

**INTERIM LOAN AGREEMENT  
NEW MEXICO ENVIRONMENT DEPARTMENT  
CONSTRUCTION PROGRAMS BUREAU  
CLEAN WATER STATE REVOLVING LOAN FUND (CWSRF)  
–also known as–  
WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM**

**Loan Number: CWSRF 110**

**Name of Borrower: Incorporated County of Los Alamos**

**Funding Packet: Loan: \$25,000,000; Interest Rate: 0.01%**

- I. This Interim Loan Agreement (Agreement) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the New Mexico Environment Department (NMED) of the State of New Mexico and the Los Alamos County hereinafter referred to as (Borrower). Borrower has enacted Ordinance No. 720 approved on \_\_\_\_\_, 2022 hereinafter referred to as (Ordinance) which authorizes execution of this Agreement, authorizes the Borrower to accept loan funds from NMED, and irrevocably pledges the Joint Utility System Revenues (Pledged Funds) for the repayment of the loan.

Listed below are agency contacts.

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| <b>Borrower's Name and Address:</b><br><br>Incorporated County of Los Alamos<br>1000 Central Ave., Suite 130<br>Los Alamos, NM 87544                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>NMED:</b><br><br>New Mexico Environment Department<br>Clean Water State Revolving Fund Program<br>P.O. Box 5469<br>Santa Fe, NM 87505-5469<br><a href="mailto:NMENV-cpbinfo@state.nm.us">NMENV-cpbinfo@state.nm.us</a>                                                                                                                                                                                                  |
| <b>Borrower's Contact Information:</b><br><br>Philo S. Shelton, Utilities Manager<br>505-662-8148<br><a href="mailto:Philo.Shelton@lacnm.us">Philo.Shelton@lacnm.us</a><br><br>Heather Garcia, Deputy Utilities Manager<br>505-662-8198<br><a href="mailto:Heather.garcia@lacnm.us">Heather.garcia@lacnm.us</a><br><br>T. Clay Moseley, Engr. Project Manager<br>505-662-8271<br><a href="mailto:Clay.moseley@lacnm.us">Clay.moseley@lacnm.us</a><br><br>Richard Valerio, Business Operations Manager<br>505-662-8001<br><a href="mailto:richard.valerio@lacnm.us">richard.valerio@lacnm.us</a> | <b>NMED Contact Information:</b><br><br>Andrea Telmo, Project Engineer<br>505-469-2687<br><a href="mailto:andrea.telmo@state.nm.us">andrea.telmo@state.nm.us</a><br><br>Maria Molina, Program Administrator<br>505-670-3876<br><a href="mailto:Maria.Molina2@state.nm.us">Maria.Molina2@state.nm.us</a><br><br>Tye Franz, Loan Manager<br>505-469-3459<br><a href="mailto:Tye.Franz@state.nm.us">Tye.Franz@state.nm.us</a> |

Incorporated as part of this Agreement as though fully set forth in this Agreement is the following:

Borrower's Loan Ordinance  
Interim Promissory Note  
Loan Amortization Schedule  
Project Description Form

**II. Project Description:**

- A. Design and construction of a replacement wastewater treatment plant in White Rock, New Mexico and the Bayo Lift Station Elimination Pipeline project.
- B. The Borrower agrees that it will implement, in all respects, the project outlined in the attached Project Description, and made a part of this Agreement.
- C. The Borrower agrees to make no change in the Project Description without first submitting a written request to NMED and obtaining NMED's written approval of the required change, and if necessary, an amended loan agreement.

**III. Loan Amount:**

NMED agrees to loan funds to the Borrower to pay for approved costs to plan, acquire and construct the Project, in an amount not to exceed: **Twenty Five Million Dollars (\$25,000,000)** (Loan Amount) at the interest rate of **0.01%** annually upon the terms and conditions set forth in this Agreement and the Interim Promissory Note.

Provided the Borrower complies with the Construction Conditions and the CWSRF Requirements below, the loan amount will be available for a period of **two (2) years** from the date of this Agreement.

**IV. Project Conditions:**

The Borrower agrees to the following Construction Conditions:

PROJECT COMPLETION means the date the operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

- A. The Borrower shall achieve Project Completion by the end of the loan agreement term.

If the Borrower is unable to complete the project by the loan termination date, the Borrower must notify NMED at least 30 days prior to the loan termination date, otherwise, NMED may terminate this Agreement or may withhold Funds. If NMED terminates this Agreement, the Borrower shall refund any Funds disbursed to the Borrower by NMED within ninety (90) days of termination.

- B. The Borrower shall require the Contractor of the Project to post a performance and payment bond approved by NMED in the amount of the bid.
- C. Bid tabulation and supporting documents (Contract Documents) shall be prepared and furnished to NMED within fifteen (15) days of bid opening. The Borrower shall not proceed with construction of the Project until NMED has approved the Contract Documents.
- D. Any change order to the Project construction contract which results in a change to the Project's contract amount, scope of work, or schedule must be approved by NMED.
- E. The Project shall have a full-time on-site inspector approved by NMED.
- F. Subsequent to the date of this Agreement, but prior to NMED's approval of the Contract Documents, for any phase, the Borrower's attorney shall provide an opinion satisfactory to NMED that the Borrower is an incorporated entity.
- G. Borrower agrees to implement environmental recommendations that will be supplied by NMED prior to final Plan approval.
- H. The Borrower must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review prior to advertising for construction. The Borrower must certify in writing that this has been done prior to award of the construction contract. A site certificate addressing the property upon or through which the facility is being constructed and prepared by the Borrower's attorney is required.
- I. The Borrower agrees to obtain a single audit annually from an Independent Professional Auditor.
- J. Upon execution of this Agreement, the Borrower shall follow the procedures listed below unless waived in writing by NMED. Disbursement by NMED may be withheld if any of these procedures are not followed by the Borrower.
  - 1. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit documentation regarding the hiring process to be used and the (RFP), to NMED for review and approval prior to selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must comply with the New Mexico Procurement Code. NMSA 1978, Sections 13-1-21 et seq and chapter 11 of title 40, United States Code. Engineering Services must be chosen based on a qualification-based request for proposal process regardless of the anticipated cost. A minimum of three proposers must be interviewed as part of the selection process. The Borrower is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB: phone (505) 881-1257, fax (505) 830-1670, and e-mail [ptab@acecnm.org](mailto:ptab@acecnm.org).)
  - 2. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit a draft form of any engineering agreement and/or other professional services contract, or a letter certifying that the Borrower's staff

will perform the engineering and/or other professional services, to NMED for review and approval prior to executing the agreement/contract or using Borrower's staff. The preferred engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at <https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/>

3. If these Funds are to be used for engineering design or for construction, the Borrower shall submit all plans, specifications, and any addenda for this project to NMED for review and approval before the project is advertised for construction bids. Plans, specifications, and addenda shall be prepared by a registered New Mexico Professional Engineer.
4. Following NMED approval of the proposed award, the Borrower shall submit to NMED for review the notice of the award and the minutes of meeting in which award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed. The selected contractor will be required to post a performance and payment bond in accordance with requirements of NMSA 1978, Section 13-4-18.
5. The selected contractor will be required to submit a construction schedule to the Borrower at the pre-construction conference.
6. The Borrower will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. NMED's written decision approving or disapproving the modification shall be rendered promptly to the Borrower. If immediate action is needed, a verbal notification of NMED's decision will be made, followed by written notification.
7. The Borrower shall provide a full-time construction inspector during construction of the project. The Borrower shall submit the inspector's résumé and inspection reports to NMED for review and approval.
8. NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans.
9. NMED may require proof of deposit and/or proof of payments to contractors and consultants, including the disbursement of funds other than those provided by the Agreement.
10. The Borrower (or the system owner) shall employ properly certified utility operators and shall comply with all provisions of the New Mexico Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 et seq.
11. With the exception of easements (See Section V.H), when real property is acquired by the Borrower, either through purchase or donation as a part of this project and within the project period, the Borrower will submit documentation of the acquisition to NMED, including a legal description of the property, the date

the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser who was selected through applicable procurement procedures. These documents must be reviewed and approved by NMED prior to the acquisition of any real property. After real property acquisition, the Borrower will make available to NMED all documents of title pertaining to the acquired property and all easements or rights-of-way necessary for the completion of work under this agreement.

12. If the Funds are to be used for construction of wastewater collection lines or water distribution lines, the existing population served by the project shall be connected to the collection system or distribution system within a reasonable time after project completion. This will be accomplished by adoption and annual review of an Ordinance and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.
13. Notwithstanding the other provisions of this Agreement the Borrower shall comply with the Prompt Payment Act, NMSA 1978, Sections 57-28-1 et seq. The Project will not be considered complete until the work as defined in this Agreement has been fully performed, and finally and unconditionally accepted by the Borrower and NMED.
14. If the Funds are to be used for construction, final disbursement will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
  - (a) Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals;
  - (b) A final reimbursement request including the final certified construction pay request prepared by the Borrower's project engineer and approved by the Borrower;
  - (c) A certificate of substantial completion including punch list items;
  - (d) A letter certifying project acceptance by the Borrower and the Borrower's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Borrower, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Borrower and contractors will be submitted to NMED for final review and approval;
  - (e) Certification letter by the Borrower that the Labor Standards Contract Provisions have been met;
  - (f) Record drawings prepared by the Borrower's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings;

- (g) Complete and legally effective releases or waivers (satisfactory to the Borrower) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished thereunder. In lieu thereof and as approved by the Borrower, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Borrower or its property might in any way be responsible, have been paid or otherwise satisfied;
  - (h) A written consent of the surety, if any, to final payment; and
  - (i) Borrower's ledger sheets including all payments made by the Borrower may be requested with the final disbursement request and before the final disbursement request can be processed by NMED.
  - (j) Verification to NMED of FSP and written certification that a FSP is in place.
15. If these Funds are to be used for purchase of equipment, final payment will be made after approval by NMED of appraisal reports and equipment title for used equipment.
16. The Borrower must ensure that each procurement contract contain the following term and condition: The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of the contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under epA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of the contract which may result in the termination of the contract or other legally available remedies.

## **V. Federal Requirements:**

By executing this agreement, the Borrower is a sub-recipient of the federal grant award to NMED by the Environmental Protection Agency (EPA) and subject to the following EPA Sub-recipient Conditions **(Note: For non-point source projects Section B. (Davis-Bacon), Section C. (American Iron and Steel), Section F. (Fiscal Sustainability Plan) do not apply):**

### **A. EPA Sub-recipient Conditions**

- a. **DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA SUB-RECIPIENTS:** The sub-recipient organization of this EPA assistance must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536. Additionally, in accordance with these regulations, the sub-recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.
  - 1. The consequences for violating this condition are detailed under Title 2 CFR Part 1536. Sub-recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at

<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=24&SID=ffaf692d3840e0c2b316d709b71e8ad2&h=L&mc=true&n=pt2.1.1536&r=PART&ty=HTML>

- b. LOBBYING AND LITIGATION: The chief executive officer of this sub-recipient agency shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The sub-recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.
- c. RESTRICTIONS ON LOBBYING: The sub-recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. In accordance with the Byrd Anti-Lobbying Amendment, any sub-recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty as required by law. For more information go to: **<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-B/part-34>**
- d. MANAGEMENT FEES: Management Fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.
- e. SINGLE AUDITS: The sub-recipient hereby agrees to obtain an annual single audit from an independent auditor with submission of the audit to the State Auditor’s office for review in accordance with State Auditor rules.
- f. SUSPENSION AND DEBARMENT: Sub-recipient shall fully comply with 2 CFR Part 180 Subpart C as implemented and supplemented by 2 CFR Part 1532. Sub-recipient is responsible for ensuring that any lower tier covered transaction as described in 2 CFR Part 180 Subpart B, includes a term or condition requiring compliance with Subpart C. Sub-recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Sub-recipient acknowledges that failing to disclose the information as required at 2 CFR Part 180.335 may result in the delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.
  - 1. Sub-recipient may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49.
- g. TRAFFICKING VICTIM PROTECTION ACT OF 2000: To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

- i. NMED or EPA may unilaterally terminate this award, without penalty, if a sub-recipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined (by the agency official authorized to terminate the award) to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) is imputed as per 2 CFR part 180, as implemented by EPA at 2 CFR part 1532. NMED or EPA shall be informed immediately of any information received from any source alleging a violation of a prohibition in the Prohibition Statement below.
  - ii. NMED's or EPA's right to terminate unilaterally that is described in paragraph (a) of this award term: (1) implements the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to NMED or EPA under this award.
  - iii. The requirements of the Prohibition Statement below must be included in any subaward you make to a private entity.
    - a. Prohibition Statement - You as the recipient, your employees, sub-recipients under this award, and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.
- h. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE):
- i. GENERAL COMPLIANCE, 40 CFR, Part 33: The sub-recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

The sub-recipient agrees to report funds used for construction, equipment, services and supplies when the cumulative total in any one fiscal year exceeds \$250,000. When reporting is required, total procurement actions are reportable, not just the portion that exceeds \$250,000.
  - ii. SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C: Pursuant to 40 CFR, Section 33.301. The sub-recipient agrees to make the six good faith efforts found at [https://www.epa.gov/sites/default/files/2013-09/documents/good\\_faith\\_efforts.pdf](https://www.epa.gov/sites/default/files/2013-09/documents/good_faith_efforts.pdf) whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, consultants, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained.
  - iii. DBE (MBE/WBE) REPORTING, 40 CFR, Part 33, Subpart E: The sub-recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" on an



annual basis. Annual reports are due by October 30<sup>th</sup> of each year beginning with the Federal fiscal year reporting period the sub-recipient receives the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.

- a. EPA Form 5700-52A may be at [http://www.epa.gov/sites/production/files/documents/5700-52a\\_updated.pdf](http://www.epa.gov/sites/production/files/documents/5700-52a_updated.pdf)
- iv. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302: The sub-recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.
- v. BIDDERS LIST, 40 CFR, Section 33.501(b) and (c): The sub-recipient shall create and maintain a bidders list. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.
- i. REPORTING REQUIREMENTS: The Clean Water State Revolving Loan Fund is partially funded by capitalization grants under Federal Assistance Program CFDA No. 66.458. The Borrower must maintain a current registration in the System for Award Management (SAM) (<http://www.sam.gov>) at all times during which the Borrower has an award funded with federal grant funds. . A unique entity identifier ("UEI") Number (<https://sam.gov/content/entity-registration>) is one of the requirements for registration in the SAM.
- j. INSPECTOR GENERAL REVIEWS: In addition to the access to records provisions of 2 CFR 215.53 or 40 CFR 31.42, sub-recipient agrees to allow any appropriate representative of the Office of Inspector General to (1) examine any records of the sub-recipient, any of its procurement contractors and subcontractors, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the procurement contract, subcontract, grant or subgrant; and (2) interview any officer or employee of the sub-recipient, subcontractor, or agency regarding such transactions.
  1. The sub-recipient is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of EPA grant funds may result in criminal, civil or administrative fines and/or penalties.
  2. Sub-recipient should be aware that the findings of any review, along with any audits, conducted by an inspector general of a Federal department or executive Agency and concerning funds awarded under the federal grant award shall be posted on the inspector general's website, except that information that is protected from disclosure under Sections 552 and 552a of title 5, United States Code may be redacted from the posted version.
- k. CIVIL RIGHTS COMPLIANCE. Sub-recipients of Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, and a variety of program-specific statutes with nondiscrimination requirements.

1. Other civil rights laws may impose additional requirements on sub-recipients. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, religion, sex, sexual orientation, gender identity, or national origin discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.
2. For questions about civil rights obligations, please call the EPA's Office of Civil Rights at 202-564-7272 or contact <http://www.epa.gov/ocr/forms/contact-us-about-civil-rights>.

- I. DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966: The Borrower agrees to comply with Public Law 89-754 (1966), as amended, 42 U.S.C. §3331 et. seq. To assist comprehensive city demonstration programs for rebuilding slum and blighted areas and for providing the public facilities and services necessary to improve the general welfare of the people who live in those areas, to assist and encourage planned metropolitan development, and for other purposes. <https://www.govinfo.gov/content/pkg/STATUTE-80/pdf/STATUTE-80-Pg1255.pdf>.
- m. UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT: The Borrower agrees to comply with Public Law 91-646 (1971), as amended, 42 U.S.C §§4601-4655 to provide fair compensation and assistance for those whose property was compulsorily acquired or who had to move due to a project that received Federal financial assistance. <https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter61&edition=prelim>
- n. USE OF PROJECT LABOR AGREEMENTS FOR FEDERAL CONSTRUCTION PROJECTS: The Borrower agrees to comply with Executive Order 13502 to promote economy and efficiency in Federal Procurement. <https://www.govinfo.gov/content/pkg/CFR-2010-title3-vol1/pdf/CFR-2010-title3-vol1-eo13502.pdf>

B. Davis-Bacon Act Wage Rate Requirements

- a. Davis-Bacon prevailing wage requirements apply to any project for treatment works that are funded by a CWSRF. The Davis-Bacon Act Requirements extend not only to assistance agreements funded with capitalization grants, but to all CWSRF-funded projects involving the construction of treatment works regardless of the source of the funding (e.g., prior years' appropriations, state match, bond proceeds, interest earnings, principal repayments, etc.). Any project that is considered a "treatment work" as defined in the Federal Water Pollution Control Act (FWPCA) section 212, now incorporated in FWPCA Section 502(26), must comply with the FWPCA 513, regardless of which eligibility it is funded under. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance from the CWSRF shall insert in full in any contract in excess of \$2,000 the contract clauses entitled "Wage Rate Requirements." Wage rate requirements are available in the CWSRF Supplemental Contract Conditions.

C. American Iron and Steel Requirements

- a. Section 608 of the Federal Water Pollution Control Act (FWPCA) includes a provision for the use of American Iron and Steel (AIS) that requires CWSRF assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of treatment works.
  - i. The term iron and steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.
  - ii. The term treatment works includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.
- b. The Borrower shall comply with all applicable provisions of Section 608 of the FWPCA and related SRF Policy Guidelines found at [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm), unless:
  - i. the Borrower has requested and obtained a waiver from EPA pertaining to the Project; or
  - ii. NMED has otherwise advised the Borrower in writing that the AIS Requirement is not applicable to the Project.
- c. The Borrower shall comply with all AIS record keeping and reporting requirements under the Clean Water Act, including any reports required by a Federal agency or NMED such as performance indicators of program deliverables, information on costs and project progress. The Borrower understands that:
  - i. each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities; and
  - ii. failure to comply with the Clean Water Act and this Agreement may be a default hereunder and/or result in other remedial actions.
- D. The Borrower agrees to post signage regarding the involvement of the EPA and the CWSRF as a funding source. In areas where English is not the primary language the Borrower is encouraged to produce signage in the appropriate non-English language(s), excluding the EPA and NMED logos. Signage may be in the form of traditional signage, posters or wall signs in public locations,

newspaper or periodical advertisements, online signage via the community or organization's website, or press releases. The Borrower must inform the NMED as to the type of signage and signage and provide documentation of such action.

- E. The Borrower agrees that architectural and engineering (A/E) contracts for projects comply with the elements of the procurement processes for A/E services as identified in 40 U.S.C. 1101 *et seq.* The Borrower is required to procure an engineer through a Request for Proposal (RFP) process that includes interviewing the top three firms.
- F. Financial Sustainability Plan (Asset Management Plan): The State of New Mexico requires borrowers to certify a Fiscal Sustainability Plan (FSP) is in place for the elements constructed with CWSRF funding prior to the final loan disbursement for the project. All FSP's must encompass:
- a. an inventory of critical assets that are constructed as part of the project;
  - b. an evaluation of the condition and performance of inventoried assets or asset groupings;
  - c. a certification that the recipient has evaluated and has or will be implementing water and energy conservation efforts as part of the plan;
  - d. and a plan for maintaining, repairing, and as necessary, replacing the treatment works and a plan for funding such activities. More information can be found at: <https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/>.
- G. Under the Federal Water Pollution Control Act (FWPCA) section 602(b)(13), the CWSRF program requires that all assistance recipients certify that they have conducted the studies and evaluations described in 602(b)(13 (A) and (B) herein referred to collectively as a cost and effectiveness analysis. The statute requires that a cost and effectiveness analysis involve, at a minimum:
- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and
  - the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—
    - the cost of constructing the project or activity;
    - the cost of operating and maintaining the project or activity over the life of the project or activity; and
    - the cost of replacing the project or activity.
- H. The Borrower agrees to comply with 2 CFR 200.216 *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of Public Law 115-332. Loan or Loan Subsidy funds shall not be used to obtain or enter into a contract to obtain covered telecommunications equipment produced or provided by companies that are excluded in the System for Award Management at SAM.gov.

## VI. Funding

- A. Project interest accrues during construction at **0.01%** annually from the date of each disbursement from NMED to the Borrower up to the date the final disbursement request is approved by NMED. The interest accrued during construction, if applicable, shall be payable as follows:

1. Project Interest shall be due and payable in one lump sum within two weeks of receiving notice of final loan amount from the NMED, or
2. Project Interest shall be added to the loan amount disbursed and shall become part of the principal due during the term of the Final Promissory Note.

**B. FINANCE COSTS**

Finance costs, if applicable, will be determined upon the issuance of the Final Loan Agreement and will be based on the final amount loaned, accrued project interest and agreed upon repayment terms.

**C. REPAYMENT TERMS**

Repayment terms will be determined upon issuance of the Final Loan Agreement. Any loan term must be substantiated by the Borrower. Repayment will begin not less than one year after project completion.

**D. ACTUAL LOAN AMOUNT DISBURSED**

If the loan amount disbursed is less than the amount in Section III. Loan Amount, then the Final Loan Agreement and the Final Promissory Note shall reflect actual loan disbursements. If the Borrower does not pay the Project Interest within two weeks of receiving notice of final loan amount from the NMED, then the accrued Project Interest shall be incorporated into the principal amount in the Final Promissory Note.

**E. SECURITY – PLEDGED FUNDS**

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as:

**Joint Utility System Revenues**

Except as stated in the Ordinance, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

**F. DEFAULT AND LATE CHARGES**

Failure by the Borrower to pay the annual payments as set forth in the Final Loan Agreement and Final Promissory Note shall constitute an event of default. Late charges may be assessed at the discretion of NMED. See VIII. COVENANTS, Sections H and I for default procedures.

**G. DEMAND FEATURE**

This Agreement has a demand feature in the event of default and the total principal and interest due shall be paid on demand. See VIII. COVENANTS Sections H and I for default procedures.

**VII. General Conditions**

- A. This Agreement is made pursuant to and in accordance with the provisions of the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as 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.
- B. Pursuant to the Ordinance of the Borrower, the Borrower is authorized to enter into this Agreement and the Final Loan Agreement and to execute and deliver an Interim Promissory Note and Final Promissory Note. The terms of the Ordinance and Interim Promissory Note are incorporated as part of this Agreement as though fully set forth in this Agreement.
- C. For purposes of this Agreement, NMED's inspection, review and approval of the Project are only for the purposes of determining compliance with applicable State regulations. NMED approval shall not be interpreted as any warranty or guarantee. Approval of the plans and design of the Project means only that plans are complete. NMED will bring to the Borrower's attention any obvious defects in the Project's design, materials or workmanship, but all such defects and their correction shall be the responsibility of the Borrower and its contractors. Any questions raised by NMED shall be resolved exclusively by the Borrower and its contractors, who shall remain responsible for the completion and success of the Project.
- D. The Borrower warrants, represents and agrees that it, and its contractors, subcontractors, employees and representatives will comply with all applicable State and Federal laws and regulations, and the requirements set forth in this Agreement or any amendment to the Agreement.
- E. If the Borrower seeks additional funding from any other entity for the Project, the Borrower agrees that the Borrower is solely responsible for satisfying any requirements arising as a result of funding from that other entity.
- F. The Borrower warrants that the internal financial statements provided to NMED by the Borrower for approval of the loan do not contain false material statements, representations, certifications, or omissions of material fact.
- G. The Borrower shall submit all future audited financial reports to the State Auditor as required by the State Auditor's Rules.
- H. The proceeds of the loan as set forth in Section III. Loan Amount above shall be used for the Project and for no other purpose. Unallowable uses of the proceeds of the loan include but are not limited to: paying administrative expenses (including applications for funding), costs of Borrower employees, late fees, interest, or penalties. Those costs shall be paid by the Borrower.

- I. The parties agree that allowable costs will be limited to those costs that are necessary, reasonable, and directly related to the efficient achievement of the objectives of this Agreement. The Borrower must justify all expenditures for which it requests reimbursement, according to accepted NMED criteria and procedures. NMED may withhold reimbursement of any item or expenditure and may reclaim improperly documented reimbursement until the Borrower provides sufficient justification. NMED may not disburse any loan funds if the Borrower fails to adhere to the schedule described in Section IV. above.
- J. For any phase of the Project which requires National Environmental Policy Act (NEPA) review, NMED shall not disburse any funds for that phase until a NEPA review is completed.
- K. The Borrower agrees to abide by all required Equal Employment Opportunity laws, both State and Federal.
- L. The Borrower agrees that it will take affirmative action to ensure that the Project is constructed in compliance with Federal and State occupational health and safety laws and that inspectors authorized by NMED's Occupational Health and Safety Bureau will be given free access to the Project sites.
- M. The Borrower agrees to make all fiscal records related to the Project available to NMED, the United States Environmental Protection Agency, the United States General Accounting Office (GAO), and the State Auditor for inspection and audit.
- N. The obligations of the Borrower under the Agreement are the special limited obligations of the Borrower as set forth in the Agreement and the Note. The Agreement and the Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall the Agreement and 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 Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment due on the Agreement or Note.
- O. The Borrower agrees to operate and maintain the Project so that the Project will function properly over the structural and material design life of the Project.
- P. The loan will not be used by the Borrower on any project constructed in fulfillment, in whole or in part, of requirements made of a subdivider by the provisions of the Land Subdivision Act, NMSA 1978, § 47-5-1 to 47-5-8 NMSA 1978.
- Q. The Borrower understands and agrees that the Project is subject to Federal and State regulations and acceptance of any disbursement pursuant to the Agreement constitutes an agreement by the Borrower that the amounts have been properly accounted for and expended in accordance with applicable Federal and State regulations.
- R. The Borrower agrees to maintain separate Project accounts in accordance with Generally Accepted Accounting Principals (GAAP) as issued by the Governmental Accounting

Standards Board (GASB) including standards relating to the reporting of infrastructure assets. If requested by NMED, the Borrower shall conduct an audit of the financial records pertaining to the Project.

#### **VIII. Covenants**

- A. Disbursements (payment of loan funds) to the Borrower made pursuant to the Agreement will be available on and after the date of the execution of the Agreement and Note if the Borrower is in compliance with the Conditions and Covenants of the Agreement. Disbursements will be made only for actual costs incurred by the Borrower to plan, design, construct or acquire the Project, or any phase thereof. Borrower shall request disbursements on forms acceptable to NMED on at least a quarterly basis and such requests shall be prepared by and certified by the Borrower. All disbursements to the Borrower will be made in accordance with applicable Federal and State regulations. Eligible planning, design and associated pre-building costs that are within the scope of the project and were incurred prior to signing the Agreement are payable under the Agreement and shall be submitted for reimbursement immediately upon execution of the Agreement. Interim disbursements will be made as the work progresses. Interim disbursement requests shall be submitted by the Borrower within ninety (90) days after the liability of the Borrower was incurred as evidenced by the date of the invoice for which disbursement is being requested.
- B. The Borrower shall not sell, lease or transfer any property related to the Project except as permitted by the Ordinance, as amended and supplemented.
- C. The Borrower shall not obligate the Pledged Funds for this Agreement, as defined in Subsection E of Section VI. DISCLOSURE STATEMENT, except as set forth in the Ordinance as adopted at the time of execution of the Agreement.
- D. The Borrower hereby irrevocably agrees that the Borrower has fixed and collected, or will fix and collect, adequate rates, fees and other charges for the use of the System (as defined in the Ordinance) which will be sufficient to satisfy the Agreement and the Note.
- E. If the pledged funds as defined in Subsection E of Section VI. DISCLOSURE STATEMENT, shall prove insufficient to produce the Repayments set forth herein and in the Interim and Final Promissory Note, the Borrower agrees to adjust and increase such rates, fees, and charges in the manner authorized by law to provide funds sufficient to produce the repayment of the loan set forth herein and in the Interim and Final Promissory Note.
- F. The Borrower shall not provide any free services of the Water and Wastewater System. The Borrower shall, to the full extent permitted by law, collect payment for water and wastewater services provided. The Borrower shall notify NMED should delinquent users impact their ability to service this agreement as defined.
- G. The Borrower shall maintain property, liability and fidelity insurance coverage on the Project as required by NMED and provide written proof of such insurance coverage to NMED.
- H. The following shall constitute an event of default under the Agreement:



1. The failure by the Borrower to pay the annual payment on the repayment of the loan set forth in the Agreement and Interim and Final Promissory Notes when due and payable either at maturity or otherwise; or
  2. Default by the Borrower in any of its covenants or conditions set forth under the Agreement (other than a default set forth in the previous clause of this section) for 60 days after NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.
- I. Upon occurrence of an event of default:
1. The entire unpaid amount of the Agreement and Interim and Final Promissory Note may be declared by the NMED to be immediately due and payable and the Borrower shall pay the amounts due under the Agreement and Interim and Final Promissory Note from the Pledged Funds, either immediately or in the manner required by NMED in its declaration.
  2. If the event of default is under clause 1 of Subsection H of Section VIII. COVENANTS, NMED is authorized to set water and wastewater user rates in the area of the Borrower's jurisdiction in order to provide sufficient money for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System. Funds sufficient to provide for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed on a yearly basis if necessary.
  3. If default by the Borrower is of covenants or conditions required under the Agreement, the Borrower may be required to refund the amount of the loan disbursed to the Borrower from NMED.
  4. NMED shall have no further obligation to make disbursements to the Borrower under the Agreement and may pursue any other appropriate remedies.
- J. NMED retains the right to seek enforcement of the terms of the Agreement. If the parties cannot reach agreement regarding disputes as to the terms and conditions of this Agreement, such disputes are to be resolved in the district court of Santa Fe County. The parties agree that the district court for Santa Fe County shall have exclusive jurisdiction over the parties and the subject matter of this Agreement and waive the right to challenge such jurisdiction.
- K. This Agreement, the Ordinance and the Note incorporate all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement, the Ordinance and the Note. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement, the Ordinance and the Note.

May 2022

L. This Agreement shall be binding upon and inure to the benefit of the Borrower, NMED and their respective successors. The rights and obligations under the Agreement and Interim and Final Promissory Note may not be assigned by the Borrower.

M. No change shall be made to the Agreement or the Interim and Final Promissory Note except in writing signed by NMED and the Borrower.

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

By executing this Agreement, the undersigned represents authorization to act on behalf of the Borrower.

INCORPORATED COUNTY OF LOS ALAMOS, NEW  
MEXICO

By \_\_\_\_\_  
Randall T. Rytz, Council Chair

ATTEST:

By \_\_\_\_\_  
Naomi D. Maestas, County Clerk

Date: \_\_\_\_\_

**Issued and administered by:**

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

BY: \_\_\_\_\_  
John Rhoderick, Acting Water Protection Division Director  
Signed pursuant to May 24, 2021, Secretary of Environment Delegation Order