

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 689

AN ORDINANCE AMENDING ORDINANCE 687 WHICH AUTHORIZED THE INCORPORATED COUNTY OF LOS ALAMOS TO ENTER INTO A LOAN AGREEMENT AND PROMISSORY NOTE WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT FOR THE PURPOSE OF OBTAINING LOAN FUNDS FOR THE CONSTRUCTION OF A NEW WASTEWATER TREATMENT FACILITY, DECLARING THE NECESSITY FOR THE LOAN, RESTRICTING THE USE OF THE LOAN FUNDS SOLELY FOR THE PROJECT, AND PLEDGING LOAN WILL BE PAYABLE FROM THE REVENUES OF THE WASTEWATER SYSTEM

WHEREAS, on September 25, 2018, the County Council of the Incorporated County of Los Alamos introduced County Ordinance 687 ("Ordinance"), *An Ordinance Authorizing the Incorporated County of Los Alamos to Enter Into a Loan Agreement and Promissory Note With the New Mexico Environment Department for the Purpose of Obtaining Loan Funds for the Construction of a New Wastewater Treatment Facility, Declaring the Necessity for the Loan, Restricting the Use of the Loan Funds Solely for the Project, and Pledging Loan Will be Payable from the Revenues of the Wastewater System*; and

WHEREAS, the County Council on October 30, 2018, held a public hearing on the proposed Ordinance and following the public hearing, adopted the Ordinance as proposed; and

WHEREAS, following the adoption of the Ordinance, the County provided the Ordinance to the State of New Mexico, Department of Environment ("NMED"); and

WHEREAS, upon review and in discussion with the County Attorney's Office, NMED determined that the language in the recitals incorrectly stated that the loan was a subordinate loan instead of a parity loan; and

WHEREAS, NMED, pursuant to Section 18 of Ordinance 687, has authorized the County to amend Ordinance 687; and

WHEREAS, the County Council of the Incorporated County of Los Alamos finds that it is necessary and proper to amend the Ordinance to ensure that the Ordinance correctly states the type of loan.

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

Section 1. The recitals of Ordinance 687, are hereby amended as follows:

WHEREAS, the Incorporated County of Los Alamos ("County" or "Borrower") is an incorporated home-rule county created pursuant the New Mexico Constitution and statutes of the State of New Mexico ("State"); and

WHEREAS, the County, through its Department of Public Utilities ("DPU") owns, operates, and maintains a public utility system including a Wastewater Collection and Treatment System ("System"), which includes a system for disposing of wastes by surface and underground methods; and

WHEREAS, the County's White Rock ("WR") Wastewater Treatment Plant ("WWTP") has been determined to be insufficient and inadequate to meet the current and future regulatory, environmental, and permitted discharge requirements; and

WHEREAS, the County has determined using current engineering review standards, that the WR WWTP must be replaced (hereafter "Project") to meet current state and federal discharge requirements; and

WHEREAS, the County and DPU has reviewed its available financial resources and funds and has determined that it is necessary to seek financial assistance to help plan, develop, and construct the Project; and

WHEREAS, the County has entered into discussions with the State of New Mexico Environment Department ("NMED"), Construction Programs Bureau ("CPB") for possible financial assistance for construction of the Project; and

WHEREAS, the NMED, CPB has reviewed the application, documentation, and financial capabilities of the County and DPU to construct the required WR WWTP and determined that the County and DPU is an eligible candidate for a receiving federally authorized and funded Clean Water State Revolving Fund ("CWSRF") loan monies ("CWSRF Loan"); and

WHEREAS, in exchange for the CWSRF Loan, the County, DPU, and Project will be subject to specific loan requirements of the CWSRF Loan; and

WHEREAS, one essential term of the CWSRF Loan agreement ("Agreement") and promissory note ("Note") will be that the Loan shall be payable solely from the Pledged Revenues of the County's and DPU's Sewer Fund; and

~~**WHEREAS**, pursuant to an Agreement with Respect to Subordination dated August 13, 2014 (the "Subordination Agreement"), NMED and the County agreed that existing NMED Loans (CWSRF 1438143 and ARRA CWSRF 09 Loan) were "Subordinate Obligations" under the debt issued under both the First Lien Indenture and the Second Lien Indenture; and~~

~~**WHEREAS**, NMED and the County agree that the CWSRF Loan refunding CWSRF Loan 1438143 and financing the Project shall also constitute "Subordinate Obligations" as defined in both the First Lien Indenture and the Second Lien Indenture (as such terms are defined in the Subordination Agreement; and~~

WHEREAS, the Borrower has the following obligations outstanding to which the Pledged Revenues have already been pledged:

<u>Funding Source (e.g., Revenue Bond, NMED, NMFA, etc.) and Series# or Loan/Project #</u>	<u>Principal Amount Outstanding at 06/30/2018 (use the most current fiscal year end date)</u>	<u>Is the listed funding source superior, subordinate or on parity with this funding?</u>
<u>CWSRLF 1438143 (Currently being refinanced)</u>	<u>Refinance amount</u> <u>\$7,029,504.37</u>	<u>parity</u>
<u>Water Trust Board #63</u>	<u>\$29,703.00</u>	<u>parity</u>
<u>Internal loan from water production</u>	<u>\$937,553.00</u>	<u>subordinate</u>

WHEREAS, the Governing Body of the Borrower has determined that it is in the best interest of the Borrower to accept and enter into the Loan Agreement and to execute and to deliver the Note to the NMED.

Section 2. All other parts and sections of Ordinance 687 remain unchanged and in affect.

Section 3. Severability. If any section, paragraph, clause or provision of the Ordinance shall 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 the Ordinance.

Section 4. Repealer. All bylaws, orders, Ordinances and Ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, Ordinance, or part thereof, heretofore repealed.

ADOPTED this ____ day of January, 2019.

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

_____, Council Chair

ATTEST: (Seal)

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

Exhibits:

Exhibit 1. Ordinance 687