

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 683

AN ORDINANCE TO AUTHORIZE THE REFINANCE AND REISSUANCE OF AMENDED LOAN AND PROMISSORY NOTE AGREEMENTS WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT TO REFLECT A REDUCTION OF THE PRIOR LOAN PRINCIPAL BALANCE, LOWERED INTEREST RATE, AND EXTENSION OF THE PAYMENT TERM

(NMED CWSRF LOAN NO. CWSRF 1438143R)

WHEREAS, the Incorporated County of Los Alamos ("County") on October 4, 2005, pursuant to NMSA 1978, Chapter 3, Article 31 and Chapter 4, Article 62, adopted County Ordinance No. 518 which authorized the County and Department of Public Utilities (DPU) to incur indebtedness via a promissory note and loan ("Loan") with the State of New Mexico Environment Department (NMED) through the State's Clean Water State Revolving Fund (CWSRF); and

WHEREAS, the Loan amount of CWSRF No. 1438143R, with a rate of interest of Two Point Five Six Four Four Percent (2.5644%) and an administrative fee of Zero Point Four Three Five Six Percent (0.4356%) per annum, was Fourteen Million Three Hundred Fifty-Five Thousand One Hundred Four Dollars and Ninety-Nine Cents (\$14,355,104.99); and

WHEREAS, such loan was necessary for the construction and upgrade of the Los Alamos Wastewater Treatment Plant and facilities; and

WHEREAS, County completed the construction and upgrade of the Los Alamos Wastewater Treatment Plan in February 2011; and

WHEREAS, County, through the DPU, has timely made all payments on the Loan to date; and

WHEREAS, the Board has recommended and the County Council has approved, pursuant to County Ordinance, transfer of approximately Two Million Five Hundred Thousand Dollars (\$2,500,000.00) from County's Gas Fund account to County's Sewer Utility Fund account to pay down the Loan's principal balance; and that action was accomplished February 7, 2018; and

WHEREAS, after discussing the refinance of the remaining principal with the NMED, NMED proposed that County could refinance the remainder of the Loan with the lowered balance and a lower current interest rate and an increased term of the Loan; and

WHEREAS, while extending the term of the Loan, this refinancing will lower the original Loan's annual payment by Four Hundred Fifty-Seven Thousand Four Hundred Eighty-Five Dollars (\$457,485.00) which will improve overall cash flow for the utility and will allow for flexibility for future capital improvements and necessary rate actions for the utility; and

WHEREAS, the prior Loan and current Refinance Documents require that the DPU Sewer Revenues have sufficient income to cover repayment of the loan through net revenues; and

WHEREAS, County's Chief Financial Officer has reviewed and affirmed that all debt coverage requirements of the refinanced Loan for any DPU outstanding revenue bonds or indebtedness against the revenue of the Sewer system are or will be adequately met; and

WHEREAS, all other terms, conditions, and requirements of the Loan and Ordinance 518, remain intact and unchanged except as provided herein; and

WHEREAS, the Board, at a regularly scheduled and properly noticed meeting, after hearing and consideration has recommended to the County Council that the Loan be refinanced; and

WHEREAS, the County Council has determined that it is necessary and in the best interest of the County to accept and enter into the Refinance Loan Agreement and Refinance Promissory Note and to execute and to deliver both to the NMED.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS, as follows:

Section 1. Findings. The County Council hereby finds and declares that it has considered all necessary and relevant information to date, and hereby makes the following findings:

Necessity. After numerous discussions and review by the County Council, County's Board of Public Utilities ("Board"), the Department of Public Utilities' staff, and the public, it has been determined that refinance of the 2005 NMED Clean Water State Revolving Fund Loan No. 1438143R ("Loan"), is necessary to ensure that future funding of County's White Rock Wastewater Treatment Plant (WWTP) receives the best loan terms and rates of interest for new construction. As noted in the recitals, County, in conjunction with the refinancing of the Loan, has paid down the Loan balance by Two Million Five Hundred Thousand Dollars (\$2,500,000.00), reducing the principal to be refinanced to Seven Million Twenty-Nine Thousand Five Hundred Four Dollars and Thirty-Seven Cents (\$7,029,504.37) with a new financing interest rate of Two Point Zero Two Four Percent (2.024%) and an administrative fee of Zero Point Three Five One Percent (0.351%) for a total rate of Two Point Three Seven Five Percent (2.375%).

a. Amendment and Refinancing of the Loan. Attached to this Ordinance as Attachments A and B are the proposed Refinance Loan and Refinance Promissory Note documents ("Refinance Documents"). The Refinance Documents replace the prior authorized Loan documents including the Loan and Promissory Note for NMED Loan No. CWSRF 1438143R.

Section 2. Authorization of Refinance Loan Agreement and Refinance Promissory Note.

a. Authorization and Basic Terms of Loan and Loan Agreement. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the County, it is hereby declared necessary that County execute and deliver, and County's Utilities Manager, in consultation with the County Attorney's Office, is hereby authorized to execute and deliver the Refinance Documents together with this Ordinance to the NMED.

b. It is understood and authorized that the final Refinance Documents loan amount and terms may be adjusted to compensate and be adjusted for the accruing interest on principal until the execution of the Refinance Documents, but shall be in substantial conformity to Attachments A and B attached hereto.

c. All other terms, conditions, covenants, and requirements as provided in Ordinance 518 and the final Loan authorized therein, remain unaltered and unchanged, except as provided herein (*i.e.*, term, interest rate, refinance administrative fee, and principal).

Section 3. Special Limited Obligations. The Refinance Documents and all payments of principal and interest thereon, and as originally provided in Ordinance 518, shall be special limited, and not general, obligations of County and shall be payable and collectible solely from Net Revenues of the Sewer System as defined in Ordinance 518 which are irrevocably pledged (but not exclusively pledged) as set forth in Section 12 of Ordinance 518. The NMED, as Lender, may not look to any general or other County fund for the payment of the principal of or interest on the Refinance Documents except the designated special funds pledged therefor. The Refinance Documents shall not constitute indebtedness or debts within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or be held to be general obligations of County and shall recite that they are payable and collectible solely out of the Net Revenues of the Sewer System, the income from which is so pledged, and that the holders of the Loan Agreement and the Note may not look to any general or other County fund for the payment of the principal of and interest on the Loan Agreement or the Note.

Section 4. Ordinance Irrepealable. After the Refinance Documents have been executed and delivered, this Ordinance shall be and remain irrepealable until the Refinance Loan has been fully paid, canceled and discharged or there has been defeasance of the Refinance Documents as provided in this Ordinance or Ordinance 518.

Section 5. Effective Date. This Ordinance shall become effective upon its final passage and approval by at least 3/4ths of all members of the Los Alamos County Council and shall be recorded with the Los Alamos County Clerk and published in accordance with the Charter of the Incorporated County of Los Alamos.

Section 6. Severability. Should any section, paragraph, clause or provision of this Ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 7. Repealer. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this 28th day of August, 2018.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

David Izraelevitz, Council Chair

ATTEST: (Seal)

**Naomi D. Maestas,
Los Alamos County Clerk**

Attachments:

- A. Refinance Loan Agreement (Draft)
- B. Refinance Promissory Note (Draft)

ATTACHMENT A

Incorporated County of Los Alamos
Refinance Loan Agreement

REFINANCE LOAN AGREEMENT
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
CLEAN WATER STATE REVOLVING LOAN FUND-ALSO KNOWN AS-
THE WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM

CWSRF REFINANCE LOAN NO. 1438143R

I. Refinance Loan Agreement. This refinance loan agreement ("Agreement") is made and entered into this the ____ day of _____, 2018 by and between the **State of New Mexico Environment Department (NMED)** and the **Incorporated County of Los Alamos**, ("Borrower"), effective on the date of last signature below. The Borrower enacted Ordinance No.518 (Ordinance) on October 25, 2005 which authorized the Borrower to incur indebtedness with NMED for improvements to its sanitary sewer system, a.k.a., wastewater treatment and collection system, and has also enacted Ordinance No. 683, on _____, 2018, authorizing this Refinance Loan Agreement ("Agreement"). This Agreement amends ("refinances") the prior NMED Final Loan Agreement as entered by the parties hereto as dated February 28, 2011 (**NMED CWSRF Loan No. 1438143R**), by lowering the interest rates and charges assessed on the remaining principal balance and increasing the term of the loan and levies a **2.00%** refinance administrative fee on the remaining principal balance. All terms and conditions as agreed to and provided in Borrowers' Ordinance 518, dated October 4, 2005 remain effective, except as provided in Borrower's Ordinance No. 683, adopted _____, 2018 and effective _____, 2018, this Agreement, and the Refinance Promissory Note.

II. Party Contacts. The following are the agreed upon Party contacts for this Agreement.

<u>Borrower:</u> Incorporated County of Los Alamos, Department of Public Utilities 1000 Central Avenue, Suite 130 Los Alamos, NM 87544	<u>NMED:</u> New Mexico Environment Department Clean Water State Revolving Fund Program P.O. Box 5469 Santa Fe, NM 87502-5469
<u>Borrower's Contact Information:</u> James Alarid Deputy Utility Manager-Engineering Office: 505-663-3420 Email: james.alarid@lacnm.us	<u>NMED Contact Information:</u> Andrea Telmo, Project Manager Office: (505) 222-9512 Email: andrea.telmo@state.nm.us

ATTACHMENT A

Incorporated County of Los Alamos Refinance Loan Agreement

Robert K. Westervelt Deputy Utility Manager- F&A Office 505-662-8001 / Cell 505-695-8448 Email: robert.westervelt@lacnm.us	CWSRF Construction Programs Bureau Office: (505) 827-2806 Email: cpbinfo@state.nm.us
Cathy D'Anna Business Operations Manager Office: 505-662-8198 Email: catherine.danna@lacnm.us	Gail Craven, Loan Manager Office: (505) 827-9691 Email: gail.craven@state.nm.us

Incorporated as part of this Agreement, as though fully set forth herein, are the following:

1. Refinance Loan Ordinance (Ordinance No. 683);
2. Refinance Promissory Note; and
3. Refinance Loan Amortization Schedule.

II. AMOUNT:

This Agreement will amend and refinance NMED Loan No. CWSRF 1438143R, which at the effective date, has a principal balance of **\$7,029,504.37** at a new financing rate of **2.375%** which consists of annual interest rate of **2.0240%** plus an annual administrative fee of **0.3510%**, upon the terms and conditions set forth in this Agreement and the Refinance Promissory Note.

III. DISCLOSURE STATEMENT

A. FINANCE COSTS:

ANNUAL PERCENTAGE RATE: <i>Interest rate plus administrative fee.</i>	AMOUNT FINANCED:	INTEREST CHARGES: <i>The total the credit will cost.</i>	ADMINISTRATIVE FEE PAYMENTS: <i>The total administrative fee dollar amount.</i>	TOTAL OF PAYMENTS: <i>The amount you will have paid after all payments have been made as scheduled.</i>
2.375%	\$7,029,504.37	\$1,360,431.81	\$235,924.67	\$8,625,860.87

B. REPAYMENT SCHEDULE

Principal and interest payments to be made by Borrower shall be made as follows:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENT	WHEN PAYMENTS ARE DUE
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ATTACHMENT A

Incorporated County of Los Alamos Refinance Loan Agreement

17 equal annual Installments	\$507,403.58	Beginning April 7, 2019 and each April 7 , thereafter through 2035 .
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C. REFINANCE COST:

A one-time **2.00%** refinancing fee of **\$140,590.09** is assessed on the principal balance outstanding of **\$7,029,504.37**. This payment is due at the time the Borrower submits a signed copy of this Agreement.

The parties have executed this Agreement on the dates set forth by their respective names.

REFINANCE LOAN Issued and administered by:

New Mexico Environment Department
Wastewater Facility Construction Loan Program
Clean Water State Revolving Loan Fund

By: _____
(Signature of NMED Official)

Title: _____

Date: _____

By executing this Agreement, the undersigned Borrower represents that he/she is duly authorized to act on behalf of the Borrower.

By: _____
(Signature of Authorized Borrower Official)

Title: _____

Date: _____

ATTEST:

By: _____

ATTACHMENT A

**Incorporated County of Los Alamos
Refinance Loan Agreement**

(Signature of Witness)

Title: _____

Date: _____

DRAFT

ATTACHMENT B

Incorporated County of Los Alamos
Refinance Promissory Note

**REFINANCE PROMISSORY NOTE TO NEW MEXICO ENVIRONMENT DEPARTMENT
CLEAN WATER STATE REVOLVING LOAN FUND -also known as-
WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM**

Date: _____

This Refinance Promissory Note amends and replaces the Final Promissory Note dated February 28, 2011. This refinance and amendment to the original Final Promissory Note is intended to lower the annual interest rate and finance charges on the outstanding principal balance and shall be effective on the date of last signature below.

FOR VALUE RECEIVED, the **Incorporated County of Los Alamos**, through its Department of Public Utilities ("Borrower") hereby promises to pay pursuant to the Refinance Loan Agreement to the order of the **State of New Mexico, Environment Department**, in connection with the State's Clean Water State Revolving Fund Loan Program (NMED) at NMED's office located at:

New Mexico Environment Department
Construction Programs Bureau
P.O. Box 5469
1190 S. St. Francis Drive
Santa Fe, New Mexico 87502-5469

or at such other place as NMED may hereafter designate in writing, the principal amount of **Seven Million Twenty-Nine Thousand Five Hundred Four Dollars and Thirty-Seven Cents (\$7,029,504.37)** pursuant to the terms of the Refinance Loan Agreement, Loan No. CWSRF 1438143R ("Refinance Loan"), between NMED and the Borrower dated _____, 2018, plus **2.375%** for annual finance and administrative fees and charges until paid in full.

REPAYMENT RATE AND SCHEDULE

This principal amount as provided in the Refinance Loan Agreement bears an effective annual finance charges of 2.375% amortized over a seventeen (17) year term, with seventeen (17) equal annual payment installments of **Five Hundred Seven Thousand Four Hundred Three Dollars and Fifty-Eight Cents (\$507,403.58)**. The first payment by Borrower to NMED shall be due **April 7, 2019** and annually thereafter each **April 7th** through 2035, or until the Refinance Loan is paid in full. Payment in full shall constitute full satisfaction of this Refinance Promissory Note.

ATTACHMENT B

Incorporated County of Los Alamos Refinance Promissory Note

PLEDGED REVENUES

The Borrower, for value received, gives a security interest in the Net Revenues of the Sewer Utility System. Net Revenues are as defined in Borrowers Ordinance No. 518, and Ordinance No. 683, passed and approved by the Borrower's County Council on ____, 2018.

ASSIGNMENT OF PAYMENTS

No assignment by NMED or the right to receive payments under this Refinance Promissory Note shall affect the Borrower's obligations or rights under this Refinance Promissory Note other than to make payments under this Refinance Note at the address(es) provided above. NMED shall provide, in advance, notice of any change or assignment of the right to receive payments, and shall timely provide the name, address, or location where payments shall be provided by Borrower.

DEBT SERVICE COVERAGE REQUIREMENT

The Borrower, pursuant to the Final Promissory Note and Ordinance 518, Refinance Loan Agreement, and this Refinance Promissory Note shall maintain a debt service coverage ratio of not less than 1.2 times the revenues of the Sewer Fund or the Borrower must maintain an identifiable debt reserve account.

COLLECTION AND DEFAULT

Collection and Default terms set forth in the Final Promissory Note remain binding on the parties.

PREPAYMENT

The Borrower may prepay all or any part of the principal on this Note without penalty. Refunds and extra payments, as defined in the regulations of NMED shall, after payment of interest due, be applied to the reduction of principal. After any prepayment of principal, the Borrower shall continue to pay the amounts listed in the Loan and Refinance Loan agreements and Final Promissory Note, and this note, until the entire principal and accrued interest are paid in full.

AUTHORITY

ATTACHMENT B

**Incorporated County of Los Alamos
Refinance Promissory Note**

This Final Loan Agreement, Final Promissory Note, Refinance Loan Agreement, Refinance Promissory Note are authorized by the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 *et seq.*, as may be amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, and the New Mexico Environment Department Regulations, 20.7.6-20.7.7 NMAC, and the Ordinance(s) of the Borrower.

This Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall this Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Net Revenues as defined in the Borrower's Ordinance Number 518 and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment of the principal or interest on the Agreement or Note.

IN WITNESS, WHEREOF, the Borrower has caused this Note to be duly executed and effective as of the date listed below by the Borrower.

INCORPORATED COUNTY OF LOS ALAMOS

Timothy A. Glasco, P.E., Utilities Manager

Date

ATTEST: (Seal)

Naomi D. Maestas
Los Alamos County Clerk