

## INTERCEPT AGREEMENT

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

### WITNESSETH:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the refunding and redemption of the Governmental Unit's 2009 College of Santa Fe Taxable Loan Agreement with the Finance Authority and paying related professional fees; and

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

WHEREAS, the Governmental Unit desires to complete the Refunding Project and such is permitted under the Act; and

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

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

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 7-1-6.15, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of (i) the revenues of the State-Shared Gross Receipts Tax distributed monthly to the Governmental Unit pursuant to Section 7-1-6.4 NMSA 1978 from the New Mexico Department of Taxation and Revenue equal to one and two hundred twenty-five hundredths percent (1.225%) of the gross receipts of persons engaging in business within the Governmental Unit, as determined and adjusted under the Gross Receipts Tax Compensating Tax Act, Chapter 7, Article 9 NMSA 1978; (ii) the revenues of the Municipal Gross Receipts Tax imposed by the Governmental Unit pursuant to Section 7-19D-9, NMSA 1978 and City Ordinance No. 1981-45, in the amount of one-half of one percent (.50%) of the gross receipts of persons engaging in business within the Governmental Unit, as determined and adjusted under

the Municipal Local Option Gross Receipts Taxes Act; (iii) the revenues of the Municipal Infrastructure Gross Receipts Tax imposed by the Governmental Unit pursuant to Section 7-19D-11 NMSA 1978 and City Ordinance No. 1993-21, in the amount of one-sixteenth of one percent (.0625%) of the gross receipts of persons engaging in business with the Governmental Unit, as determined and adjusted under the Municipal Local Option Gross Receipt Taxes Act and the Tax Administration Act; (iv) the portion of the gross receipts tax distribution to the Governmental Unit made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Infrastructure Gross Receipts Tax Revenues that would have been remitted to the Governmental Unit but for the deductions (effective January 1, 2005) provided by Section 7-9-92 and 7-9-93 NMSA 1978 and any similar distributions made to the Governmental Unit in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues pursuant to law; and (v) any other gross receipts tax revenues received by the Governmental Unit, whether from distribution by the State or pursuant to gross receipts taxes imposed by the Governmental Unit (the "Pledged Revenues"), from the State Taxation and Revenue Department (the "Distributing State Agency") be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement.

NOW THEREFORE, the parties hereto agree:

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

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

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency, to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from monthly distributions of the Pledged Revenues pursuant to Sections 7-1-6.9 and 7-1-6.15, NMSA 1978, as amended, to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or the Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

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

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

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Ordinance No. 2019-\_\_\_, passed and adopted on May 29, 2019 by the Governing Body of the Governmental Unit, which Ordinance is in full force and effect on the date hereof.

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

Section 5. Counterparts. This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

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

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

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

(Remainder of page left intentionally blank)

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

NEW MEXICO FINANCE AUTHORITY

By: \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

CITY OF RIO RANCHO, NEW MEXICO

By: \_\_\_\_\_  
Alan Webber, Mayor

(SEAL)

Attest:

By: \_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

Acknowledged:

By: \_\_\_\_\_  
State Taxation and Revenue Department

Date: \_\_\_\_\_

**EXHIBIT "A"**

INTERCEPT SCHEDULE

CITY OF SANTA FE, NEW MEXICO

Loan No. PPRF- \_\_\_\_\_

Month	Pledged Revenues	Amount
Monthly, beginning _____ 2019, through October 2019  Monthly, beginning November 2019, through _____, 2039	(i) the revenues of the State-Shared Gross Receipts Tax distributed monthly to the Governmental Unit pursuant to Section 7-1-6.4 NMSA 1978 from the New Mexico Department of Taxation and Revenue equal to one and two hundred twenty-five hundredths percent (1.225%) of the gross receipts of persons engaging in business within the Governmental Unit, as determined and adjusted under the Gross Receipts Tax Compensating Tax Act, Chapter 7, Article 9 NMSA 1978; (ii) the revenues of the Municipal Gross Receipts Tax imposed by the Governmental Unit pursuant to Section 7-19D-9, NMSA 1978 and City Ordinance No. 1981-45, in the amount of one-half of one percent (.50%) of the gross receipts of persons engaging in business within the Governmental Unit, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act; (iii) the revenues of the Municipal Infrastructure Gross Receipts Tax imposed by the Governmental Unit pursuant to Section 7-19D-11 NMSA 1978 and City Ordinance No. 1993-21, in the amount of one-sixteenth of one percent (.0625%) of the gross receipts of persons engaging in business with the Governmental Unit, as determined and adjusted under the Municipal Local Option Gross Receipt Taxes Act and the Tax Administration Act; (iv) the portion of the gross receipts tax distribution to the Governmental Unit made pursuant to Section	\$0*

	<p>7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Infrastructure Gross Receipts Tax Revenues that would have been remitted to the Governmental Unit but for the deductions (effective January 1, 2005) provided by Section 7-9-92 and 7-9-93 NMSA 1978 and any similar distributions made to the Governmental Unit in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues pursuant to law; and (v) any other gross receipts tax revenues received by the Governmental Unit, whether from distribution by the State or pursuant to gross receipts taxes imposed by the Governmental Unit (the “Pledged Revenues”), from the State Taxation and Revenue Department (the “Distributing State Agency”) be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement which distributions are made monthly by the New Mexico Taxation and Revenue Department</p>	
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\*Except in the event that the Governmental Unit fails to make timely payments of principal and interest on the Loan Agreement, as provided in the Loan Agreement at which time a monthly collection schedule will be prepared by the Finance Authority and given to the Governmental Unit and the State Taxation and Revenue Department. The State Taxation and Revenue Department shall thereafter distribute Pledged Revenues set forth in the collection schedule to be applied to payment of the principal and interest on the Loan Agreement.