**BOND COUNSEL MEMORANDUM**

**REGARDING RELEASE OF FUNDS SUBJECT TO CONDITIONS**

**(LEDA PROJECTS STATEWIDE)**

To: Ashley Leach, Director, State Board of Finance

Marcos Trujillo, Deputy Director, State Board of Finance

From: Rodey, Dickason, Sloan, Akin & Robb, P.A.

Sherman & Howard L.L.C. (together, “Bond Counsel”)

Date: \_\_\_\_\_\_\_\_\_, 202\_\_

Re: [Severance Tax][Note][Bonds], Series [20\_\_\_], Project Number [\_\_\_\_\_\_\_]

 Reference is made to the above-captioned legislative appropriation to the New Mexico Economic Development Department (“NMEDD”) for economic development projects statewide (the “Appropriation”), the release of which is conditioned, under the terms of the related memorandum dated [\_\_\_\_\_\_\_\_\_, 20\_\_], from the State of New Mexico Office of the Attorney General (the “Conditions Memorandum”), upon the review and approval of Bond Counsel. We have reviewed certain documentation provided by the New Mexico State Board of Finance (the “Board”) in relation to the following specific grants or loans to be funded through the Appropriation (each, a “LEDA Project”) for approval prior to disbursement of funds from the Appropriation to the various fiscal agents described below:

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| --- | --- | --- | --- | --- |
| Amount | Fiscal Agent | Project Party | Grant or Loan | Approved/Disapproved |
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Our review is limited in scope to confirmation of the following: (1) that the application of funds from the Appropriation to the particular LEDA Project is within the written scope of the Appropriation; (2) that the stated purpose of the LEDA Project as described to us in the documentation provided to us is generally consistent with the terms of the project participation agreement or project participation grant or loan agreement (“PPA”) governing the particular LEDA Project; and (3) that the amount of funds provided to the fiscal agent for the benefit of the project party is not in excess of the amount provided for in such PPA. We have assumed for purposes of this memorandum that (a) the New Mexico Department of Economic Development has reviewed and approved the funding of the particular LEDA Project (and has provided, or will provide, a certification to that effect in the substantially the form attached to this memorandum as Exhibit A); (b) the Office of the Attorney General of the State of New Mexico has reviewed and approved the funding of the particular LEDA Project; (c) the aggregate amount of all grants or loans (including those previously approved and disbursed, together with those described in this memorandum) funded pursuant to the Appropriation do not exceed in the aggregate the amount authorized in the Appropriation; (d) the aggregate amount of funds provided to the particular project party under the terms of the PPA (including the funding described above and any other funding for the related LEDA Project previously provided) do not exceed the amounts permitted to be funded for such LEDA Project under the PPA; (e) the bond or note issue which is the source of funds for the appropriation either (i) is a taxable bond or note issue, or (ii) is a tax-exempt bond or note issue for which the application of funds to the LEDA Projects is not inconsistent with the closing tax certifications provided by the Board and/or NMEDD in connection with the delivery of the bonds or notes or has otherwise received the approval of Tax Counsel to the Board; and (f) all disbursements of funds made and to be made by the fiscal agents to the project parties will be made strictly in accordance with the relevant authorizing legislation and the terms of the related PPA.

Subject to the foregoing assumptions and limitations, the disbursement of funds described above which are designated “Approved” to the respective fiscal agent for further disbursements to the project parties in accordance with the PPAs are hereby approved by Bond Counsel for purposes of satisfying the related condition set out in the Conditions Memorandum.

Any disbursement of funds described above which are designated “Disapproved” are not approved for the following reasons: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

EXHIBIT A

FORM OF CERTIFICATION OF

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

LEDA PROJECTS

 The undersigned, on behalf of the New Mexico Economic Development Department (“NMEDD”), hereby certifies as of [\_\_\_\_\_\_\_\_\_, 20\_\_], as follows:

1. The undersigned is NMEDD counsel with the authority to provide the certifications and approvals contained herein.

2. Each of the following-described economic development projects (each, a “LEDA Project”), to the extent denoted as “Approved”, is hereby approved by NMEDD and complies with all requirements of the New Mexico Local Economic Development Act (the “LEDA Act”):

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| --- | --- | --- | --- | --- |
| Amount | Fiscal Agent | Project Party | Grant or Loan | Approved/Disapproved |
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3. The disbursement of funds appropriated under Section [\_\_] of Chapter [\_\_], Laws of New Mexico 20[\_\_] (the “Appropriation”) for the LEDA Projects described above is hereby approved by NMEDD and is consistent with and in compliance with the LEDA Act, the Appropriation, and the terms of the applicable project participation agreement or project participation grant or loan agreement and intergovernmental agreement governing the funding of such LEDA Project.

4. The application of funds for the LEDA Projects is consistent with the certifications, statements and representations made by NMEDD in (i) the preliminary questionnaires completed by NMEDD prior to the issuance of the bond or note issue, or (ii) the closing certifications (including tax certifications) provided by NMEDD in connection with the issuance of the bond or note issue; all of such certifications, statements and representations are hereby ratified and affirmed. [OR IF NOT CONSISTENT, PLEASE IDENTIFY INCONSISTENCIES].

5. The aggregate amount of funding approved by NMEDD to date for LEDA Projects under the Appropriation, together with the funding for the projects described in Section 2 above, does not exceed the amount of the Appropriation.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By:

Name:

Title:

Date: