

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 and No Cents (\$2,500,000) 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.

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 monthly payment by \$457,485 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 \$2,500,000, 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, attached hereto as Attachment C, 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 31st day of July, 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)
- C. Final Promissory Note, dated February 28, 2011