borrower" means the Navajo Tribal Utility Authority, an instrumentality and enterprise of the Navajo Nation.

"Business Day" means any day other than a Saturday, a Sunday, or days when commercial banks in Window Rock, Arizona are closed for a legal holiday or by government directive

"Capital Expenditure" means any expenditure that is considered a capital expenditure under GAAP, consistently applied.

"Capital Lease" means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any Property by a Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

"Closing Date" means the date on which closing occurs.

"Controller" means the Person appointed as the controller of the Nation pursuant to 12 N.N.C. § 201, et seq., and serving in such capacity as contemplated by 12 N.N.C. § 201, et seq. The Controller is solely responsible to the Navajo Nation Council and the Budget and Finance Committee concerning the propriety of financial transactions, and compliance with Council or committee directives pursuant to 12 N.N.C. § 203(B). As of the Closing Date, the Controller is Ms. Pearline Kirk.

"Council" means the Navajo Nation Council established pursuant to 2 N.N.C. § 101, et seq.

"Debtor Relief Laws" means the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

"Default" means any event that, with the giving of any applicable notice or passage of time, or both, would constitute an Event of Default.

"Disposition" means the sale, lease, conveyance or other disposition of Property.

"Event of Default" has the meaning given to such term in Section 9.1.

"Expenditure Plan" has the meaning set forth in the recitals hereto.

"Fiscal Year" means a fiscal year of the Lender consisting of a twelve month fiscal period ending on each 30th day of September.

"GAAP" means, as of any date of determination, accounting principles set forth as generally accepted in the United States of America in currently effective opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and in statements of the Financial Accounting Standards Board, together with interpretive rulings and bulletins issued in connection therewith. The term "consistently applied," as used in connection therewith, means that the accounting principles applied are consistent in all material respects to those applied at prior dates or for prior periods.

"Governmental Agency" means (a) any international, foreign, federal, tribal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court, administrative tribunal or public utility, or (d) any arbitration tribunal or other non-governmental authority to whose jurisdiction a Person has consented.

"Hazardous Materials" means substances defined as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., or as hazardous, toxic or pollutant pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or in any other applicable Hazardous Materials Law, in each case as such laws are amended from time to time.

"Hazardous Materials Laws" means all federal, tribal, applicable state or applicable local laws, ordinances, rules or regulations governing the disposal of Hazardous Materials, to the extent applicable.

"Indebtedness" means, as to any Person on any date of determination, without duplication, (a) all indebtedness of such Person for borrowed money (including obligations to repurchase receivables and other assets sold with recourse), (b) that portion of the obligations of such Person under Capital Leases (c) any obligation of such Person that is evidenced by a promissory note or other instrument representing an extension of credit to such Person, whether or not for borrowed money, (d) any obligation of such Person for the deferred purchase price of Property or services (other than trade or other accounts payable in the ordinary course of business in accordance with customary terms not exceeding 90 days past the date of invoice), (e) any obligation of such Person that is secured by a Lien on assets of such Person, whether or not that Person has assumed such obligation or whether or not such obligation is nonrecourse to the credit of such Person, (f) obligations of such Person arising under acceptance facilities or under facilities for the discount of accounts receivable of such Person, (g) face amount of all letters of credit issued for the account of such Person,

"Late Charge" has the meaning given to such term in Section 3.3.

"Laws" means, collectively, all international, foreign, federal, tribal, applicable state and applicable local constitutions, statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents.

"Lender" has the meaning given to such term in the first paragraph of this Agreement.



“Lender’s Office” means the Lender’s address as set forth on the signature pages of this Agreement, or such other address as the Lender hereafter may designate by written notice to the Borrower.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, lien or charge of any kind, whether voluntarily incurred or arising by operation of Law or otherwise, affecting any Property, including any agreement to grant any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and/or the filing of or agreement to give any financing statement under the Navajo Nation UCC or comparable Law of any jurisdiction with respect to any Property.

“Loan” means the loan made by the Lender to the Borrower pursuant to the terms and conditions of this Agreement.

“Loan Documents” means, collectively, this Agreement, the Note, and all other agreements of any type or nature heretofore or hereafter executed and delivered by the Borrower to the Lender in any way relating to or in furtherance of this Agreement.

“Management Board” means the Management Board of the Borrower.

“Material Adverse Effect” means any circumstance or event or any set of circumstances or events which (a) could have any material adverse effect whatsoever upon the validity or enforceability of any provision of any Loan Document, (b) may reasonably be expected to be material and adverse to the business, Property, operations, condition (financial or otherwise) or the prospects of the Borrower, (c) materially impairs or could materially impair the ability of the Borrower to perform its Obligations under the Loan Documents, (d) materially impairs or could materially impair the ability of the Lender to enforce any of the Obligations or any of the benefits intended to be created and conveyed by the Loan Documents.

“Maturity Date” means 40 years from the date that the proceeds of any Advance is deposited into the Borrower’s designated account.

“Maximum Loan Amount” means an aggregate principal amount of \$63,945,972 which amount may be borrowed by the Borrower in the following maximum annual amounts for the applicable Navajo Nation Fiscal Year:

<b>Fiscal Year</b>	<b>Maximum Loan Amount</b>
2016*	\$9,270,000
2017*	\$13,850,000
2018	\$16,225,972
2019	\$12,550,000
2020	\$12,050,000

\* FY 2016 and FY 2017 disbursed on the Closing Date



"Nation" has the meaning given to such term in the first paragraph of this Agreement.

"Navajo Nation UCC" means the Navajo Uniform Commercial Code, codified at 5A N.N.C. §1-101, et seq.

"Negative Pledge" means any covenant binding on the Borrower that prohibits the creation of Liens on any of its Property.

"Net Available Proceeds" means: (a) in the case of any Disposition, the aggregate amount of all cash payments, and the fair market value of any non-cash consideration, received by the Borrower directly or indirectly in connection with such Disposition; provided, that such cash payments and non-cash consideration shall be net of the amount of any reasonable legal, title and recording expenses, and commissions paid by the Borrower in connection with such Disposition; and (b) in the case of any casualty event, the aggregate amount of proceeds of insurance, condemnation awards and other compensation received in respect of such casualty event net of the amount of any reasonable legal, title and recording expenses, and commissions paid by the Borrower in connection therewith.

"Non-Repayment Amounts" means the amounts disbursed to the Borrower for certain costs as set forth in the Act and on Exhibit C hereto that are not required to be repaid by the Borrower.

"Note" means the promissory note made by the Borrower and payable to the order of the Lender in substantially the form attached hereto as Exhibit A evidencing the Loan.

"Obligations" means and includes all loans, advances, debts, liabilities and obligations, howsoever arising, owed or owing by the Borrower to the Lender of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of any of the Loan Documents or relating to other Indebtedness of Borrower to Lender, including without limitation all interest (including interest that accrues after the commencement of any bankruptcy or other insolvency proceeding by or against the Borrower, whether or not allowed or allowable), fees, charges, expenses, attorneys' fees and accountants' fees chargeable to and payable by the Borrower hereunder and thereunder.

"Payment Date" means the last Business Day of the first full fiscal quarter occurring after the Closing Date and the last Business Day of each quarter of each Fiscal Year thereafter through the Maturity Date.

"Person" means any entity, whether an individual, trustee, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, instrumentality, enterprise (including the Borrower), firm, joint venture, Governmental Agency, or otherwise.

"Project Costs" means all costs, expenses and fees for the design, planning and construction of the Projects.

"Projects" means the projects of the Borrower to be financed with the Loan as set forth in Exhibit D hereto.

"Property" means any interest in any kind of property or asset within the water and wastewater utilities, whether real, personal or mixed, or tangible or intangible.

"Request for Advance" means a written request for an Advance under the Loan, substantially in the form of Exhibit B, signed by an authorized officer of the Borrower and properly completed to provide all information required to be included therein.

"Requirement of Law" means, as to any Person, the formation document, the articles or certificate of incorporation and bylaws, the partnership agreement and any related certificate of partnership, or other organizational or governing documents of such Person, and any Law, or judgment, order, award, decree, writ or determination of a Governmental Agency, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Senior Officer" means, the Chairperson of the Management Board of Borrower and the General Manager of Borrower, or any other individual specifically authorized in a resolution adopted by the Borrower to the extent authorized therein; provided, that, with respect to anyone so authorized, the Lender receives (i) an incumbency certificate which identifies such individual(s) and (ii) a copy of such resolution(s). Subject to the preceding sentence, each Senior Officer shall be conclusively presumed to be authorized to act on behalf of the Borrower with respect to the transactions contemplated by the Loan Documents.

**1.2 Use of Defined Terms.** Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any one or more of the members of the relevant class.

**1.3 References.**

(a) References in this Agreement to "Recitals," "Sections," "Exhibits" and "Schedules" are to recitals, sections, exhibits and schedules herein and hereto unless otherwise indicated. A matter disclosed on any schedule shall be deemed disclosed on all schedules.

(b) References in this Agreement or any other Loan Document to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof if such replacement is permitted hereby, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, restated, modified, extended and supplemented from time to time and in effect at any given time if such amendment, restatement, modification, extension or supplement is permitted hereby.

(c) References in this Agreement or any other Loan Document to any Law (i) shall include any successor Law, (ii) shall include all rules and regulations promulgated under such Law (or any successor Law), and (iii) shall mean such Law (or successor

Law) and such rules and regulations, as amended, modified, codified or reenacted from time to time and in effect at any given time.

(d) References in this Agreement or any other Loan Document to any Person in a particular capacity (i) shall include any successors to and permitted assigns of such Person in that capacity and (ii) shall exclude such Person individually or in any other capacity.

**1.4 Time.** All references in this Agreement and each of the other Loan Documents to a time of day shall mean Window Rock, Arizona time, unless otherwise indicated.

**1.5 Interpretation.** In this Agreement, unless otherwise indicated, the singular includes the plural and plural the singular; words importing any gender include the other gender; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to this Agreement; references to Persons include their respective permitted successors and assigns and, in the case of governmental Persons, Persons succeeding to their respective functions and capacities; the term "or" is disjunctive; the term "and" is conjunctive; the term "shall" is mandatory; and the term "may" is permissive.

**1.6 Role of the Controller.** Notwithstanding anything to the contrary herein, no action, approval, waiver, consent, amendment, modification or other function to be performed by the Lender under the Loan Documents shall be valid unless such action, approval, waiver, consent, amendment, modification or other function is performed, provided or executed (as applicable) by (a) the Controller, on behalf of the Lender, or (b) such other Person expressly designated by the Controller in writing, to the extent of such designation.

## **ARTICLE 2**

### **THE LOAN; DISBURSEMENT OF NON-REPAYMENT AMOUNTS**

#### **2.1 The Loan and Non-Repayment Amounts.**

(a) The Lender, on the terms and subject to the conditions set forth in this Agreement, agrees to make the Loan to the Borrower and agrees to disburse the Non-Repayment Amounts to the Borrower. The Loan shall be evidenced by the Note and will be disbursed in Advances in accordance with the schedule set forth in Exhibit C. All Non-Repayment Amounts shall be disbursed to the Borrower in accordance with the schedule set forth in Exhibit C. All or any portion of the Loan which are repaid or prepaid may not be reborrowed.

(b) The Loan shall be a general obligation of the Borrower, backed by the full faith and credit of the Borrower and payable from all legally available revenues of the Borrower.



(c) Notwithstanding any other provision herein, the Lender shall have no obligation of any nature to fund any Advance until and unless (i) no Event of Default has occurred and is continuing; (ii) all representations and warranties of the Borrower in each Loan Document are true and correct; (iii) all conditions set forth in Section 8.1 as conditions to the effectiveness of this Agreement (unless waived in connection with the execution of this Agreement) shall have been satisfied; (iv) for any Advance, all conditions set forth in Section 8.2 shall have been satisfied; and (v) after giving effect to such Advance, the original principal amount of all Advances will not exceed the Maximum Loan Amount.

(d) The Navajo Nation Code, 2 N.N.C. § 223 (A), requires that any contract involving the expenditure of funds executed on behalf of the Navajo Nation shall expressly state that "the liability of the Navajo Nation under such contract is contingent upon the availability of appropriations by the Navajo Nation Council to carry out the same" and that language is incorporated herein. Notwithstanding the foregoing, the Lender and Borrower stipulate and agree that, under all applicable laws, the Navajo Nation Council and President of the Navajo Nation have fully appropriated the Maximum Loan Amount totaling \$63,945,972 and to Non-Repayment Amounts totaling \$21,500,000 pursuant to the Act, and that no further action is necessary to effectuate the availability of the appropriations.

(e) Subject to Section 2.1(g), Borrower shall use the proceeds of the Loan solely for Project Costs.

(f) Borrower shall have the ability to make changes to the disbursement of funds for Projects within the Expenditure Plan to account for (i) Projects which run over budget, (ii) Projects which run under budget and (iii) with the approval of the Naabik'iyati Committee of the Navajo Nation Council, Projects whose priority has moved ahead of the date of disbursement of funds within the Expenditure Plan for that specific Project. Notwithstanding the above, the Loan disbursement amount for each Fiscal Year shall not be greater than as set forth in the Expenditure Plan.

(g) Borrower is responsible for identifying ways to leverage the Loan funds appropriated under the Act and any costs saved, reduced or reimbursed through leveraging shall remain in the respective continuing account and be expended to design, plan or construct the Projects listed under Exhibit A or, with the approval of the Naabik'iyati Committee of the Navajo Nation Council, subsequently eligible water and wastewater projects.

(h) In the event Borrower is leveraging Loan funds to reduce the cost of a Project and the agency providing financial assistance is requesting that all money be available for disbursement for a Project, NTUA shall have the right, upon approval by the Naabik'iyati Committee of the Navajo Nation Council, to advance funds within the Expenditure Plan for such Project.

**2.2 Request for Advances and Non-Repayment Amounts.** The Advances set forth on Exhibit C for Fiscal Year 2016 and Fiscal Year 2017 shall be made on the Closing Date.



Each Advance and disbursement of Non-Repayment Amounts, other than initial Advance and disbursement of Non-Repayment Amounts to be made on the Closing Date, shall be made pursuant to a Request for Advance to the Controller in the form of Exhibit B hereto which shall: (i) be delivered to the Controller at least 10 calendar days before the requested date of disbursement, and (ii) specify the principal amount of such Advance and the amount of any Non-Repayment Amounts. Pursuant to the Act, each Advance shall be released to Borrower by the end of the second quarter of the respective Navajo Nation Fiscal Year through a single distribution and not more than one (1) Request for Advance shall be submitted per Fiscal Year, subject to the provisions set forth in Section 2.1(g). Unless the Lender otherwise consents, no Request for Advance may be revoked by the Borrower after its submission to the Lender. In the event that the Lender consents to the revocation of any Request for Advance submitted by the Borrower, the Borrower agrees that it shall reimburse the Lender for any loss, cost, damage or expense associated with any redeployment of funds caused by such revocation.

### **ARTICLE 3 PAYMENTS AND FEES**

#### **3.1 Principal and Interest.**

(a) *Interest Rate.* Interest on the outstanding principal of each Advance shall accrue from the date on which the respective Advance is made to the date on which such principal is paid and shall accrue and be payable as set forth herein before and after Default, before maturity, before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law. The principal amount of each Advance of the Loan shall bear interest at the prevailing Federal Financing Bank (FFB) quarterly rates as published on the USDA Rural Utilities web site at <http://www.rd.usda.gov/programs-services/services/rural-utilities-loan-interest-rates> and pursuant to Section 6(b) of the Federal Financing Bank Act of 1973, as amended (codified at 12 U.S.C. 2281 et. seq.) in effect from time to time (the "FFB Rate"). The interest rate on all outstanding amounts of the Loan shall be adjusted to the applicable FFB Rate each year on May 1 until May 1, 2023. On May 1, 2024, the Interest Rate for the remaining term of the Loan shall be fixed at the FFB Rate in effect on such date.

(b) *Interest-Only Payments Through May 1, 2024.* Borrower shall pay interest-only payments on Advances until May 1, 2024 (the "Interest-Only Period"). The initial interest-only payment schedule for Advances of the Loan made on the Closing Date is attached hereto as Schedule 3.1. Schedule 3.1 shall be supplemented and updated by the Controller after each Advance to reflect the total amount loaned to the Borrower and the consolidated interest-only payment schedule during the Interest-Only Period.

(c) *Interest and Principal Payments After May 1, 2024.* On or before May 1, 2024, the Controller shall prepare a consolidated interest payment and principal amortization schedule for the Loan. Principal amortization shall be based on a thirty-three (33) year principal amortization schedule. Beginning on the first Payment Date after May 1, 2024, the Borrower shall pay on each Payment Date through the Maturity Date the principal and interest payments as set forth in such schedule.

(d) Determinations of interest and principal payments on each Advance made by the Controller shall be conclusive and binding on Borrower in the absence of manifest error.

**3.2 Prepayment.** The Loan may be prepaid in whole or in part in amounts of not less than \$50,000, on any Payment Date, upon not less than fifteen (15) days prior written notice to Lender by the Borrower.

**3.3 Late Charge.** In the event that any payment required hereunder is not paid within ten (10) Business Days after the due date thereof, the Borrower agrees to pay a late charge of one percent (1%) of the unpaid payment to defray the costs of the Lender incident to collecting such late payment (the "Late Charge"). This Late Charge shall apply individually to each payment past due and there will be no daily pro rata adjustment. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights the Lender may have including the right to declare the entire unpaid principal amount of the Loan together with interest immediately due and payable.

**3.4 Computation of Interest and Fees; Non-Business Days.** Computation of interest and fees (if any) payable under this Agreement shall be calculated on the basis of a year of 360 days and actual days elapsed. If any payment to be made by the Borrower under any Loan Document shall come due on a day other than a Business Day, payment shall instead be considered due on the next succeeding Business Day and the extension of time shall be reflected in computing fees and interest.

**3.5 Manner and Treatment of Payments.** Each payment hereunder or under any other Loan Document shall be made, without setoff, counterclaim or deduction of any kind, to the Lender, at the Lender's Office in immediately available funds not later than 11:00 a.m. on the day of payment (which must be a Business Day). All later payments shall be deemed received on the next succeeding Business Day. Lender shall use its best efforts to keep a record of Advances made by it and payments received by it with respect to its Notes and such record shall be presumptive evidence of the amounts owing. Notwithstanding the foregoing sentence, Lender shall not be liable to any party for any failure to keep such a record, and no such failure shall affect the amount of the Obligations hereunder.

**3.6 Failure to Charge Not Subsequent Waiver.** Any decision by the Lender not to require payment of any interest, fee, cost (including the Late Charge) or other amount payable under any Loan Document, or to calculate any amount payable by a particular method, on any occasion shall in no way limit or be deemed a waiver of the Lender's right to require full payment of any interest, fee, cost (including the Late Charge) or other amount payable under any Loan Document, or to calculate an amount payable by another method, on any other or subsequent occasion.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to the Lender that:

**4.1 Existence and Qualification; Power; Compliance with Laws.** The Borrower is an instrumentality and enterprise of the Nation. To the extent required by Law, the Borrower is qualified to do business and is in good standing under the Laws of each jurisdiction in which it is required to be qualified by reason of the location or the conduct of the business of the Borrower. The Borrower has all requisite power and authority to conduct its business, to own and lease its Property, to execute and deliver each Loan Document to which it is a party and to perform its Obligations. The General Manager's office of the Borrower is located at the address for notices set forth on the signature pages hereto. The Borrower is in compliance with all applicable Laws and other legal requirements applicable to its existence and its business, has obtained all authorizations, consents, approvals, orders, licenses and permits from, and has accomplished all filings, registrations and qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Agency that are necessary for the transaction of its business, except where the failure so to file, register, qualify or obtain exemptions could not constitute a Material Adverse Effect.

**4.2 Authority; Compliance with Other Agreements and Instruments and Government Regulations.** The execution, delivery and performance by the Borrower of the Loan Documents have been duly authorized by all necessary Management Board and other action, and do not: (a) require any consent or approval not heretofore obtained of any enrolled tribal member, Management Board member, other tribal body, security holder or creditor; (b) violate or conflict with any provision of the governing documents of the Borrower; (c) result in or require the creation or imposition of any Lien upon or with respect to any of the Borrower's Property now owned or leased or hereafter acquired; (d) violate any Law or Requirement of Law, applicable to the Borrower; (e) constitute a "transfer of an interest" or an "obligation incurred" by the Borrower that is avoidable by a trustee under Section 548 of the Bankruptcy Code, or constitute a "fraudulent conveyance," "fraudulent obligation" or "fraudulent transfer" by the Borrower within the meanings of the Uniform Fraudulent Conveyances Act or Uniform Fraudulent Transfer Act, as enacted in any applicable jurisdiction; (f) result in a material breach of or default under, or would, with the giving of notice or the lapse of time or both, constitute a material breach of or default under, or cause or permit the acceleration of any obligation owed under, any mortgage, indenture or loan or credit agreement or any other contractual obligation to which the Borrower is a party or by which the Borrower or any of its Property is bound or affected; or (g) require any consent or approval of any Governmental Agency, or any notice to, registration or qualification with any Governmental Agency, not heretofore obtained or obtained concurrently with the Closing Date.

**4.3 No Governmental Approvals Required.** No authorization, consent, approval, order, license or permit from, or filing, registration or qualification with, any Governmental Agency is required to authorize or permit under applicable Laws the execution, delivery and performance by the Borrower of the Loan Documents to which it is a party, except for those which have been made or heretofore obtained and are in full force and effect (including those required by the Bond Financing Act and 12 N.N.C. § 1330(A)).

**4.4 Financial Statements of the Borrower; No Material Adverse Effect; No Default.** All financial statements of the Borrower provided to the Lender are complete and correct and fairly present the financial condition of the Borrower as of the date indicated in such financial statements and the results of operations for the fiscal period ended on such date, all in



accordance with GAAP and in conformity with accounting principles generally accepted in the United States of America as applied to governmental units.. Since the date of the latest financial statements, there has been no material adverse change in the business, assets, liabilities (actual or contingent), Property, operations, condition (financial or otherwise) or prospects of the Borrower. No event or circumstance exists or has occurred and is continuing that is a Default or an Event of Default.

**4.5 Brokerage Commissions.** No Person is entitled to receive any brokerage commission, finder's fee or similar fee or payment in connection with the extensions of credit contemplated by this Agreement as a result of any agreement entered into by the Borrower. No brokerage or other fee, commission or compensation is to be paid by the Lender with respect to the extensions of credit contemplated hereby as a result of any agreement entered into by the Borrower.

**4.6 Litigation.** There are no legal or arbitral actions, suits, proceedings or investigations by or before any arbitrator or Governmental Agency now pending or (to the Borrower's knowledge) threatened against the Borrower or any of its Property which, if adversely determined, could have a Material Adverse Effect.

**4.7 Binding Obligations.** The Loan Documents to which the Borrower is a party have been duly executed and delivered by the Borrower and constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their terms, and each Loan Document hereafter executed will, when executed and delivered by the parties thereto, constitute the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms. The provisions of Section 10.16 and Section 10.19 of this Agreement are specifically enforceable against the Borrower.

**4.8 Disclosure.** No written statement made by or on behalf of the Borrower to the Lender in connection with this Agreement, or in connection with the Loan, contains any untrue statement of a material fact or omits a material fact necessary in order to make the statement made not misleading in light of all the circumstances existing at the date the statement was made. There is no fact known to the Borrower (other than matters of a general economic nature) which could constitute a Material Adverse Effect.

**4.9 Tax Liability.** The Borrower has filed all tax returns which are required to be filed, and has paid, or made provision for the payment of, all taxes with respect to the periods, Property or transactions covered by said returns, or pursuant to any assessment received by the Borrower, except such taxes, if any, as are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established and maintained.

**4.10 Employee Matters.** There are no disputes presently subject to grievance procedure, arbitration or litigation under any of the collective bargaining agreements, employment contracts or employee welfare or incentive plans to which the Borrower is a party, and there are no strikes, lockouts, work stoppages or slowdowns, or, to the best knowledge of the Borrower, jurisdictional disputes or organizing activities occurring or threatened, in each case, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.



**4.11 Hazardous Materials.** Neither the Borrower nor to the best knowledge of each Senior Officer of the Borrower, any predecessor in title or any third person at any time occupying or present on the real property underlying the Projects or any other operations of the Borrower at any time, has disposed of, discharged, released or threatened the release of any material amount of Hazardous Materials on, from or under such real property in any manner that violates any Hazardous Materials Law. No condition exists that violates any Hazardous Material Law affecting the real property underlying the Projects or any other operations of the Borrower except for such violations that could not individually or in the aggregate have a Material Adverse Effect. The real property underlying the Projects or any other operations of the Borrower and each portion thereof is not and has not been utilized by the Borrower as a site for the manufacture of any Hazardous Materials and is in compliance in all material respects with all applicable Hazardous Materials Laws. To the extent that any Hazardous Materials have been, or are, used, generated or stored by the Borrower on any real property underlying the Projects or any other operations of the Borrower, or transported to or from such real property underlying the Projects or any other operations of the Borrower by the Borrower, such use, generation, storage and transportation have been and are, in compliance in all material respects with all applicable Hazardous Materials Laws.

**4.12 Statutory Limitation on Borrower's Long-Term Debt; Government Regulation of Incurrence of Debt.** After the incurrence of the Loan made hereunder, the Borrower will not be in violation of 21 N.N.C. § 7(B)(12) which provides that the total outstanding long-term indebtedness of the Borrower at any one time shall not exceed \$500,000,000. Other than as set forth in the Bond Financing Act and 21 N.N.C. § 7(B)(12), the Borrower is not subject to regulation under any law limiting or regulating its ability to incur indebtedness for money borrowed or to otherwise incur the indebtedness hereunder or perform its obligations hereunder.

**4.13 Bond Financing Act.** The Loan made hereunder constitutes a bond obligation of the Borrower under the Bond Financing Act.

## **ARTICLE 5 AFFIRMATIVE COVENANTS OF THE BORROWER**

So long as the Loan remains unpaid, or any other Obligation remains unpaid or unperformed, the Borrower shall, unless the Lender otherwise consents:

**5.1 Payment of Taxes and Other Potential Liens.** Pay and discharge promptly all applicable taxes, assessments and governmental charges or levies imposed upon the Borrower or its Property or any part thereof, upon its income or profits or any part thereof or any applicable tax assessment, governmental charges or levies imposed upon any right or interest of the Lender under any Loan Document, except that the Borrower shall not be required to pay or cause to be paid any tax, assessment, charge or levy that is not yet delinquent, or is being contested in good faith by appropriate proceedings, so long as the Borrower has established and maintained adequate reserves for the payment of the same and by reason of such nonpayment and contest no material item or portion of the Borrower's Property is in jeopardy of being seized, levied upon or forfeited.

**5.2 Maintenance of Properties.** Maintain, preserve and protect all of the Property of the Borrower in good order and condition, subject to wear and tear in the ordinary course of business, and not permit any waste of such Properties, except that the failure to maintain, preserve and protect a particular item of Property that is not of significant value, either intrinsically or to the operations of the Borrower shall not constitute a violation of this covenant, and maintain its ownership of all intellectual property and licenses thereof necessary for the operation of the business of the Borrower.

**5.3 Maintenance of Insurance.** Secure, pay for and maintain without interruption, (i) insurance during the term of this Agreement of the types and in the amounts customarily carried from time to time by others engaged in substantially the same business as the Borrower and operating in the same or similarly situated geographic area as the Borrower, including, but not limited to, fire, public liability and property damage and (ii) such additional insurance as the Lender may reasonably request from time to time. To the extent that any policy is acquired directly by the Borrower (and not obtained through a risk management program sponsored by the Nation), each policy for such insurance shall be with (i) a company which is rated A or better by A.M. Best and Company at the time such policy is placed and at the time of each annual renewal thereof or (ii) any other insurer which is satisfactory to the Lender; provided, however, that if the Borrower shall fail to maintain insurance in accordance with this Section, the Lender shall have the right (but shall be under no obligation) to procure such insurance and the Borrower agrees to reimburse the Lender for all costs and expenses of procuring such insurance.

**5.4 Compliance with Laws.** Comply with all Requirements of Laws in all material respects.

**5.5 Preservation of Licenses and Permits.** Preserve and maintain all authorizations, rights, franchises, privileges, consents, approvals, orders, licenses, permits, or registrations from any Governmental Agency that are necessary for the transaction of the business of the Borrower, and qualify and remain qualified to transact business in each jurisdiction in which such qualification is necessary in view of the business of the Borrower or the ownership or leasing of its Property except where the failure to preserve and maintain any such authorizations, rights, franchises, privileges, consents, approvals, orders, licenses, permits or registrations or to so qualify or remain qualified could not constitute a Material Adverse Effect.

**5.6 Keeping of Records and Books of Account; Inspection.** The Borrower shall:

(a) Keep adequate records and books of account reflecting all financial transactions in conformity with GAAP and in material conformity with all applicable requirements of any Governmental Agency having regulatory jurisdiction over the Borrower.

(b) Permit the Lender to inspect the Projects, books and financial records of the Borrower related to the Projects, to examine the books of accounts and other financial records of the Borrower related to the Projects, and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, the Borrower's officers at such reasonable times and intervals as the Lender may designate.



(c) At all times comply with the terms of the Act relating to the administration, accounting and reporting required for the amounts advanced to Borrower hereunder, including enacting a Fund Management Plan and ensuring that the funds advanced hereunder are kept and accounted for separately from the Borrower's other funds and accounts.

**5.7 Compliance with Material Documents and Other Agreements.** Promptly and fully perform and comply with all of its obligations under all the Loan Documents, the Act and all other material agreements, indentures, leases and instruments to which it is a party, whether such material agreements, indentures, leases or instruments are with the Lender or another Person, to the extent that non-compliance could constitute a Material Adverse Effect.

**5.8 Use of Proceeds.** In accordance with the Act, the proceeds of the Loan and other amounts advanced hereunder shall be used solely for Project Costs, subject to the provisions set forth in Section 2.1(g).

**5.9 Project Accounting and Reporting.** The Borrower shall account for all Project Costs and the use of all funds advanced hereunder. The Borrower shall segregate Loan proceeds from all other funds and accounts of the Borrower and shall maintain separate accounting and financial records therefor as required by the Act. The Borrower shall report the status of the Projects and use of proceeds of the Loan to the Lender's Resources and Development Committee on a quarterly basis, as required by the Act.

## **ARTICLE 6 NEGATIVE COVENANTS OF THE BORROWER**

So long as the Loan remains unpaid, or any other Obligation remains unpaid or unperformed, the Borrower shall not, unless the Lender otherwise consents:

### **6.1 Disposition of Assets; Sale of Assets.**

(a) Sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all of the Borrower's Property to any Person.

(b) Make any substantial Disposition of the Borrower's Property (including any transfer to the Navajo Nation government), whether now owned or hereafter acquired, other than any transaction in which the Net Available Proceeds of such Disposition are applied to the acquisition of Property substantially similar in nature or functionally equivalent to the Property subject to the transaction within 90 days of such Disposition.

**6.2 Business of the Borrower.** Engage directly or indirectly in any business other than as stated in NTUA's Plan of Operations, 21 N.N.C. § 1. et. seq., including any business reasonably related thereto.

**6.3 Expenditures.** Use any of the Borrower's Property for a purpose which is not related to the business of the Borrower or specifically contemplated hereby, expend any of the Borrower's Property for any purpose which does not directly or indirectly benefit the Borrower,

or make any Capital Expenditure, except to add to, further improve, maintain, repair, restore or refurbish the Borrower's Property.

**6.4 Accounting Changes.** Change (a) its Fiscal Year or (b) its accounting practices except as required by GAAP.

**6.5 Hazardous Materials Laws.** Keep and maintain the real property underlying the Projects and other operations of the Borrower and each portion thereof in compliance in all material respects with all applicable Hazardous Materials Laws and promptly advise the Lender in writing of, and indemnify the Lender from, (a) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing pursuant to any applicable Hazardous Materials Laws, (b) any and all claims made or threatened in writing, and received by the Borrower, by any third party against the Borrower or the real property underlying the Projects and other operations of the Borrower relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials and (c) discovery by any Senior Officer of the Borrower of any occurrence or condition on any real property adjoining or in the vicinity of the real property underlying the Projects and other operations of the Borrower that could cause the real property underlying the Projects and other operations of the Borrower or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Real Property underlying the Projects and other operations of the Borrower under any applicable Hazardous Materials Laws.

## **ARTICLE 7 INFORMATION AND REPORTING REQUIREMENTS**

**7.1 Financial and Business Information.** So long as the Loan remains unpaid, or any other Obligation remains unpaid or unperformed, the Borrower shall, unless the Lender otherwise consents, deliver or caused to be delivered to the Lender, at the Borrower's sole expense:

(a) As soon as available and in any event within one hundred and fifty (150) days after the end of each Fiscal Year, (i) the consolidated audited balance sheet of the Borrower as of the end of such Fiscal Year, and (ii) the consolidated audited statements of income and fund balances and of cash flow of the Borrower as of the end of such Fiscal Year, all in reasonable detail and setting forth in each case in comparative form the corresponding year-to-date figures for the preceding Fiscal Year and the corresponding period in the applicable projections. Such financial statements shall be prepared in accordance with GAAP, consistently applied, and such balance sheet and statements shall be accompanied by a report and opinion of independent public accountants of recognized standing selected by the Borrower and reasonably satisfactory to the Lender, which report shall be based on an audit conducted in accordance with generally accepted auditing standards as of such date, and which opinion shall be an unqualified opinion without additional explanatory or nonstandard wording and with no limitation as to the scope of their audit and such balance sheet and statements shall be accompanied by any management letters of such accountants addressed to the Borrower;



(b) Promptly following receipt by the Borrower, copies of any detailed audit reports or recommendations submitted to the Borrower by independent accountants in connection with the accounts or books of the Borrower or any audit of the Borrower;

(c) Promptly upon a Senior Officer of the Borrower becoming aware that (i) any Person has commenced a legal proceeding with respect to a claim against the Borrower that is, in the reasonable opinion of their independent legal counsel, \$500,000 or more in excess of the amount thereof that is fully covered by insurance (subject to applicable deductibles and retentions), (ii) any creditor or lessor under a written credit agreement with respect to Indebtedness in excess of \$500,000 or lease involving unpaid rent in excess of \$500,000 has asserted a default thereunder on the part of the Borrower, (iii) any labor union has notified the Borrower of its intent to strike the Borrower on a date certain, (iv) the occurrence of any Default or Event of Default, or (v) any other event or circumstance occurs or exists that could constitute a Material Adverse Effect, in each case a written notice describing the pertinent facts relating thereto and what action the Borrower is taking or proposes to take with respect thereto; and

(d) If requested by the Lender, such income tax returns, if any, (including the related schedules and exhibits), and other data and information concerning the Borrower, the Borrower's business and operations, the financial condition, credit standing, and business affairs of the Borrower as from time to time may be reasonably requested by the Lender. The Lender is authorized to disclose the information and documents delivered in connection with this Agreement and the other Loan Documents to the Lender's attorneys, accountants, auditors, examiners, and regulatory agencies. The Lender also is authorized to disclose such information and documents to any insurance company or insurance agent in connection with any application for insurance or any claim made under an insurance policy.

## **ARTICLE 8 CONDITIONS**

**8.1 Loan Closing.** The Closing Date and the obligation of the Lender to make the initial Advance are subject to the following conditions precedent, each which shall be satisfied prior to the making of the initial Advance (unless the Lender, in its sole and absolute discretion, shall agree otherwise).

(a) The Lender shall have received all of the following, each of which shall be originals (except where only evidence is required) unless otherwise specified, each properly executed by each party thereto, each dated as of the Closing Date and each in form and substance satisfactory to the Lender and its legal counsel (unless otherwise specified or, in the case of the date of any of the following, unless the Lender otherwise agrees or directs):

(i) a resolution of the Management Board of the Borrower authorizing and approving this Agreement, the Loan and the Loan Documents;

(ii) executed counterparts of this Agreement and the Loan Documents, sufficient in number for distribution to the Lender and the Borrower;

(iii) the Note for the Loan executed by the Borrower in favor of the Lender;

(iv) the favorable written legal opinion of counsel to the Borrower, together with copies of all factual certificates and legal opinions upon which such counsel have relied;

(v) such documentation as the Lender may reasonably require to confirm the authority of the Borrower to execute, deliver and perform any Loan Documents, and the identity, authority and capacity of each Senior Officer authorized to act on its behalf, including the Borrower's resolutions, incumbency certificates, certificates of Senior Officers, and the like;

(vi) evidence that all applications, certifications, consents, approvals and other actions required under the Bond Financing Act in connection with the transactions contemplated by the Loan Documents shall have been made, received and taken, as applicable; and

(vii) a certificate signed by a Senior Officer of the Borrower confirming that the conditions specified herein have been satisfied, and such other assurances, certificates, documents, consents or opinions as the Lender may reasonably require.

(b) The Borrower and any other parties shall be in compliance with all the terms and provisions of this Agreement and the Loan Documents, and no Default or Event of Default shall have occurred and be occurring.

(c) There shall have been no material adverse change in the business, Property, operations, condition (financial or otherwise) or the prospects of the Borrower subsequent to latest audited financial statements of the Borrower provided to the Lender.

(d) No material litigation shall be pending or threatened against the Borrower as of the Closing Date that could have a Material Adverse Effect or impair the closing of the transactions contemplated by this Agreement.

(e) The representations and warranties of the Borrower contained in this Agreement and the Loan Documents shall be true and correct as of the date hereof

(f) The Borrower shall have received all required consents from the Management Board, tribal commissions, federal, state, tribal and other governing entities, and counterparties to material contracts, which consents shall be satisfactory to the Lender in form and substance.

(g) Such other conditions as the Lender may reasonably require.

**8.2 Each Advance.** The obligation of the Lender to make any Advance is subject to the following conditions precedent, each which shall be satisfied prior to the making of such Advance (unless the Lender, in its sole and absolute discretion, shall agree otherwise):

(a) Each representation or warranty by Borrower contained herein or in any other Loan Document shall be true or correct in all material respects.

(b) No Default or Event of Default shall have occurred and be continuing or could reasonably be expected to result after giving effect to such Advance.

(c) After giving effect to such Advance, the original principal amount of all Advances made hereunder shall not exceed the Maximum Loan Amount.

## **ARTICLE 9**

### **EVENTS OF DEFAULT AND REMEDIES UPON EVENT OF DEFAULT**

**9.1 Events of Default.** The existence or occurrence of any one or more of the following events, whatever the reason therefor and under any circumstances whatsoever, shall constitute an Event of Default (each, an "Event of Default"):

(a) The Borrower fails to pay any interest on or the principal of the Loan, or any portion thereof, when due, subject to any cure period, but no less than fifteen (15) days; or

(b) The Borrower fails to pay any other amounts payable to the Lender under any Loan Document, or any portion thereof, within three (3) Business Days after the same becomes due; or

(c) The Borrower fails to perform or observe any of the other covenants contained in this Agreement, and such default shall continue for thirty (30) days after written notice thereof has been sent to the Borrower by the Lender for any default that can be reasonably cured within thirty (30) days, and a reasonable period of time for a default not reasonably capable of cure within thirty (30) days, provided Borrower diligently commences and continues a course of action to so cure and the default is cured within sixty (60) days of such notice unless the circumstances leading to such continued default are not caused by the actions of the Borrower or cannot be cured through the actions of the Borrower, in which case, the Borrower shall continue to diligently pursue such cure and shall provide to the Controller periodic updates of the status of such attempted cure; or

(d) The Borrower fails to make any payment, or perform or observe any covenant or agreement contained in the Loan Documents or the Act and such default shall continue after all notice and cure periods provided for thereunder; or

(e) Any representation or warranty made in any Loan Document, or in any certificate delivered pursuant to any Loan Document, proves to have been incorrect in any material respect when made or reaffirmed.



(f) At any time (i) the Borrower fails to pay the principal, or any principal installment, of or interest on any present or future Indebtedness of \$100,000 or more, when due (or within any stated grace period), whether at the stated maturity, upon acceleration, by reason of required prepayment or otherwise or (ii) the Borrower fails to perform or observe any other term, covenant or agreement on its part to be performed or observed, or suffers any event to occur, in connection with any present or future Indebtedness of \$100,000 or more if as a result of such failure or sufferance (x) any holder or holders thereof (or an agent or trustee on its or their behalf) has the right to declare such Indebtedness due, or has the right to cause the Borrower to purchase, redeem or otherwise acquire such Indebtedness, or (y) such Indebtedness automatically becomes due, before the date on which it otherwise would become due, or such Indebtedness shall automatically become subject to purchase, redemption or other acquisition; or

(g) Any Loan Document, at any time after its execution and delivery and for any reason other than satisfaction in full of all the Obligations, ceases to be in full force and effect or is declared by a court or tribunal which purports to be of competent jurisdiction to be null and void, invalid or unenforceable which, in any such event in the reasonable opinion of the Lender, is materially adverse to the interests of the Lender; or the Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind the same or any provision thereof; or

(h) (i) a judgment against the Borrower is entered for the payment of money in excess of \$500,000 over the amount thereof that is fully covered by a reputable and solvent insurance company (subject to applicable deductibles and retentions); or (ii) a judgment against the Borrower is entered that could result in a Lien on any Property of the Borrower constituting the Projects; or (iii) any delay in payment of any judgment against the Borrower that could reasonably be expected to have a Material Adverse Effect and, absent procurement of a stay of execution, any such judgment (under clause (i), (ii) or (iii)) remains unbonded or unsatisfied for 30 calendar days after the date of entry of judgment, or in any event later than 30 days prior to the date of any proposed sale thereunder; or

(i) The Borrower institutes or consents to any proceeding under a Debtor Relief Law relating to it or to all or any part of its Property, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any part of its Property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of the Borrower and the appointment continues undischarged or unstayed for thirty (30) calendar days; or any proceeding under a Debtor Relief Law relating to the Borrower or to all or any part of its Property is instituted without its consent and continues undismissed or unstayed for thirty (30) calendar days; or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against all or any material part of the Borrower's Property and is not released, vacated or fully bonded within thirty



(30) calendar days after its issue or levy; or any order for relief is entered under any Debtor Relief Law; or

(j) The occurrence of an Event of Default (as such term is or may hereafter be specifically defined in any other Loan Document) under any other Loan Document or under any other Indebtedness of Borrower to Lender; or

(k) The actual or attempted revocation, replacement, or change to any Loan Document (not consented to by the Nation) which is materially adverse to the Lender or could constitute a Material Adverse Effect; or

(l) The occurrence of a change in the business, Property, operations, condition (financial or otherwise) or the prospects of the Borrower which could constitute a Material Adverse Effect; or

(m) Construction of any of the Projects is abandoned prior to completion for a period in excess of (30) thirty Business Days without reports to the Nabikayati Committee of the Navajo Nation Council and the President of the Navajo Nation.

**9.2 Remedies upon Event of Default.** Without limiting any other rights or remedies of the Lender provided for elsewhere in this Agreement, or the Loan Documents, or by applicable Law, or in equity, or otherwise:

(a) Upon the occurrence, and during the continuance, of any Event of Default other than an Event of Default described in Section 9.1(i), the Lender may (in its sole and absolute discretion) declare all or any part of the unpaid principal of the Loan, all interest accrued and unpaid thereon and all or any part of other amounts payable under the Loan Documents to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by the Borrower.

(b) Upon the occurrence of any Event of Default described in Section 9.1(i):

(i) all other obligations of the Lender and all rights of the Borrower and any other parties under the Loan Documents shall terminate without notice to or demand upon the Borrower, which are expressly waived by the Borrower;

(ii) the unpaid principal of the Loan, all interest accrued and unpaid thereon and all other amounts payable under the Loan Documents shall be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by the Borrower.

(c) Upon the occurrence and during the continuance of any Event of Default, the Lender, without notice to or demand upon the Borrower, which are expressly waived by the Borrower, may proceed in accordance with applicable Laws to protect, exercise and enforce the rights and remedies of the Lender under the Loan Documents against the Borrower and such other rights and remedies as are provided in such Loan Documents or

by Law or equity, including the right of setoff in accordance with 12 N.N.C. §1507. The order and manner in which the Lender's rights and remedies are to be exercised shall be determined by the Lender in its sole and absolute discretion, and all payments received after the occurrence of any Default or Event of Default by the Lender shall be applied in such manner and order as the Lender may determine in its sole and absolute discretion.

## **ARTICLE 10 MISCELLANEOUS**

**10.1 Cumulative Remedies; No Waiver.** The rights, powers, privileges and remedies of the Lender provided herein and in the other Loan Documents are cumulative and not exclusive of any right, power, privilege or remedy provided by Law or equity. No failure or delay on the part of the Lender in exercising any right, power, privilege or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of the same or any other right, power, privilege or remedy.

**10.2 Amendments; Consents.** No amendment, modification, supplement, extension, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, and no consent to any departure by the Borrower therefrom, may in any event be effective unless in writing signed by the Lender and the Borrower, and then only in the specific instance and for the specific purpose given.

### **10.3 Costs, Expenses and Taxes; Indemnification.**

(a) The Borrower and Lender stipulate and agree that they will equally share costs and expenses in connection with the negotiation, preparation, closing, execution and delivery of the Loan Documents, which costs and expenses consist only of the fees, disbursements and expenses of Lender's outside legal counsel. The Controller has waived the application fee contemplated by 12 N.N.C. § 1330 (A)(3) and (4).

(b) The Borrower agrees to pay all costs and expenses of Lender incurred in connection with each refinancing, restructuring, reorganization (including a bankruptcy reorganization) and enforcement or attempted enforcement of the Loan Documents, or with the preparation for such enforcement if Lender has reasonable grounds to believe that such enforcement may be necessary, including filing fees, recording fees, title insurance fees (to the extent applicable), appraisal fees, search fees and other out-of-pocket expenses and the fees and out-of-pocket expenses of any outside legal counsel to the Lender, independent public accountants and other outside experts retained by the Lender, and including any costs, expenses or fees incurred or suffered by the Lender in connection with or during the course of any bankruptcy or insolvency proceedings of the Borrower.

(c) To the extent authorized by law, the Borrower agrees to indemnify, save and hold harmless the Lender and its officials, affiliates, directors, officers, agents, attorneys and employees (collectively the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action which may be asserted by a third party

against any Indemnitee by reason of claims that such Indemnitee is obligated or has undertaken to perform or discharge any obligation of Borrower with respect to any Project; (ii) any and all claims, demands, actions or causes of action by a third party if the claim, demand, action or cause of action arises out of or relates to the Loan, the use or contemplated use of proceeds of any Advance, the relationship of the Borrower and the Lender under this Agreement or any transaction contemplated by the Loan Documents; (iii) any administrative or investigative proceeding by any Governmental Agency arising out of or related to a claim, demand, action or cause of action described in clauses (i) or (ii) above; (iv) any and all liabilities, losses, costs (including settlement costs) or expenses (including reasonable attorneys' fees and disbursements and other professional services) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action or cause of action; and (v) any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for Indemnitees) in connection with, or as a result of (A) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or (B) any Advance or the use or proposed use of the proceeds therefrom.

**10.4 Nature of the Lender's Obligations.** Nothing contained in this Agreement or any other Loan Document and no action taken by the Lender pursuant hereto or thereto may, or may be deemed to make the Lender a partnership, an association, a joint venture or other entity, with the Borrower or any Affiliate of the Borrower.

**10.5 Survival of Representations and Warranties.** All representations and warranties contained herein or in any other Loan Document, or in any certificate or other writing delivered by or on behalf of any one or more of the parties to any Loan Document, will survive the making of the Loan and the execution and delivery of the Loan Documents, and have been or will be relied upon by the Lender, notwithstanding any investigation made by the Lender or on its behalf.

**10.6 Notices.** Except as otherwise expressly provided in the Loan Documents (a) all notices, requests, demands, directions and other communications provided for hereunder or under any other Loan Document must be in writing and must be mailed, telegraphed, telecopied, electronically submitted, delivered or sent by recognized overnight courier service, to the appropriate party at the address set forth on the signature pages of this Agreement or other applicable Loan Document or, as to any party to any Loan Document, at any other address as may be designated by it in a written notice sent to all other parties to such Loan Document in accordance with this Section; and (b) any notice, request, demand, direction or other communication given by telecopier or electronically must be confirmed within 48 hours by letter mailed or delivered to the appropriate party at its respective address. Except as otherwise expressly provided in any Loan Document, if any notice, request, demand, direction or other communication required or permitted by any Loan Document is given by mail it will be effective on the earlier of receipt or the third Business Day after deposit in the United States mail with first class or airmail postage prepaid; if given by telegraph or cable, when delivered to the telegraph



company with charges prepaid; if given by telex, telecopier or electronically, when sent; or if given by personal delivery, when delivered.

**10.7 Execution of Loan Documents.** Unless the Lender otherwise specifies with respect to any Loan Document, this Agreement and any other Loan Document may be executed in any number of counterparts and any party hereto or thereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Agreement or any other Loan Document, as the case may be, when taken together will be deemed to be but one and the same instrument. The execution of this Agreement or any other Loan Document by any party hereto or thereto will not become effective until counterparts hereof or thereof, as the case may be, have been executed by all the parties hereto or thereto.

**10.8 Binding Effect; Assignments.** This Agreement and the other Loan Documents shall be binding upon and shall inure to the benefit of the parties hereto and thereto and their respective successors and assigns, except that the Borrower may not assign its rights hereunder or thereunder or any interest herein or therein without the prior written consent of the Lender. Any assignment by the Borrower without the prior written consent of the Lender shall be null and void; provided, that no Person other than the Lender shall have any rights under this sentence. The Lender may assign its interest under the Loan Documents (or any portion thereof) without the prior written consent of the Borrower; provided that (i) the Lender agrees to use commercially reasonable efforts to provide the Borrower with at least five Business Days' prior written notice of such assignment and (ii) the failure of the Lender to provide such notice shall not have any effect on the obligations of the Borrower under the Loan Documents or the rights and remedies of the Lender under the Loan Documents or result in any liability for the Lender).

**10.9 No Third Parties Benefited.** This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of the Borrower and the Lender in connection with the Loan, and is made for the sole benefit of the Borrower, the Lender, and any of their successors and assigns. Except as expressly provided in Sections 10.8, no other Person shall have any rights of any nature hereunder or by reason hereof.

**10.10 Further Assurances.** The Borrower shall, at its sole expense and without expense to the Lender, perform, execute and deliver such further acts and documents as the Lender from time to time reasonably requires for the assuring and confirming unto the Lender of the rights hereby created or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of any Loan Document.

**10.11 Integration.** This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes all prior agreements, written or oral, on the subject matter hereof. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control and govern; provided that the inclusion of supplemental rights or remedies in favor of the Lender in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.



**10.12 Governing Law.** This Agreement and the Loan Documents shall be governed by, construed and enforced in accordance with, the internal law of the Nation. The Borrower and each other party hereto each hereby consents to the application of civil law of the Nation to the construction, interpretation and enforcement of this Agreement and the other Loan Documents, and to the application of civil law of the Nation to the procedural aspects of any suit, action or proceeding relating thereto, including, but not limited to, legal process, execution of judgments, enforcement of any arbitration award and other legal remedies, except for any procedural matters governed by or relating to the conduct of arbitration under Section 10.16. This Agreement and the Loan Documents shall be construed in accordance with their intent and with the fair meaning of its provisions and without regard to any presumption or other rule requiring construction against the party which caused the same to be drafted.

**10.13 Severability of Provisions.** Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

**10.14 Headings.** Article and Section headings in this Agreement and the other Loan Documents are included for convenience of reference only and are not part of this Agreement or the other Loan Documents for any other purpose.

**10.15 Time of the Essence.** Time is of the essence of the Loan Documents.

**10.16 Arbitration.** The Lender or the Borrower may require that any dispute be settled by binding arbitration pursuant to and in accordance with arbitration procedures referenced in the Navajo Nation Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. ("Arbitration"), and judgment on any arbitration award may be entered in the Nation court. No provision hereof shall limit the right of any party to this Agreement to exercise self-help remedies such as setoff, foreclosure against or sale of any real or personal property collateral or security, or to obtain provisional or ancillary remedies, including injunctive relief, sequestration, attachment, garnishment or the appointment of a receiver, from a court of the Nation before, after or during the pendency of any arbitration or other proceeding; provided, that the right to compel arbitration and the remedies referred to herein shall be available only to the parties to this Agreement and no other parties. The exercise of any such remedy shall not waive the right of any party to compel arbitration hereunder. Each party to this Agreement severally represents and warrants to the other parties that this Section 10.16 is specifically enforceable against such party by the other parties. The Arbitration shall be conducted in accordance with the rules of the American Arbitration Association (AAA) except to the extent as modified by the following:

(a) Unless otherwise agreed upon, all Arbitration proceedings shall be held on the Nation;

(b) The arbitration shall be conducted by an arbitration panel consisting of three AAA available arbitrators, with at least one arbitrator possessing at least 10 years of

experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third arbitrator;

(c) The prevailing party in any action or proceeding shall be entitled to recover its costs of collection including reasonable attorney's fees.

**10.17 Purported Oral Amendments.** THE BORROWER AND THE LENDER EXPRESSLY ACKNOWLEDGE THAT THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY ONLY BE AMENDED OR MODIFIED, OR THE PROVISIONS HEREOF OR THEREOF WAIVED OR SUPPLEMENTED, BY AN INSTRUMENT IN WRITING THAT COMPLIES WITH SECTION 10.2. EACH PARTY AGREES THAT IT WILL NOT RELY ON ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR ORAL OR WRITTEN STATEMENTS BY ANY OTHER PARTY THAT DOES NOT COMPLY WITH SECTION 10.2 TO EFFECT AN AMENDMENT, MODIFICATION, WAIVER OR SUPPLEMENT TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

**10.18 Waiver of Right to Trial by Jury.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO.

**10.19 Lender's Statutory Rights and Remedies; Consent to Jurisdiction.**

(a) The Lender shall have the statutory rights and remedies of a noteholder to enforce this Agreement and any Loan Document as set forth in 21 N.N.C. § 26, which is incorporated herein by reference, and the Lender shall be entitled to the benefit of the waiver of sovereign immunity contained therein.

(b) The Borrower hereby expressly submits and consents to the jurisdiction of the courts of the Nation, including all Nation courts to which decisions of the courts of the Nation can be appealed, with respect to any dispute or controversy arising out of this Agreement or any Loan Document, including any amendment or supplement which may be made hereto or thereto or to any transaction in connection herewith or therewith and the enforcement of any arbitration award.

(c) The waivers and consents described in this Section shall inure solely to the benefit of the Lender and each other person who is entitled to the benefits of this Agreement, including without limitation the Indemnitees referred to in Section 10.3. The Lender and such other persons shall have and be entitled to all available legal and equitable remedies, including the right to specific performance, money damages, injunctive or declaratory relief, and the remedies provided for in 21 N.N.C. § 26. The consents to jurisdiction contained in this Section are irrevocable.

**10.20 Waiver of Punitive Damages; Etc..** Notwithstanding anything to the contrary contained in this Agreement, the Borrower hereby agrees that it shall not seek from the Lender punitive, consequential or exemplary damages under any theory of liability. Notwithstanding anything to the contrary contained in this Agreement, the Lender hereby agrees that it and each other person who is entitled to the benefits of this Agreement, including without limitation the Indemnitees referred to in Section 10.3, shall not seek from the Borrower punitive, consequential or exemplary damages under any theory of liability.

**10.21 No Lender Liability for Project Costs.** Under no circumstances shall the Lender be expected to pay any costs of the Project (including any cost overruns) from the Síhasin Fund or any other funds of the Lender.

**10.22 No Restrictions on Future Borrowing or Grants.** Nothing in this Agreement restricts or prohibits the Borrower's ability to seek additional loans or grants from the Síhasin Fund beyond the Loan and the Non-Repayment Amounts.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**"Borrower":**

**NAVAJO NATION TRIBAL UTILITY  
AUTHORITY**

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

Name: Walter W. Haase, P.E.

Title: General Manager

Address for Notices:

Navajo Tribal Utility Authority  
North Hwy Route 12  
Fort Defiance, AZ 86504  
Attention: General Manager's Office  
Email: arashm@ntua.com  
Telephone: (928) 729-6126  
Telecopier: (928) 729-2135



**"Lender":**

**NAVAJO NATION** (listed in the Federal Register as NAVAJO NATION, ARIZONA, NEW MEXICO & UTAH), acting by and through the Budget and Finance Committee of the Navajo Nation Council

By: \_\_\_\_\_  
Russell Begaye, President

Address for Notices:

Office of the Controller  
P.O. Box 3150  
Window Rock, Arizona 86515  
Attention: Controller  
Email: pkirk@NNOOC.ORG  
Telephone: (928) 871-6327  
Telecopier: (928) 871-6026

With copy to:  
Tax and Finance Unit  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, Navajo Nation (Arizona) 86515  
Attn: Assistant Attorney General  
Telephone: (928) 871-6936  
Telecopier: (928) 871-6177

## EXHIBIT A

### FORM OF PROMISSORY NOTE

#### PROMISSORY NOTE

\$63,945,972

\_\_\_\_\_, 2017

FOR VALUE RECEIVED, the undersigned promises to pay to the **NAVAJO NATION** (listed in the *Federal Register* as Navajo Nation, Arizona, New Mexico & Utah), acting by and through the Budget and Finance Committee of the Navajo Nation Council (the "Lender"), the principal sum of Sixty Three Million Nine Hundred Forty Five Thousand Nine Hundred Seventy Two Dollars (\$63,945,972) or such lesser aggregate amount as may be advanced by Lender pursuant to the Loan Agreement, payable as set forth herein. The undersigned also promises to pay interest on the principal amount outstanding from time to time from the date hereof until the date of payment in full both before and after Default and before and after maturity and judgment, payable as set forth below.

Reference is made to the Loan Agreement, dated as of even date herewith, by and between the undersigned, as Borrower, and the Lender (as the same may from time to time be supplemented, modified, amended, restated or extended, the "Loan Agreement"). Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement. This Promissory Note is the Note referred to in the Loan Agreement, and the Lender and any subsequent rightful holder hereof (collectively, the "Holder") is entitled to all of the rights, remedies, benefits and privileges provided for in the Loan Agreement as originally executed or as it may from time to time be supplemented, modified or amended. The Loan Agreement, among other things, contains provisions for binding arbitration and acceleration of the maturity hereof upon the happening of certain stated events upon the terms and conditions therein specified.

The principal indebtedness evidenced by this Note shall be payable as provided in the Loan Agreement.

Interest shall be payable on the outstanding daily unpaid principal amount advanced to the Borrower under the Loan Agreement until payment in full and shall accrue and be payable at the rates and on the dates set forth in the Loan Agreement, both before and after Default and before and after maturity and judgment, with interest on overdue principal and interest to bear interest at the rate set forth in Sections 3.1 of the Loan Agreement, to the fullest extent permitted by applicable Law.

The undersigned shall make all payments hereunder to the Lender as indicated in the Loan Agreement in lawful money of the United States by delivery of a check at the Lender's Office or by wire transfer or other immediately available funds.

The Lender shall keep a record (which may be in electronic or other intangible form) of all advances made by it and payments of principal received by it with respect to this Note, and such record shall be presumptive evidence of the amounts owing under this Note, provided that

nothing herein shall prevent the Holder from presenting their books and records as evidence of the outstanding amount of the Obligations.

The undersigned hereby promises to pay all costs and expenses of any rightful Holder hereof incurred in collecting the undersigned's obligations hereunder or in enforcing or attempting to enforce any of such Holder's rights hereunder, including attorneys' fees and disbursements and the other costs and expenses described in Section 10.3 of the Loan Agreement, whether or not an action is filed in connection therewith.

The undersigned hereby waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest and any other notice or formality, to the fullest extent permitted by applicable Laws.

This Note is a Loan Document as defined in the Loan Agreement, and the sovereign immunity waiver, jurisdictional waivers and consents, governing law and other provisions of the Loan Agreement generally applicable to Loan Documents are applicable hereto and incorporated herein by this reference and this Note shall be interpreted, construed and enforced as if all such provisions were set forth in full in this Note.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

**NAVAJO TRIBAL UTILITY AUTHORITY**

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

Name: \_\_\_\_\_ Walter W. Haase, P.E. \_\_\_\_\_

Title: \_\_\_\_\_ General Manager \_\_\_\_\_



## EXHIBIT B

### REQUEST FOR ADVANCE AND NON-REPAYMENT AMOUNTS

[Date]

Office of the Controller  
The Navajo Nation  
PO Box 3150  
Window Rock, AZ 86515

1. This Request for Advance and Non-Repayment Amounts is executed and delivered by an authorized officer of the Navajo Tribal Utility Authority (the "Borrower") to the Controller of the Navajo Nation, as lender under Section 2.2 of that certain Loan Agreement (Water Projects) dated as of [\_\_\_\_\_, 2017] (the "Loan Agreement") between the Borrower and the Navajo Nation (the "Nation"). Any terms used herein and not defined herein shall have the meanings set forth for such terms in the Loan Agreement.

2. The Borrower hereby requests that the Controller make an Advance of the Loan and a disbursement of the Non-Repayment Amounts in accordance with the Loan Agreement and the Schedule of Disbursements set for in Paragraph 3 below as follows:

(a) Amount of Advance: \$[\_\_\_\_\_]

(b) Amount of Non-Repayment Amount: \$[\_\_\_\_\_]

(b) Requested Date of Advance and Non-Repayment Amount (which is not less than 10 days after the date of this Request for Advance as set forth in Section 2.2 of the Loan Agreement): [\_\_\_\_\_]

3. Schedule of all Disbursements:

Fiscal Year	Maximum Loan Advances	Administration (non-repayment)	O&M Fund (non-repayment)	Emergency/ Replacement Fund (non-repayment)
2016*	\$9,270,000	\$300,000	\$2,000,000	\$2,000,000
2017*	\$13,850,000	\$300,000	\$2,000,000	\$2,000,000
2018	\$16,225,972	\$300,000	\$2,000,000	\$2,000,000
2019	\$12,550,000	\$300,000	\$2,000,000	\$4,000,000
2020	\$12,050,000	\$300,000	\$2,000,000	
	\$63,945,972	\$1,500,000	\$10,000,000	\$10,000,000

\*2016 and 2017 Advances and Non-Repayment Amounts disbursed on the Closing Date

4. The aggregate amount of Advances outstanding after the Advance requested herein will be \$[\_\_\_\_\_].

5. The proceeds of the Advance will be used for Project Costs as required by the Loan Agreement.

6. The Borrower hereby requests that the Controller prepare an updated debt service schedule that incorporates the requested Advance of the Loan Agreement, which will update Schedule 3.1 of the Loan Agreement.

7. The Borrower hereby represents and warrants that:

(a) Each representation or warranty by Borrower contained herein or in any other Loan Document shall be true or correct in all material respects;

(b) No Default or Event of Default has occurred and is continuing or could reasonably be expected to result after giving effect to such Advance; and

(c) After giving effect to the Advance requested herein, the original principal amount of all Advances made hereunder does not exceed the Maximum Loan Amount.

8. This Request for Advance is executed on [\_\_\_\_\_], by an authorized officer of the Borrower. The undersigned, in such capacity, hereby certifies each and every matter contained herein to be true and correct.

IN WITNESS WHEREOF, the Borrower has executed this Request for Advance on the date set forth above.

**NAVAJO TRIBAL UTILITY AUTHORITY**

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

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

**EXHIBIT C**

**APPROPRIATIONS AUTHORIZED AND SCHEDULE OF ADVANCES AND NON-REPAYMENT AMOUNTS**

<b>Fiscal Year</b>	<b>Loan Advances (Maximum Loan Amount)</b>	<b>Administration (Non-Repayment)</b>	<b>O&amp;M Fund (Non-Repayment)</b>	<b>Emergency/Replacement Fund (Non-Repayment)</b>
2016*	\$9,270,000	\$300,000	\$2,000,000	\$2,000,000
2017*	\$13,850,000	\$300,000	\$2,000,000	\$2,000,000
2018	\$16,225,972	\$300,000	\$2,000,000	\$2,000,000
2019	\$12,550,000	\$300,000	\$2,000,000	\$4,000,000
2020	\$12,050,000	\$300,000	\$2,000,000	
	\$63,945,972	\$1,500,000	\$10,000,000	\$10,000,000

\*2016 and 2017 Advances and Non-Repayment Amounts disbursed on the Closing Date.



**EXHIBIT D**

**DESCRIPTION OF PROJECTS**

**SCHEDULE 3.1**

**INITIAL INTEREST PAYMENT SCHEDULE**