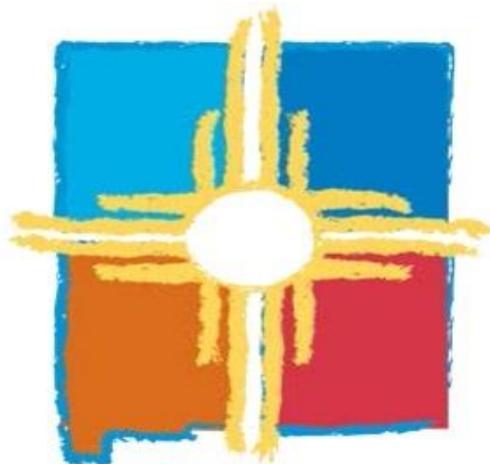


**NEW MEXICO  
DEPARTMENT OF TRANSPORTATION**

**TRANSPORTATION COMMISSION MEETING**



**March 3, 2022**

**Via Zoom**

**NEW MEXICO STATE TRANSPORTATION COMMISSION**

**Via Zoom**

**March 3, 2022**

**9:00 a.m.**

**Special Meeting Agenda**

1. **Call to Order:** Walter G. Adams, Chairman
  - a. **Establish Quorum**
  - b. **Pledge of Allegiance**
2. **Approval of Agenda:** Walter G. Adams, Chairman
3. **Approval of Minutes:** Regular Meeting of January 6, 2022
4. **Introductions:** Walter G. Adams, Chairman
  - a. **Elected Officials**
  - b. **Commission Members**
  - c. **NMDOT Executive Staff**
5. **Welcoming Remarks:** Walter G. Adams, Chairman
6. **Public Comment**
7. **Authorizing Resolution No. 2022-03 (MAR) Extension of \$50 Million Line of Credit for BNSF Requirement:** William Craven, Rail Bureau Chief, NMDOT Transit and Rail Division
8. **Adjournment**

# **Agenda Items 1-2**

1. Call to Order: Walter G. Adams, Chairman
  - a) Establish Quorum
  - b) Pledge of Allegiance
  
2. Approval of Agenda: Walter G. Adams, Chairman

# **Agenda Item 3**

Approval of Minutes:  
Regular Meeting of  
January 6, 2022

**NEW MEXICO STATE TRANSPORTATION COMMISSION**

**MEETING**

**Drury Plaza Hotel  
828 Paseo de Peralta  
Santa Fe, NM 87501  
January 6, 2022**

The New Mexico State Transportation Commission (STC or Commission) held a regular meeting on January 6, 2022, at the Drury Plaza Hotel, Santa Fe, New Mexico. Chairman Adams called the meeting to order at 8:31 a.m. He asked for a roll call to establish a quorum. Mershawn Griego, Office of the Secretary, New Mexico Department of Transportation (NMDOT), proceeded to call the roll. Commissioners Walter G. Adams, Jennifer Sandoval, Hilma E. Chynoweth, and Tomas C. Taylor were present.

**Approval of the STC Meeting Agenda**

**Commissioner Chynoweth made a motion to move item 10(c) on the agenda, “Approval of Proposed Dedication of the ‘John I. King Memorial Bridge’” to item number 8, “Staff Briefings”; Chairman Adams asked for a vote to approve the agenda, as amended; Commissioner Sandoval seconded; motion carried unanimously.**

**Approval of the STC Minutes**

**Chairman Adams asked for a motion to approve the December 15, 2021 STC special meeting minutes; Commissioner Chynoweth made a motion to approve the minutes; Commissioner Sandoval seconded; motion carried unanimously.**

**State Transportation Commissioners Present:**

Jennifer Sandoval, Vice-Chair, District One  
Bruce Ellis, Commissioner, District Two (absent with notice)  
Hilma E. Chynoweth, Commissioner, District Three  
Walter G. Adams, Chairman, District Four  
Thomas C. Taylor, Commissioner, District Five  
Charles Lundstrom, Secretary, District Six (absent with notice)

**NMDOT Staff Present:**

Michael Sandoval, Cabinet Secretary  
Justin Reese, Deputy Secretary, Business Support  
Rick Padilla, P.E., Executive Director of Highway Operations  
Jerry Valdez, Executive Projects Director  
Kenneth B. Baca, General Counsel  
NMDOT Staff

**Elected Officials and Delegations Present:**

The Honorable Harry Garcia, New Mexico State Representative, District 69  
The Honorable Tara L. Lujan, New Mexico State Representative, District 48  
The Honorable Benny Shendo, Jr., New Mexico State Senator, District 22  
The Honorable Boyd Herrington, Mayor, Village of Encino  
The Honorable Louie Bonaguidi, Mayor, City of Gallup  
Anna Hansen, Santa Fe County Commissioner, District 2  
Christine Bustos, Rio Arriba County Commissioner, District 2  
Candyce O'Donnell, Taos County Commission Chair, District 5  
Billy Moore, McKinley County Commission Chair, District 1

**Introductions**

Francisco Sanchez, P.E., District Two Engineer, NMDOT paid tribute to District Two employee, Mittie Runyan, who recently lost her life while working on US 285. She worked for her entire career, almost 22 years, with the Artesia Maintenance Patrol. She will be sadly missed by her NMDOT family. Chairman Adams extended his condolences to Mittie's family and requested a moment of silence for her.

Chairman Adams and Michael Sandoval, Cabinet Secretary, NMDOT, welcomed STC meeting attendees and acknowledged the elected officials in attendance, some of whom rose to make introductory comments. The Chairman and Secretary Sandoval then asked STC Commissioners and certain others present to introduce themselves.

### **Welcoming Remarks**

Chairman Adams acknowledged and thanked NMDOT employees for their work and meeting participants for attending the meeting.

### **Public Comment**

Candyce O'Donnell, Taos County Commission Chair, commented regarding the installation of security cameras and construction of a "handicapped walkway" on the Rio Grande Gorge Bridge. She read a statement of support from Taos County Sheriff, Jerry Hogrefe, regarding the placement of cameras on the bridge. He indicated they will aid all Taos County law enforcement agencies with bridge related investigations and confirmed the Sheriff's Office will take responsibility for monitoring them as it is the primary agency responsible for responding to bridge related incident calls.

Carline Murphy, sister of John I. King and resident of Fort Wingate, spoke in support of the proposed highway bridge dedication in honor of her late brother, John I. King. She identified family members and others present at the meeting, who also support the proposed dedication.

Anna Hansen, Santa Fe County Commissioner, commented regarding safety concerns related to the transport of plutonium waste from Los Alamos National Laboratory through various counties in the state, including Santa Fe.

### **Gallup Mobility Investment District**

The Honorable Louie Bonaguidi, Mayor, City of Gallup, introduced himself and stated he wanted to share the findings of a recent study regarding the “Gallup Mobility Investment District”. The purpose of the initiative is to bring research and testing of autonomous vehicles to Gallup and McKinley County and with it, opportunities for job creation. He asked the STC to work to establish a \$20 million regional infrastructure accelerator, modeled after the U.S. Department of Transportation program, for the purpose of investing in (1) projects that advance autonomous vehicles, supply chain and clean energy; and (2) transportation projects in New Mexico that accelerate job creation and private investment. The City of Gallup is working with public and private partners on this program. Mayor Bonaguidi explained the study showed that Gallup is in need of a 7,000-foot roadway, urban research test track, an administrative building, and warehouse to service electric and other alternative clean fuel vehicles. He reported that Gallup also wants to partner with the NMDOT Aviation Division given the City’s need for air passenger service. Approximately \$6 million is needed for an air terminal building. In addition, Mayor Bonaguidi would like to see Phases Two and Three of the Allison Road crossing project completed to connect the north and west sides of Gallup to help promote economic development on the west side of town. In closing, Mayor Bonaguidi complained about the traffic on I-40 and stated Gallup would like to see a third lane added to the Interstate for trucks to help eliminate some of the City’s problems.

Michael Sage, Deputy Director, Greater Gallup Economic Development Corporation (GGEDC), introduced McKinley County Commission Chair, Billy Moore, and invited him to comment before the scheduled presentation on the ‘Gallup Mobility Investment District’.

First, Chairman Moore stated that he represents the community of Iyanbito and fully supports the proposed highway bridge dedication. He then discussed McKinley County’s partnership with the City of Gallup and its support for the City’s project. The County has set aside the 7,000 feet of road space needed for the testing of autonomous vehicles.

Mr. Sage then introduced Gallup Assistant City Manager, Jon DeYoung, and explained that Mr. DeYoung would be assisting with the Gallup Mobility Investment District presentation.

Recognizing that a detailed presentation was made to the STC at its September 30, 2021 meeting in Gallup, Mr. Sage stated that he would only provide highlights of the findings of the GLD Partners report on the Gallup Mobility Investment District, and more specifically, the opportunities related to autonomous vehicles and Gallup, northwest New Mexico, McKinley County and the State of New Mexico. (The complete report is included in the STC meeting book as Item No. 7.)

**Approval of Proposed Dedication of the “John I. King Memorial Bridge”**

Lisa Vega, P.E., District Six Engineer, NMDOT, presented and requested the STC’s approval of the proposed dedication of the bridge located on NM 400 over Interstate 40 in McKinley County (Bridge No. 6367) as the “John I. King Memorial Bridge”, and its adoption of related STC Resolution No. 2022-02 (JAN). She invited Andre King, son of the late John I. King, to read the proposed resolution aloud to the STC.

The Honorable Harry Garcia, New Mexico State Representative, addressed the STC regarding the proposed dedication. He stated it was his honor to support it and encouraged the Commissioners to approve and adopt the related resolution. He considers military veterans to be the backbone of the United States. Recognizing them with dedications like this is essential; it is part of the history of our state. He thanked both the STC and NMDOT.

Secretary Sandoval expressed his appreciation to the King family for attending the STC meeting and offered his condolences to them. He stated that it is his honor to be the Secretary of NMDOT at the time of this dedication to forever memorialize the life of John I. King.

**Chairman Adams asked for a motion to approve the proposed dedication of the bridge located on NM 400 over Interstate 40 in McKinley County (Bridge No. 6367) as the “John I. King Memorial Bridge”; Commissioner Sandoval made a motion to so approve; Commissioner Chynoweth seconded; motion carried unanimously.**

### **Staff Briefings**

### **Secretary’s Report**

Secretary Sandoval updated the STC regarding NMDOT’s bond program. A couple of the 2012 Series bonds are up for call and NMDOT will be looking into refinancing those bonds. It is believed they are worth approximately \$50 million dollars and that NMDOT may be able to save between \$4-\$5 million dollars, which would be refunded to NMDOT in cash. The process has started so the STC will be receiving materials to review in the next couple of months as NMDOT moves through the process. NMDOT would like to bring the matter to the STC for a vote at its

March 24, 2022 meeting. The STC will be briefed in advance. The STC's March meeting is scheduled on the same day as the New Mexico Finance Authority (NMFA) board meeting. If the matter is approved by the STC in the morning on that date, NMFA can consider the matter later the same day to allow a closing to be scheduled quickly, perhaps April or May, to enable NMDOT to take advantage of lower interest rates before the anticipated rate increases by the Federal Reserve.

NMDOT's priority for the upcoming 2022 legislative session is the passage of its Construction Manager General Contractor (CMGC) bill. If passed, it will enable NMDOT to use a different tool for project delivery.

During the recent special legislative session, NMDOT received \$172.5 million of American Rescue Plan Act (ARPA) funds (recovery money appropriated to New Mexico by the U.S. Congress): \$142.5 million for roads; \$10 million for electric vehicle charging stations; \$10 million for airports; and \$10 million for a litter control program. NMDOT is working on a plan for how that money will be spent. NMDOT also anticipates receiving in the upcoming regular legislative session up to \$200 million for roads, rest areas and other items. Secretary Sandoval outlined by District the particular projects NMDOT believes it will use this new funding for during the next 12-24 months: **District One:** US 180, total estimated project cost approximately \$150 million; St. Francis extension in the border area, total estimated project cost approximately \$40 million; Nogal Canyon Bridge improvements (estimated project cost not stated); **District Two:** NM 31/NM 128, total estimated project cost approximately \$60 million; NM 128, four-laning the entire highway, total estimated project cost approximately \$150 million; US 380, total estimated project cost approximately \$100 million; **District Three:** Montgomery/Comanche Interchange, total estimated project cost approximately \$170 million; Mesa del Sol/Bobby Foster; Paseo del

Volcan/Atrisco Interchange; and Gibson Interchange (total estimated project costs not stated); **District Four:** Completion of NM 39 project, total estimated project cost approximately \$30-\$40 million; **District Five:** NM 4 Bypass/Jemez, (total estimated project cost not stated); Pinon Hills river crossing in Farmington, total estimated project cost approximately \$40-\$50 million; Cerrillos Road from St. Michael's to St. Francis, total estimated project cost, approximately \$15 million; **District Six:** Six-laning I-40 from Albuquerque to the Arizona State line (total estimated project cost, approximately \$1.7-\$2 billion). The criteria for selection of these projects are based on (1) pavement conditions; (2) economic development – how building these roads can improve the economy; and (3) readiness – how soon the projects can be completed given that all of the new money has time restrictions that NMDOT must comply with.

Chairman Adams asked about the status of funding for the Transportation Project Fund (TPF). Secretary Sandoval responded that NMDOT will continue to receive \$40 million per year in funding for the TPF (local entities) based on revenue and 2021 legislation. LFC is planning to allocate an additional \$80 million of General Fund money, subject to approval. That would amount to approximately \$120 million in funding for the Transportation Project Fund (local entities).

### **Federal Highway Administration (FHWA) Report**

Cindy Vigue, New Mexico Division Administrator, FHWA, discussed the bipartisan infrastructure law signed by President Biden on November 15, 2021. She explained that the previous federal legislation (the “FAST Act”) brought approximately \$389 million to New Mexico over five years. The new bill will bring approximately \$500 million to New Mexico over five years, which represents about a 30% increase. With additional state funds matching federal funds,

NMDOT will be able to leverage that and do the priority projects that need to be done for the citizens of New Mexico. Ms. Vigue introduced Dolores Gallegos, Transportation Finance Manager, FHWA, and asked her to address funding. Mrs. Gallegos and Ms. Vigue reported that \$120 million was allocated to New Mexico in December through a continuing resolution, which ends on February 18, 2022. Because Congress has yet to make an appropriation with funds from the new bill, FHWA does not have the full amount of \$500 million available. Instead, it is currently using the \$120 million allocation from the continuing resolution to fund traditional or legacy programs in the state. The new bill also includes 12 new programs, for which new policies, eligibility requirements and rules need to be developed. In the next few months NMDOT will be given the opportunity to comment on the requirements.

## **Finance Reports**

### **FY21 External Audit Summary - REDW LLC**

Mallery Manzanares, Budget Director and Acting ASD Director, NMDOT, reported that each year NMDOT must undergo an independent financial audit by an external auditor. The FY21 audit was completed and approved by Office of the State Auditor (OSA). This is the third year that REDW LLC has performed the external audit for NMDOT.

Jesse Jiron, CPA, Senior Manager, and Ernesto Ramirez, CPA, Manager, REDW LLC, reported the scope of the audit included a NMDOT financial statement audit and a NMDOT federal compliance audit. Unmodified opinions were issued on both. There were no material deficiencies identified in the 2021 audit; however, there were two audit findings. The first was a significant deficiency in controls over compliance related to the Highway Safety Cluster federal program (the

finding is detailed on page 139 of REDW's report), and the second was one instance of non-compliance with state statutes (the finding is detailed on page 141 of REDW's report).

Secretary Sandoval briefly clarified the audit findings and expressed his gratitude and appreciation to Mrs. Manzanares, and the NMDOT Finance and Accounting team.

### **NMDOT Financial Status Update**

Mallery Manzanares, Budget Director and Acting Administrative Services Director, NMDOT, presented the NMDOT financial status update as of November 30, 2021. NMDOT's FY22 budget as of that date was \$1.6 billion. State Road Fund: To date, NMDOT has received a total of \$363.6 million in revenue and spent \$379.8 million. Restricted Funds: To date, NMDOT has received \$38 million in revenue and spent \$23.1 million. Mrs. Manzanares also discussed NMDOT's FY22 cash balances for operating budget funds: Road Fund: \$360.2 million; Restricted Funds: \$84.5 million; and Total Cash Balance: \$444.7 million. At present, NMDOT's projected FY22 year end fund balances ("savings account" amounts) are: Road Fund: \$24.8 million; Restricted Funds: \$48 million; and Operating Fund (agency total): \$72.9 million.

### **Approval of FY22 Budget Adjustment Request (BAR) No. 12 - Mesa del Sol**

David Quintana, P.E., Chief Engineer, NMDOT, presented and requested approval of FY22 BAR No. 12 - P562 - PDC. The BAR is required to increase budget authority for the Design Program. It will increase Contractual Services (Category 300) by \$2 million to fund the design phase of the Mesa del Sol Boulevard/Interstate 25 interchange project.

**Chairman Adams asked for a motion to approve FY22 BAR No. 12 - Mesa del Sol; Commissioner Taylor made a motion to so approve; Commissioner Chynoweth seconded; motion carried unanimously.**

**Approval of FY22 BAR No. 13 - Federal Transit**

David Harris, Transit and Rail Division Director, NMDOT, presented and requested approval of FY22 BAR No. 13 - P565 - Modal. The BAR is required to increase budget authority in Federal Grants and Services (CAT 400) for the Transit Bureau in the amount of \$2,150,626. The funds are 100% federally reimbursable. The increased budget authority will be utilized as follows: \$1,485,000 for a federal discretionary award for Los Alamos County for the purchase of electric busses and charging infrastructure; and \$665,626 in Federal Transit Section 5310 (Enhanced Mobility for Seniors and Individuals with Disabilities) funding to be used for waiver of local match requirements for participants.

**Chairman Adams asked for a motion to approve FY22 BAR No. 13 - Federal Transit; Commissioner Taylor made a motion to so approve; Commissioner Sandoval seconded; motion carried unanimously.**

**New Mexico Finance Authority (NMFA) Report**

Mark Lovato, Managing Director, Investments, NMFA, provided an update regarding NMDOT's investment portfolio funds under NMFA management and NMDOT/NMFA's outstanding bond debt service as of December 20, 2021. During the month of December, NMFA received a set aside payment in the total amount of \$15.5 million and made interest payments in the total amount of \$22.7 million, representing a net decrease of \$7.2 million in NMDOT's

portfolio. NMFA is currently holding \$69.8 million in debt service funds. It is also holding \$309.1 million in project funds: \$302.4 million in NMDOT's 2021A project account and \$6.7 million in NMDOT's 2014A project account. NMDOT has a \$50 million line of credit at Wells Fargo pursuant to certain agreements with BNSF. NMDOT made a Commitment Fee payment this month in the amount of \$24,277 for the line of credit. NMDOT's next bond debt service payment is due on June 15, 2022, for principal in the amount of \$121.2 million plus interest in the amount of \$24.5 million, for a total payment in the amount of \$145.7 million. Including the \$22.7 million interest payment made in December, NMDOT's fiscal year debt service payments currently total \$168.4 million. NMDOT's outstanding debt currently totals \$998.2 million. NMDOT's 2012 Series Senior Bonds will become callable on June 15, 2022. After NMDOT's principal payment in the amount of \$103 million on June 15, 2022, the remaining amount of \$50 million will be refunded to NMDOT.

## **Policy Reports**

### **Annual Determination of Notice Provisions for Open and Closed State Transportation**

#### **Commission (STC) Meetings**

Ken Baca, General Counsel, NMDOT, presented and requested the STC's approval to reaffirm the notice provisions for open and closed STC meetings pursuant to NMSA 1978, Section 10-15-1(D) of the Open Meetings Act, as set forth in Commission Policy 1, *New Mexico State Transportation Commission Organization and Meetings* (CP 1).

Chairman Adams inquired whether a Commissioner may attend a STC meeting via Zoom and vote, etc. if he or she is unable to attend in person. Mr. Baca responded that a Commissioner

can because there is a rule in place that allows for Commissioners to participate in meetings via telephone, as long as it is something that does not occur on a routine basis. There needs to be some sort of hardship for the rule to apply. He believes in these times that Zoom or some other virtual technology application would suffice. To amend the rule to specifically include meeting participation via Zoom, Microsoft Teams or some other virtual technology application, the STC and NMDOT would probably have to go through the rulemaking process. Chairman Adams suggested that the matter be presented to the STC at its next meeting.

**Chairman Adams asked for a motion to approve reaffirmation of the Annual Determination of Notice Provisions for Open and Closed State Transportation Commission meetings; Commissioner Chynoweth made a motion to so approve; Commissioner Taylor seconded; motion carried unanimously.**

#### **Proposed Revision to 18.11.3 NMAC - Air Service Assistance Program**

Pedro Rael, Aviation Division Director, NMDOT presented and requested approval to initiate rulemaking to amend existing NMDOT Aviation Division Rule 18.11.3 NMAC, Air Service Assistance Program, to (1) allow eligible recipients in New Mexico to apply for grants from the Aviation Division to assist with the marketing of passenger air service; and (2) to change the 50% match requirement for eligible recipients in order to receive an assistance grant.

**Chairman Adams asked for a motion to approve the request to initiate rulemaking to amend 18.11.3 NMAC - Air Service Assistance Program; Commissioner Taylor made a motion to so approve; Commissioner Chynoweth seconded; motion carried unanimously.**

## **Approval of Proposed Dedication of the “Senator Carlos R. Cisneros Memorial Highway”**

Paul Brasher, P.E., District Five Engineer, NMDOT, presented and requested the STC’s approval of the proposed dedication of the entire length of NM 522, from its junction with US 64 in Taos County north to the New Mexico/Colorado state line, as the “Senator Carlos R. Cisneros Memorial Highway”, and its adoption of related STC Resolution No. 2022-01 (JAN). He invited Andrea Cisneros, daughter of the late Senator Carlos R. Cisneros to read the proposed resolution aloud to the STC.

On behalf of the STC, Chairman Adams posthumously commended and thanked Senator Cisneros for all of his contributions to the State of New Mexico. He remarked that the Senator served his constituents and New Mexico as well as anyone could. He was always concerned about people and wanted to do the right things in order to get things done. His efforts were sincerely appreciated.

Secretary Sandoval offered his belated condolences to the Cisneros family members present at the meeting. He congratulated them on the dedication of the highway. Senator Cisneros was truly a wonderful man. He always cared about not only his constituents, and in particular the people of Questa, but also about infrastructure. In his role as a member of the Senate Finance Committee, he treated NMDOT very well and always made certain NMDOT was made whole at the end of every legislative session.

Commissioner Taylor stated he had the pleasure of serving with Senator Cisneros for a number of years in the legislature. He was a true statesman, a wonderful man, deliberative and really delightful to work with. He genuinely worked for the betterment of people and made a significant contribution to the State of New Mexico.

**Chairman Adams asked for a motion to approve the proposed dedication of the entire length of NM 522, from its junction with US 64 in Taos County north to the New Mexico/Colorado state line, as the “Senator Carlos R. Cisneros Memorial Highway”; Commissioner Taylor made a motion to so approve; Commissioner Sandoval seconded; motion carried unanimously.**

### **Additional Comment**

Brian Jones, Executive Director, Asphalt Pavement Association of New Mexico (APANM), commented regarding his concern about the size of future NMDOT projects. If they are too big, local contractors will not be able to bid on them, which will bring in out-of-state contractors. If that can be avoided, money will stay in New Mexico. When out-of-state contractors are awarded jobs, some money is spent in state but the majority goes out of state. When local contractors are awarded jobs, money is spent in the state, including funds for housing costs, materials and equipment purchases.

Jim Garcia, Associated Contractors of New Mexico, commented that he appreciated Brian Jones’ remark that it is a big concern for local contractors that the larger the project, the harder it is for them to do the work. However, he chose to emphasize what has been happening for the last two years. He commended NMDOT for its communication efforts and for making local contractors essential, allowing them to do the work they do. Because of that, contractors have had a very good two years and he wants everybody to know that despite the present emphasis on doom and gloom. He thanked Secretary Sandoval for his willingness to meet with contractors.

## **Adjournment**

**Chairman Adams asked for a motion to adjourn the regular meeting at 11:29 a.m.; Commissioner Sandoval made a motion to adjourn the regular meeting; Commissioner Chynoweth seconded. Motion carried unanimously.**

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**Chairman**

**Walter G. Adams**

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**Secretary**

**Charles Lundstrom**

# Agenda Item 4

4. Introductions: Walter G. Adams, Chairman
  - a. Elected Officials
  - b. Commission Members
  - c. NMDOT Executive Staff

# **Agenda Item 5**

Welcoming Remarks: Walter G. Adams, Chairman

# **Agenda Item 6**

## Public Comment

# **Agenda Item 7**

Authorizing Resolution No.  
2022-03 (MAR) Extension  
of \$50 Million Line of Credit  
for BNSF Requirement

# Commission Brief

**SUBJECT:** Authorizing Resolution No. 2022-03 (MAR) Extension of \$50 Million Line of Credit for BNSF Requirement

**PRESENTER:** William Craven, Rail Bureau Chief, NMDOT Transit and Rail Division

**BACKGROUND:** The BNSF-NMDOT Railrunner Agreements required NMDOT to establish an escrow account of \$50 million with respect to liability that BNSF may incur related to operation of the Railrunner commuter service. In March 2013, NMDOT and BNSF agreed to amend the Railrunner Agreements to allow replacement of the escrow account with a line of credit, and the STC subsequently authorized the New Mexico Finance Authority (NMFA) to enter into the BNSF Taxable Line of Credit agreement with Wells Fargo Bank, N.A. in an amount not to exceed \$50 million. Under the original line of credit agreement, the NMFA, at the direction of the NMDOT, could draw on the line of credit until June 30, 2016, or such later date as agreed to by the parties. That deadline (the “Advance Termination Date”) was later extended to June 30, 2019, and still later to June 30, 2022. NMDOT, NMFA, and Wells Fargo Bank, N.A. now seek the STC’s approval to extend the Advance Termination Date to June 30, 2025.

**ACTION:** Request Approval of Authorizing Resolution No. 2022-03 (MAR).

**STATE OF NEW MEXICO  
STATE TRANSPORTATION COMMISSION  
RESOLUTION NO. 2022-03 (MAR)**

AUTHORIZING EXECUTION OF AMENDMENTS EXTENDING THE EXPIRATION DATE UNTIL JUNE 30, 2025 OF A TAXABLE LINE OF CREDIT IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 BY THE NEW MEXICO FINANCE AUTHORITY FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE CERTAIN OBLIGATIONS OF THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (THE “DEPARTMENT”) PURSUANT TO CERTAIN AGREEMENTS BETWEEN THE DEPARTMENT AND THE BNSF RAILWAY COMPANY; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION WITH SUCH AMENDMENTS TO THE TAXABLE LINE OF CREDIT ON BEHALF OF THE COMMISSION BY THE CHAIRMAN OF THE COMMISSION AND ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION BY THE SECRETARY OF THE DEPARTMENT.

WHEREAS, the State Transportation Commission (the “Commission”) of the State of New Mexico (the “State”) was created under Article V, Section 14 of the New Mexico State Constitution; and

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

WHEREAS, pursuant to the provisions of Chapter 3, Laws 2003, adopted during the First Special Session of the Legislature in 2003, codified in Sections 67-3-59.1, .2, .3 and .4, NMSA 1978, as amended (the “GRIP Financing Legislation”), the Commission is authorized to direct the issuance of state transportation revenue bonds (the “State Transportation Revenue Bonds”) by the Finance Authority from time to time, payable from Federal Revenues (as defined in the Master Indenture referred to below) and State Revenues (also as defined in the Master Indenture referred to below) (collectively, the “Pledged Revenues”), in order to provide funds to finance state transportation projects as specified in Sections 27 and 28 of the GRIP Financing Legislation (the “GRIP Transportation Projects”); and

WHEREAS, as permitted by the Public Securities Short-Term Interest Rate Act including, without limitation, Section 6-18-6 and Section 6-18-7, NMSA 1978, as amended, the Finance Authority may, when directed and authorized by the Commission, issue the bonds pursuant to the GRIP Financing Legislation as short-term bonds bearing a variable rate of interest; and

WHEREAS, the Department and BNSF Railway Company (“BNSF”) had previously entered into various agreements concerning the sale of certain right of way and other property

interests from BNSF to the Department and the operation, maintenance and use of such property interests by BNSF and the Department (the “BNSF-NMDOT Railrunner Agreements”); and

WHEREAS, pursuant to the BNSF-NMDOT Railrunner Agreements, the Department was required to establish an escrow account of \$50,000,000 as a refundable portion of the purchase price with respect to liability that BNSF may incur in relation to the commencement or operation of Commuter Service, as defined in the BNSF-NMDOT Railrunner Agreements (the “Escrow Account”); and

WHEREAS, pursuant to the GRIP Financing Legislation, the Finance Authority, as directed and authorized by the Commission, has previously issued its Adjustable Rate State Transportation Revenue Bonds (Subordinate Lien), Series 2006D (Taxable) (the “Series 2006D Bonds”) for the purpose of funding the Escrow Account;

WHEREAS, pursuant to the GRIP Financing Legislation, the Finance Authority, as directed and authorized by the Commission, has previously issued the Series 2008D Bonds for the purpose of refunding the Series 2006D Bonds; and

WHEREAS, pursuant to that certain Escrow Agreement among BNSF, the Department and Bank of Albuquerque, N.A. (the “Escrow Agreement”), the Department established the Escrow Account; and

WHEREAS, the Department and BNSF have entered into the General Amendment Agreement dated as of March 16, 2013 (the “BNSF Amendment”), amending the BNSF-NMDOT Railrunner Agreements to allow for the replacement of the Escrow Account with a line of credit under conditions set forth in the BNSF Amendment (the “BNSF Taxable Line”); and

WHEREAS, in 2013, the Commission and the Department determined that it was in the interest of the Commission and the Department to establish the BNSF Taxable Line in place of the Escrow Account; and

WHEREAS, in 2013, the Commission authorized the Finance Authority to enter into the BNSF Taxable Line with Wells Fargo Bank, N.A. (the “Line of Credit Provider”) in an amount not to exceed \$50,000,000; and

WHEREAS, the Department, the Finance Authority and the Line of Credit Provider entered into the BNSF Taxable Revolving Line Of Credit Agreement, dated June 14, 2013 (the “Original Agreement”), pursuant to which the Line of Credit Provider agreed to make funds available for deposit pursuant to the BNSF Amendment; and

WHEREAS, under the Original Agreement, the Finance Authority could, at the direction of the Department, draw on the BNSF Taxable Line until June 30, 2016, or such later date as was agreed to by the parties to the BNSF Taxable Line (the “Advance Termination Date”); and

WHEREAS, the Department, the Finance Authority and the Line of Credit Provider entered into the First Amendment to the Original Agreement, dated October 2, 2015 (the “First Amendment”), pursuant to which the Line of Credit Provider agreed to allow the Finance

Authority, at the direction of the Department, to draw on the BNSF Taxable Line until June 30, 2019, or such later date as may be agreed to by the parties to the BNSF Taxable Line; and

WHEREAS, the Department, the Finance Authority and the Line of Credit Provider entered into a Second Amendment to the Original Agreement, dated April 30, 2019 (the “Second Amendment” and together with the First Amendment and the Original Agreement, the “Amended BNSF Line of Credit Agreement”) whereby the parties agreed to amend the Advance Termination Date (as that term is defined in the Amended Agreement) to June 30, 2022; and

WHEREAS, the Department, the Finance Authority and the Line of Credit Provider now desire: (i) to extend the Advance Termination Date from June 30, 2022 to June 30, 2025; and (ii) to make certain amendments to the Amended BNSF Line of Credit Agreement in connection with such extension (collectively, the “Amendments”); and

WHEREAS, the Commission desires to authorize the Chairman of the Commission and the Secretary of the Department to make certain representations and to enter into the Amendments on behalf of, respectively, the Commission and the Department in connection with the Original Agreement and to execute certain agreements and certificates necessary, appropriate or convenient in connection with the execution and delivery of the Amendments.

NOW, THEREFORE, IT IS RESOLVED BY THE STATE TRANSPORTATION COMMISSION:

**Section 1. Definitions; Interpretation.**

(a) Definitions. Capitalized terms defined in the foregoing Recitals shall have the same meaning when used in this Authorizing Resolution, unless the context clearly requires otherwise. Capitalized terms not defined in the Recitals and defined in this Section 1 shall have the same meaning when used in this Authorizing Resolution including the foregoing Recitals, unless the context clearly requires otherwise:

(b) Interpretation. For all purposes of this Authorizing Resolution, except as otherwise expressly provided or unless the context otherwise requires:

(i) The singular includes the plural and the plural includes the singular.

(ii) All accounting terms not otherwise defined have the meanings assigned to them in accordance with generally accepted accounting principles applicable in the United States to governmental entities such as the Finance Authority, the Commission and the Department.

(iii) All references to sections shall refer to sections of this Authorizing Resolution.

(iv) Words importing any gender include the other gender.

**Section 2. Findings and Determinations.**

(a) The Commission hereby determines that it is in the best interests of the Commission and the Department to extend the Advance Termination Date on the Original Agreement of the BNSF Taxable Line from June 30, 2022 to June 30, 2025.

(b) The Chairman of the Commission and the Secretary of the Department shall make certain representations and to enter into the Amendments on behalf of, respectively, the Commission and the Department in connection with the Original Agreement and shall execute certain agreements and certificates necessary, appropriate or convenient in connection with the execution and delivery of the Amendments.

(c) The Commission has considered all relevant information and data in making its findings.

**Section 3. Ratification of Prior Actions Taken by the Commission and the Finance Authority; Inconsistent Actions Superseded.**

Prior actions of the Commission, the Department and the Finance Authority consistent with this Resolution are hereby ratified and approved. All acts, orders, resolutions, or parts thereof, of the Commission that are inconsistent or in conflict with this Resolution are hereby superseded to the extent only of such inconsistency or conflict.

**Section 4. Effective Date.**

The provisions of this Resolution shall become effective immediately upon its adoption and approval.

[Signature page follows]

ADOPTED IN OPEN MEETING BY THE STATE TRANSPORTATION  
COMMISSION ON MARCH 3, 2022.

\_\_\_\_\_  
Walter Adams, Chairperson

\_\_\_\_\_  
Jennifer Sandoval, Commissioner

\_\_\_\_\_  
Bruce Ellis, Commissioner

\_\_\_\_\_  
Hilma Chynoweth, Commissioner

\_\_\_\_\_  
Thomas C. Taylor, Commissioner

\_\_\_\_\_  
Charles Lundstrom, Commissioner

ATTEST: \_\_\_\_\_  
Michael Sandoval, Cabinet Secretary

**CERTIFICATE REGARDING THE RESOLUTION  
OF THE NEW MEXICO STATE TRANSPORTATION COMMISSION**

I, the undersigned, Walter Adams, Chairperson of the New Mexico State Transportation Commission (the “Commission”), DO HEREBY CERTIFY that: (i) the annexed Resolution was duly adopted by the members of the Commission at a meeting thereof duly called and held on March 3, 2022, at which meeting a quorum was present and acting throughout; (ii) the annexed Resolution has been compared by me with the original thereof recorded in the minute books of the Commission and is a correct transcript therefrom and of the whole of said original; (iii) the annexed Resolution has not been altered, amended or repealed; and (iv) the annexed Resolution is in full force and effect on the date of this Certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 3<sup>rd</sup> day of March, 2022.

\_\_\_\_\_  
Walter Adams, Chairperson  
New Mexico State Transportation  
Commission

**THIRD AMENDMENT TO  
BNSF TAXABLE REVOLVING LINE OF CREDIT AGREEMENT**

This **THIRD AMENDMENT TO BNSF TAXABLE REVOLVING LINE OF CREDIT AGREEMENT** (this “*Amendment*”), dated [February \_\_, 2022] (the “*Amendment Date*”), is by and among **NEW MEXICO DEPARTMENT OF TRANSPORTATION**, an agency of the State of New Mexico (including its successors and assigns, the “*Department*”), having its address at 1120 Cerillos Road, Santa Fe, New Mexico 87504, **NEW MEXICO FINANCE AUTHORITY**, a public body politic and corporate, separate and apart from the State of New Mexico, constituting a governmental instrumentality (including its successors and assigns, the “*Finance Authority*”), having its address at 207 Shelby Street, Santa Fe, New Mexico 87501-2151, and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (including its successors and assigns, the “*Bank*”), having its address at 100 West Washington Street, 20th Floor, MAC S4101-204, Phoenix, AZ 85003. All capitalized terms used herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

**WITNESSETH**

**WHEREAS**, the Department, the Finance Authority and the Bank have previously entered into that certain BNSF Taxable Revolving Line of Credit Agreement, dated June 14, 2013 (as amended, restated or otherwise modified from time to time, the “*Agreement*”), pursuant to which the Bank agreed to make funds available under the Commitment for deposit in the Escrow Fund created pursuant to the Escrow Agreement;

**WHEREAS**, pursuant to Sections 9.13 and 9.21 of the Agreement, the Agreement may be amended by a written amendment thereto executed by the Department, the Finance Authority and the Bank; and

**WHEREAS**, at the request of the Finance Authority and the Department, the Bank has agreed to extend the Advance Termination Date and to make certain other modifications to the Agreement, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises, the parties hereto hereby agree as follows:

**SECTION 1. AMENDMENTS.**

Upon the satisfaction of the conditions precedent set forth in Section 2 hereof, the Agreement is hereby amended as follows:

1.01. The following definitions appearing in Section 1.1 of the Agreement are hereby amended in their entireties and, as so amended, shall be restated to read as follows:

**Advance Interest Rate:** Means (a) from and including the date an Advance is made hereunder until the first to occur of (i) the date such Advance is repaid in full and (ii) subject to Section 2.3(c) hereof, the first day of the related Term Out

Period therefor, the Daily Simple SOFR Rate and (b) from and including the first day of the Term Out Period through the final day thereof, the Term Out Rate; *provided however*, (A) that from and after the occurrence of an Event of Default, the Advance Interest Rate will equal the Default Rate and (B) that at no time will the Advance Interest Rate exceed the Maximum Rate.

**Advance Termination Date:** Means June 30, 2025, as such date may be extended from time to time by the parties hereto in accordance with Section 9.13 hereof, or such earlier date on which this Agreement and the Commitment are terminated.

**Base Rate:** Means, for any date of determination, a fluctuating rate of interest per annum equal to the highest of (a) the Prime Rate, (b) the Fed Funds Rate plus 3.00%, (c) Daily Simple SOFR Rate plus 3.00% and (d) 8.50%.

**Business Day:** Means any day on which (a) the Federal Reserve System is in operation, (b) banks in the State, the State of Arizona and in the State of New York are open for business and (c) in relation to Advances bearing interest at the Daily Simple SOFR Rate (including interest rate setting, funding, disbursement, settlement or payment), any such day that is also a U.S. Government Securities Business Day.

**Undrawn Fee:** Means the percentage equal to (a) 19 bps (0.19%) plus (b) the Undrawn Fee Margin, as said Undrawn Fee Margin may be adjusted from time to time as set forth herein, applied to the difference between the principal amount of the Commitment and the current principal amount of unreimbursed Advances. On [February \_\_, 2022], the Undrawn Fee is equal to 19 bps (0.19%).

1.02. The following definitions are hereby added to Section 1.1 of the Agreement in the appropriate alphabetical order to read as follows:

**Anti-Corruption Laws:** Means (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (b) the U.K. Bribery Act 2010, as amended; and (c) any other anti-bribery or anti-corruption laws, regulations or ordinances in any jurisdiction in which the Department or the Finance Authority are located or doing business.

**Anti-Money Laundering Laws:** Means applicable Laws or regulations in any jurisdiction in which the Department or the Finance Authority are located or doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

**Daily Simple SOFR:** Means, for any day (a “**SOFR Rate Day**”), a rate per annum equal to the greater of (a) SOFR for the day (such day, a “**SOFR Determination Day**”) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day

immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website, and (b) the Floor. If by 5:00 p.m. on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Department or the Finance Authority.

**Daily Simple SOFR Rate:** Means a per annum rate of interest equal to the sum of (a) Daily Simple SOFR plus 45 bps (0.45%), plus (b) the Daily Simple SOFR Rate Margin, as said Daily Simple SOFR Rate Margin may be adjusted from time to time as set forth herein. The Daily Simple SOFR Rate shall be rounded upward to the fifth decimal place.

**Daily Simple SOFR Rate Margin:** Means, on any day, the margin set forth below, as the same may be adjusted from time to time as set forth herein in accordance with the terms hereof:

Credit Rating (S&P/Moody's)	Daily Simple SOFR Rate Margin
AAA/Aa1 to AA+/Aa2	5.0 bps
AA/Aa2 to AA-/Aa3	5.0 bps
AA-/Aa3 to A+/A1	10.0 bps
A+/A1 to A/A2	10.0 bps
A/A2 to A-/A3	10.0 bps
A-/A3 to BBB+/Baa1	25.0 bps
BBB+/Baa1 to BBB/Baa2	35.0 bps
BBB/Baa2 to BBB-/Baa3	50.0 bps

For purposes of determining the Daily Simple SOFR Rate Margin, in the event of a split rating between S&P and Moody's, the lower rating will prevail. If (a) a Credit Rating is withdrawn or suspended for any reason, (b) a Credit Rating is downgraded below the lowest level set forth above or (c) an Event of Default occurs and remains uncured hereunder, the Daily Simple SOFR Rate Margin shall automatically increase by an amount equal to (i) the Daily Simple SOFR Rate Margin that would be payable by the Department were the Credit Rating assigned to the lowest level set forth above plus (ii) one hundred basis points (1.00%) per annum. The Daily Simple SOFR Rate Margin will be reduced on any date that (A) Moody's or S&P

shall have publicly announced the reinstatement or upgrade of a Credit Rating or (B) an Event of Default has been waived in writing by the Bank or cured to the reasonable satisfaction of the Bank. All increases in the Daily Simple SOFR Rate Margin contemplated herein shall be cumulative.

**Floor:** Means a rate of interest equal to 0.00%.

**Sanction or Sanctions:** Means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future statute or Executive Order, (b) the United Nations Security Council, (c) the European Union, (d) the United Kingdom, or (e) any other Governmental Authority with jurisdiction over the Department or the Finance Authority.

**Sanctioned Target:** Means any target of Sanctions, including: (a) Persons on any list of targets identified or designated pursuant to any Sanctions, (b) Persons, countries, or territories that are the target of any territorial or country-based Sanctions program, (c) Persons that are a target of Sanctions due to their ownership or control by any Sanctioned Target(s), or (d) otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

**SOFR:** Means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**SOFR Administrator:** Means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**SOFR Administrator's Website:** Means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**SOFR Determination Day:** Has the meaning specified in the definition of "Daily Simple SOFR".

**SOFR Rate Day:** Has the meaning specified in the definition of "Daily Simple SOFR".

**U.S. Government Securities Business Day:** Means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

1.03. The definitions of “**LIBOR Index**,” “**LIBOR Index Rate**,” “**LIBOR Index Reset Date**” and “**LIBOR Interest Rate Margin**” appearing in Section 1.1 of the Agreement are hereby deleted in their entirety.

1.04. Article I of the Agreement is hereby further amended by the addition of a new Section 1.8 to read as follow:

**1.8 Rates.** The Bank does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.11(c), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Bank and its affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Department or the Finance Authority. The Bank may select information sources or services in its reasonable discretion to ascertain the Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Department or the Finance Authority or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

1.05. Section 2.3(b) of the Agreement is hereby amended and restated in its entirety to read as follows:

(b) The Finance Authority or the Department may prepay the principal balance of an Advance, in full at any time or in part from time to time, without fee, premium or penalty; *provided* that: (i) the Bank shall have actually received from the Finance Authority, or the Department, acting on behalf of the Finance Authority, at least five (5) Business Days before such prepayment, prior written notice of (A) Finance Authority’s or Department’s intent to prepay, as the case may be, (B) the amount of principal which will be prepaid (the “**Prepaid Principal**”), and (C) the date on which the prepayment will be made; (ii) each prepayment shall be in the amount of \$100,000 or more (unless the prepayment retires the outstanding balance of the Note in full); and (iii) each prepayment shall be in the amount of 100% of the Prepaid Principal, plus accrued unpaid interest thereon to the date of prepayment, plus any other sums which have become due to the Bank

under the Line of Credit Documents on or before the date of prepayment but have not been paid.

1.06. Section 2.4(a) of the Agreement is hereby amended and restated in its entirety to read as follows:

(a) Subject to Section 2.11, the principal amount of each Advance made pursuant hereto shall bear interest at the Advance Interest Rate from time to time in effect. Accrued interest on each Advance then outstanding shall be payable in arrears on the first Business Day of each month and on the Advance Termination Date; provided that, in the event of any prepayment of an Advance, accrued interest on the principal amount prepaid shall be payable on the date of such prepayment. Interest on each Advance shall be computed on the basis of a year of 360 days and the actual number of days elapsed.

1.07. Section 2.8 of the Agreement is hereby amended and restated in its entirety to read as follows:

**2.8 Breakage Expenses.** In the event the Bank shall incur any loss, cost or expense (including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to purchase or hold the Note or the re-lending or re-investing of such deposits or other funds or amounts paid or prepaid to the Bank) as a result of any prepayment of the Note on a date other than a date specified in a notice of prepayment delivered to the Bank pursuant to Section 2.3(b) (the “**Breakage Expenses**”) for any reason, whether before or after an Event of Default, and whether or not such payment is required by any provision of this Agreement or any other Line of Credit Document, then, upon the demand of the Bank, the Finance Authority or the Department shall pay to the Bank a prepayment premium in such amount as will reimburse the Bank for such Breakage Expenses. If the Bank requests such prepayment, it shall provide to the Finance Authority and the Department with a certificate setting forth the computation of the Breakage Expenses giving rise to the request for such prepayment in reasonable detail and such certificate shall be conclusive if reasonably determined.

1.08. Article II of the Agreement is hereby further amended by the addition of a new Section 2.11 to read as follow:

**2.11 Changed Circumstances.**

(a) *Circumstances Affecting Benchmark Availability.* Subject to clause (c) below, in connection with any Request for Line of Credit Advance, if for any reason (i) the Bank shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for ascertaining Daily Simple SOFR pursuant to the definition thereof or (ii) the Bank shall determine (which determination shall be conclusive and binding absent manifest error) that Daily Simple SOFR does not adequately and fairly reflect the

cost to the Bank of making or maintaining such Advances and, in the case of clause (ii), the Bank shall have provided notice of such determination, in each case, to the Finance Authority and the Department. Upon notice thereof to the Finance Authority and the Department, any obligation of the Bank to make Advances shall be suspended until the Bank (with respect to clause (ii)) revokes such notice. Upon receipt of such notice, (A) the Finance Authority and the Department may revoke any pending Request for Line of Credit Advance or, failing that, the Finance Authority and the Department will be deemed to have converted any such request into a request for an Advance bearing interest at the Prime Rate in the amount specified therein and (B) any outstanding affected Advances will be deemed to have been converted into Advances bearing interest at the Prime Rate immediately. Upon any such prepayment or conversion, the Finance Authority and the Department shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.8.

(b) *Laws Affecting SOFR Availability.* If, after the date hereof, the introduction of, or any change in, any applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank (or any of its respective lending offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for the Bank (or any of its respective lending offices) to honor its obligations hereunder to make or maintain any Advances, or to determine or charge interest based upon Daily Simple SOFR, the Bank shall promptly give notice thereof to the Finance Authority and the Department. Thereafter, until the Bank notifies the Finance Authority and the Department that such circumstances no longer exist, any obligation of the Bank to make Advances shall be suspended. Upon receipt of such notice, the Finance Authority and the Department shall, if necessary to avoid such illegality, upon demand from the Bank, prepay or, if applicable, convert all Advances bearing interest at Daily Simple SOFR to Advances bearing interest at the Prime Rate, on the interest payment date therefor, if the Bank may lawfully continue to maintain such Advances bearing interest at Daily Simple SOFR to such day, or immediately, if the Bank may not lawfully continue to maintain such Advances bearing interest at Daily Simple SOFR to such day. Upon any such prepayment or conversion, the Finance Authority and the Department shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.8.

(c) *Benchmark Replacement Setting.*

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Line of Credit Document, upon the occurrence of a Benchmark Transition Event, the Department, the Finance Authority and the Bank may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00

p.m. on the fifth (5<sup>th</sup>) Business Day after the Bank has posted such proposed amendment to the Finance Authority and the Department. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.11(c)(i) will occur prior to the applicable Benchmark Transition Start Date.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Bank will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Line of Credit Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Line of Credit Document.

(iii) Notices; Standards for Decisions and Determinations. The Bank will promptly notify the Finance Authority and the Department of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Bank will promptly notify the Finance Authority and the Department of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.11(c)(iv). Any determination, decision or election that may be made by the Bank pursuant to this Section 2.11(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Line of Credit Document, except, in each case, as expressly required pursuant to this Section 2.11(c).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Line of Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Bank may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is

not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Bank may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Finance Authority’s and the Department’s receipt of notice of the commencement of a Benchmark Unavailability Period, (A) the Finance Authority and the Department may revoke any pending Request for Line of Credit Advance during any Benchmark Unavailability Period and, failing that, the Finance Authority and the Department will be deemed to have converted any such request into a request for an Advance bearing interest at the Prime Rate and (B) any outstanding affected Advances will be deemed to have been converted into Advances bearing interest at the Prime Rate immediately.

(d) *Certain Defined Terms*. As used in this Section 2.11:

**Available Tenor:** Means as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.11(c)(iv).

**Benchmark:** Means, initially, Daily Simple SOFR; provided that if a Benchmark Transition Event has occurred with respect to Daily Simple SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.11(c)(i).

**Benchmark Replacement:** Means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Bank giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Line of Credit Documents.

**Benchmark Replacement Adjustment:** Means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Bank giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

**Benchmark Replacement Date:** Means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**Benchmark Transition Event:** Means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has

ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**Benchmark Transition Start Date:** Means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

**Benchmark Unavailability Period:** Means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Line of Credit Document in accordance with Section 2.11(c) and (y) ending at the time that a Benchmark Replacement has

replaced the then-current Benchmark for all purposes hereunder and under any Line of Credit Document in accordance with Section 2.11(c).

**Conforming Changes:** Means, with respect to either the use or administration of Daily Simple SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of Requests for Line of Credit Advances or prepayment, the applicability and length of lookback periods, the applicability of Section 2.8 and other technical, administrative or operational matters) that the Bank decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank decides that adoption of any portion of such market practice is not administratively feasible or if the Bank determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Bank decides is reasonably necessary in connection with the administration of this Agreement and the other Line of Credit Documents).

**FRB:** Means the Board of Governors of the Federal Reserve System of the United States.

**Relevant Governmental Body:** Means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

**Unadjusted Benchmark Replacement:** Means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

1.09. Section 3.1(s) of the Agreement is hereby amended and restated in its entirety to read as follows:

(s) (i) The Finance Authority has instituted, maintains and complies with policies, procedures and controls reasonably designed to assure compliance with Anti-Money Laundering Laws and Anti-Corruption Laws. To the best of Finance Authority’s knowledge, after due care and inquiry, neither the Financing Authority nor any affiliate of the Financing Authority is under investigation for an alleged violation of Anti-Money Laundering Laws or Anti-Corruption Laws by a Governmental Authority that enforces such laws.

(ii) The Finance Authority is not a Sanctioned Target. The Finance Authority is not owned or controlled by, or is acting or purporting to act for or on behalf of, directly or indirectly, a Sanctioned Target. The Finance Authority has instituted, maintains and complies with policies, procedures and controls

reasonably designed to assure compliance with Sanctions. To the best of the Finance Authority's knowledge, after due care and inquiry, neither the Financing Authority nor any affiliate of the Financing Authority is under investigation for an alleged violation of Sanction(s) by a Governmental Authority that enforces Sanctions. The Finance Authority shall notify the Bank in writing not more than one Business Day after first becoming aware of any breach of this Section.

1.10. Section 3.2(r) of the Agreement is hereby amended and restated in its entirety to read as follows:

(r) (i) The Department has instituted, maintains and complies with policies, procedures and controls reasonably designed to assure compliance with Anti-Money Laundering Laws and Anti-Corruption Laws. To the best of the Department's knowledge, after due care and inquiry, neither the Department nor any affiliate of the Department is under investigation for an alleged violation of Anti-Money Laundering Laws or Anti-Corruption Laws by a Governmental Authority that enforces such laws.

(ii) The Department is not a Sanctioned Target. The Department is not owned or controlled by, or is acting or purporting to act for or on behalf of, directly or indirectly, a Sanctioned Target. The Department has instituted, maintains and complies with policies, procedures and controls reasonably designed to assure compliance with Sanctions. To the best of the Department's knowledge, after due care and inquiry, neither the Department nor any affiliate of the Department is under investigation for an alleged violation of Sanction(s) by a Governmental Authority that enforces Sanctions. The Department shall notify the Bank in writing not more than one Business Day after first becoming aware of any breach of this Section.

1.11. Section 4.1(a) of the Agreement is hereby amended in part by inserting the following sentence after the last sentence of the Section:

“Notwithstanding the foregoing, the Finance Authority shall comply with Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws.”

1.12. Section 4.2(f) of the Agreement is hereby amended in part by inserting the following sentence after the last sentence of the Section:

“Notwithstanding the foregoing, the Department shall comply with Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws.”

1.13. Section 5.1 of the Agreement is hereby amended by the addition of new clauses (i) and (j) to read as follows:

**(i) Anti-Money Laundering and Anti-Corruption Laws; Sanctions.**

(A) Use any of the proceeds of an Advance to fund, finance or facilitate any activities, business or transactions that would be prohibited by Anti-Money Laundering Laws or Anti-Corruption Laws.

(B) Use any of the proceeds of an Advance to fund, finance or facilitate any activities, business or transactions: (1) that are prohibited by Sanctions, (2) that would be prohibited by U.S. Sanctions if conducted by a U.S. Person, or (3) that would be prohibited by Sanctions if conducted by the Bank, or any other party to this Agreement. The Finance Authority and the Department shall notify the Bank in writing not more than one Business Day after first becoming aware of any breach of this Section.

**(j) Source of Repayment and Collateral.** Fund any repayment of the Advances with proceeds, or provide as collateral any property, that is directly or indirectly derived from any transaction or activity that is prohibited by Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws, or that could otherwise cause the Bank or any other party to this Agreement to be in violation of Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws.

1.14. Article IX of the Agreement is hereby amended by the addition of new Sections 9.24 and 9.25 to read as follows:

**9.24 No Advisory or Fiduciary Relationship.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof, or of any other Line of Credit Document), the Department and the Finance Authority acknowledge and agree that: (a) (i) the services regarding this Agreement provided by the Bank and any affiliate thereof are arm's-length commercial transactions between the Department and the Finance Authority, on the one hand, and the Bank and its affiliates, on the other hand, (ii) the Department and the Finance Authority have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (iii) the Department and the Finance Authority are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Line of Credit Documents; (b) (i) the Bank and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (municipal, financial or otherwise), agent or fiduciary, for the Department or the Finance Authority, or any other Person and (ii) neither the Bank nor any of its affiliates has any obligation to the Department or the Finance Authority with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Line of Credit Documents; and (c) the Bank and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Department or the Finance Authority, and neither the Bank nor any of its affiliates has any obligation to disclose any of such interests to the Department or the Finance Authority.

**9.25 EMMA Postings.** In the event the Department or the Finance Authority file with EMMA this Agreement or any Line of Credit Documents or any description of the material terms thereof or notice of any respective agreement to covenants, events of default, remedies, priority rights or other similar terms, either voluntarily or as required pursuant a continuing disclosure agreement or Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the “**Rule**”) (each such posting, an “**EMMA Posting**”), the Department and the Finance Authority shall (i) provide the Bank with a copy of each EMMA Posting prior to submitting or posting on EMMA and (ii) shall not file or permit the filing of any EMMA Posting that includes Confidential Information. The Department and the Finance Authority acknowledge and agree that although the Bank may request review, edits or redactions of such materials prior to filing, the Bank is not responsible for the Department’s, the Finance Authority’ or any other entity’s (including, but not limited to, any broker-dealer’s) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with any continuing disclosure agreement or any applicable securities or other laws, including, but not limited to, those relating to the Rule. Notwithstanding the foregoing, any such redactions requested by the Bank shall not prevent compliance with any continuing disclosure agreement or any applicable securities or other Laws, including, but not limited to, those relating to the Rule. As used herein, “Confidential Information” means any sensitive or confidential information regarding the Department, the Finance Authority, the Bank or any affiliate of the Bank including, without limitation, address and account information, letter of credit numbers, e-mail addresses, telephone numbers, facsimile numbers, names and signatures of officers, employees and signatories.

## **SECTION 2. CONDITIONS PRECEDENT.**

This Amendment shall be effective as of the Amendment Date subject to the satisfaction of or waiver by the Bank of all of the following conditions precedent:

2.01. Delivery by the Department and the Finance Authority to the Bank of an executed counterpart of this Amendment.

2.02. Receipt by the Bank of an incumbency certificate of an authorized representative of the Department and the Finance Authority certifying as to the names and true signatures of the officers authorized to execute this Amendment.

2.03. Receipt by the Bank of the resolutions of the Commission and the Finance Authority authorizing the execution and delivery of, and performance of its respective obligations under, this Amendment.

2.04. The Department and the Finance Authority shall have provided, or will cause to be provided, written notice of this Amendment to the Commission, the Escrow Agent and BNSF.

2.05. Payment to the Bank on or before the Amendment Date of the reasonable legal fees and expenses of counsel to the Bank.

2.06. All other legal matters pertaining to the execution and delivery of this Amendment shall be reasonably satisfactory to the Bank and its counsel.

### **SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE DEPARTMENT AND THE FINANCE AUTHORITY.**

3.01. The Department and the Finance Authority hereby represent and warrant that the following statements are true and correct as of the Amendment Date:

(a) the representations and warranties of the Department and the Finance Authority contained in Article III of the Agreement are true and correct on and as of the Amendment Date as though made on and as of such date;

(b) no Event of Default has occurred and is continuing or would result from the execution of this Amendment; and

(c) no petition by or against either the Department or the Finance Authority has at any time been filed under the United States Bankruptcy Code or under any similar law.

3.02. In addition to the representations and warranties given in Article III of the Agreement, the Department and the Finance Authority hereby represent and warrant as follows:

(a) the execution, delivery and performance by the Department and the Finance Authority of this Amendment and the Agreement, as amended hereby, are within their powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the Department and the Finance Authority;

(b) no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Department and the Finance Authority of this Amendment or the Agreement, as amended hereby; and

(c) this Amendment and the Agreement, as amended hereby, constitute legal, valid and binding obligations of the Department and the Finance Authority enforceable against the Department and the Finance Authority in accordance with their respective terms, except that (i) the enforcement thereof may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, as the same may be applied in the event of the bankruptcy, reorganization, insolvency, liquidation or similar situation of the Department or the Finance Authority, and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

### **SECTION 4. MISCELLANEOUS.**

4.01. Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or

made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to, and shall mean and be a reference to, the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK; PROVIDED, HOWEVER, THAT MATTERS RELATING TO (I) THE POWER AND AUTHORITY OF THE FINANCE AUTHORITY AND THE DEPARTMENT TO ENTER INTO THIS AMENDMENT AND (II) THE POWER AND AUTHORITY OF THE FINANCE AUTHORITY AND THE DEPARTMENT TO UNDERTAKE ANY OBLIGATION OR OTHER REQUIREMENT HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW MEXICO.

4.02. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Amendment may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be duly executed and delivered as of the Amendment Date.

**NEW MEXICO FINANCE AUTHORITY**

By: \_\_\_\_\_  
Name: Katherine Miller  
Title: Chair

By: \_\_\_\_\_  
Name: Steve Kopelman  
Title: Vice-Chair

[SEAL]

Approved for execution by Officers of the New Mexico Finance Authority:

**GILMORE & BELL, P.C.**, as Bond Counsel to the New Mexico Finance Authority

By: \_\_\_\_\_  
Name: Brad Patterson

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: Michael Sandoval  
Title: Cabinet Secretary

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: Mark A. Jensen  
Title: Senior Vice President