Clean Water State Revolving Loan Fund Interim Loan Agreement

City of Santa Fe

$17,000,000 Water Utility System Loan Agreement

(Made pursuant to Funding Package consisting of $151,000,000 total Loan at 0.01%

The following items are included as part of the funding agreement:

- **Financial Pages and NMED Project Conditions, General Conditions, and Covenants**
- **Covenants and Provisions Applicable to Net Water Utility System Revenue Debt Obligations (Attachment 1)**
- **CWSRF Federal Requirements:**

Applies to All Projects:

- **Super Crosscutters**
- **Generally Accepted Government Accounting Practices**
- **Useful Life**
- **Office of the Inspector General Poster**
- **Cost and Effectiveness**

Applies only to Treatment Works Projects (UV Disinfection and Sewer Line Repair):

- **American Iron and Steel**
- **State Environmental Review Process**
- **Davis-Bacon Wage Rates**
- **Fiscal Sustainability Plan**


NEW MEXICO
ENVIRONMENT DEPARTMENT

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 140 A-F

Name of Borrower: **City of Santa Fe**

$17,000,000 Water Utility Loan Agreement (made as part of total CWSRF Loan package of $151,000,000, Interest Rate: 0.01%

This Interim Loan Agreement (Agreement) between the New Mexico Environment Department (NMED) of the State of New Mexico and the City of Santa Fe (Borrower) becomes effective on the date signed by the NMED. Borrower has enacted Ordinance No. 2024-6 approved on August 14, 2024 (as amended by Ordinance No. 2025-___ approved on _____, 2025), hereinafter referred to as the "Ordinance") which authorizes execution of this Agreement, authorizes the Borrower to accept loan funds from NMED, and irrevocably pledges Net Water Utility System Revenues (Pledged Funds) for the repayment of the loan.

Listed below are agency contacts.

Borrower's Name and Address: City of Santa Fe 200 Lincoln Avenue PO Box 909 Santa Fe, New Mexico 87504-0909	**NMED:** New Mexico Environment Department Clean Water State Revolving Fund Program P.O. Box 5469 Santa Fe, New Mexico 87505 NMENV-cpbinfo@state.nm.us
Borrower's Contact Information: _____, Public Utilities Director (505) 955-4650	**NMED Contact Information:** Stephanie DuBois, Project Engineer (505) 538-5539, stephanie.dubois@env.nm.gov Maria Molina, Program Administrator (505) 670-3876, maria.molina2@env.nm.gov

Jonna Leigh Stack, Project Administrator 505-955-4206 jlstack@santafenm.gov	Rhonda Holderman, Financial Manager, Loans and Grants (505) 363-9396, Rhonda.holderman@env.nm.gov
Emily K. Oster, Finance Director	
(505) 955-6171	
5ekoster@santafenm.gov	

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

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

I. Project Description:

A. Project under this agreement includes:

- Nichols Dam Outlet Works Rehabilitation.

B. 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. 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.

II. 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: $17,000,000 (Water Utility System 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 three **(3) years** from the date of this Agreement. Subject to completion of the Project within the three (3) year construction period, Borrower shall determine the construction schedule for the project in its reasonable discretion.

III. 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, and the loan term shall not exceed the average economic life of the project as a whole.. Repayment will begin not less than one year after project completion. Repayment need not be based on level payments of principal and interest, but may instead be structured to address Borrower's needs with respect to cash flow, anticipated utility rate increases, and other relevant factors, in Borrower's discretion; provided, that structured repayments shall not be interest-only, but shall include annual amortization of a portion of unpaid principal and payment of interest.

The Borrower may pay off ("Prepay") all or any part of the loan at any time following delivery of written notice to NMED of Borrower's election to Prepay, specifying the principal amount to be prepaid, together with interest thereon accrued to the date of prepayment.

D. ACTUAL LOAN AMOUNT DISBURSED

(i) 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.

(ii) At the Borrower's request, NMED will reallocate unused loan amounts for other eligible projects of the Borrower, and will either amend an existing loan agreement and note ("Loan Documentation") or enter into new Loan Documentation with Borrower reflecting the reallocation of unused proceeds for other eligible purposes. Borrower shall be responsible for determining that funds pledged for repayment in connection with such Loan Documentation is from an appropriate source.

(iii) Within the State and Federal requirements applicable to the Loan Agreement, NMED intends to utilize amounts repaid by Borrower hereunder to provide additional loans to Borrower for eligible purposes, at Borrower's request.

E. SECURITY – PLEDGED FUNDS

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as Net Revenues of the Water Utility System owned and operated by the City of Santa Fe, as more specifically defined in the Covenants and Provisions Applicable to Net Water Utility System Revenue Debt Obligations attached hereto as Attachment 1 ("Attachment 1"), which are hereby incorporated in this Agreement.

Except as stated in Attachment 1, 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 VI. 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 VI. COVENANTS Sections H and I for default procedures.

H. NO DEBT SERVICE RESERVE FUND OR MATCHING REQUIREMENTS.

Borrower shall not be required to establish a debt service reserve fund or to provide matching funds pursuant to this Agreement. In lieu of debt service reserve fund requirements, Borrower shall comply with the Rate Covenant herein. See VI, COVENANTS Section E.

IV. Project Conditions:

A. After 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.

B. 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. 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 email 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.

8. 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.

9. 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.

10. 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.

11. If the Funds are to be used for construction of 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.

12. 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. 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.

16. 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.

17. 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.

18. 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.

19. Borrower agrees to implement environmental recommendations that will be supplied by NMED prior to final Plan approval.

20. 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 the 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.

21. The Borrower agrees to obtain a single audit annually from an Independent Professional Auditor.

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

23. 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.

V. 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 the 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 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 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.

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 Principles (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.

VI. Covenants:

Attachment 1 (Covenants and Provisions Applicable to Net Water Utility System Revenue Debt Obligations ("System Covenants")) is hereby incorporated hereinbelow and shall be controlling in the event of inconsistency between the System Covenants and the following covenants, but only to the extent of such inconsistency.

A. (i) 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 compliant 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. The 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. NMED shall use commercially reasonable efforts to disburse loan proceeds, or to notify Borrower that the disbursement request is incomplete or otherwise unsatisfactory, within 10 business days after receiving a disbursement request from Borrower.

(ii) NMED will compensate Borrower for the actual and reasonable costs of employing personnel (which may be a current employee of Borrower) tasked with assisting Borrower in preparing, documenting and submitting disbursement requests, and working with NMED to resolve issues relating thereto ("Disbursement Request Administration"). Reimbursement of the Borrower by NMED for the Borrower's actual and reasonable costs of employing such personnel is conditioned on the Borrower providing reasonably detailed, contemporaneous time records describing the activities of such personnel in connection with Disbursement Request Administration as part of each disbursement request. [Such costs [will] [will not] be paid from loan proceeds.]

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 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 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, as set forth in the Rate Covenant in the System Covenants.

F. The Borrower shall not provide any free services of the Water Utility System. The Borrower shall, to the full extent permitted by law, collect payment for water 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 one of Subsection H, NMED is authorized to set water 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 Water Utility 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.

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.

CWSRF FEDERAL REQUIREMENTS: APPLIES TO ALL PROJECTS

New Mexico CWSRF Loan Agreement Provision LA 1: Anti-Discrimination Laws (Super Cross- Cutters)

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Civil Rights Laws (i.e., Super Crosscutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102

These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability, or age, in programs or activities receiving federal financial assistance. All recipients of CWSRF financial assistance must agree, and required their contractors and subcontractors to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age.

New Mexico CWSRF Loan Agreement Provision LA2: Generally Accepted Governmental Accounting

All recipients of CWSRF financial assistance (Assistance Recipients) are required to comply with the following provisions:

Section 602(b)(9) of the Federal Water Pollution Control Act (FWPCA) states:

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets

The most recent applicable standard is GASB Statement No. 34 (GASB 34), issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. Further details on the requirements, as well as the full text of GASB 34, can be obtained through the GASB. CWSRF assistance recipients that follow GAAP standards other than GASB 34 are still required to maintain project accounts according to GAAP and apply GAAP standards for reporting on infrastructure assets.

Pursuant to Section 602(b)(9) of the FWPCA, all CWSRF Assistance Recipients must agree to maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), using standards relating to the reporting of infrastructure assets.

New Mexico CWSRF Loan Agreement Provision LA13: Useful Life Requirement

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Section 603(d)(1)(A) of the Clean Water Act (as amended) restricts the terms of CWSRF loans to the lesser of 30 years or the useful life of the project. All applicants for CWSRF financial assistance agree to provide an engineer's estimate of the useful life of project components to be funded by the CWSRF.

New Mexico CWSRF Loan Agreement Provision LA14 Office of Inspector General Posting

The US Environmental Protection Agency requires that contracts exceeding $1,000,0000 prominently display the Office of the Inspector General Hotline poster within contractor work areas and facilities where work is performed.

Posters may be obtained at: https://www.epa.gov/office-inspector-general/poster-report-fraud-waste-and-abuse-epa-oig-hotlineThe parties have executed this Agreement on the dates set forth by their respective names.

LA 18 Cost and Effectiveness—Government Requirement

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 conducting 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, considering—
    - 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.

CWSRF FEDERAL REQUIREMENTS: APPLIES ONLY TO TREATMENT WORKS PROJECTS

(UV Disinfection and Sewer Line Repair):

AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

The Federal Water Pollution Control Act (P.L. 92-500) Section 608 requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) 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 a public water system or treatment works.

The Act states:

> SEC. 608. REQUIREMENTS.
> *(a)* IN GENERAL.—Funds made available from a State water pollution control revolving fund established under this title may not be used for a project for the construction, alteration, maintenance, or repair of treatment works unless all of the iron and steel products used in the project are produced in the United States.
> *(b)* DEFINITION OF IRON AND STEEL PRODUCTS.—In this section, 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.
> *(c)* APPLICATION.—Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that—
>
> (1) applying subsection (a) would be inconsistent with the public interest.
> (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
> (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
>
> *(d)* WAIVER.—If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet site of the Environmental Protection Agency.
> *(e)* INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.
> *(f)* MANAGEMENT AND OVERSIGHT.—The Administrator may retain up to 0.25 percent of the funds appropriated for this title for management and oversight of the requirements of this section.
> *(g)* EFFECTIVE DATE.—This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that

agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of enactment of the Water Resources Reform and Development Act of 2014.

AMERICAN IRON AND STEEL (AIS) GUIDANCE

The following guidance excerpt has been provided from EPA:

(Complete guidance may be downloaded from: https://www.epa.gov/cwsrf/state-revolving-fund- american-iron-and-steel-ais- requirement)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:
Lined or unlined pipes or fittings;
Manhole Covers.
Municipal Castings (defined in more detail below),
Hydrants.
Tanks;
Flanges.
Pipe clamps and restraints; Valves.
Structural steel (defined in more detail below);
Reinforced precast concrete; and
Construction materials (defined in more detail below).

12) What does the term 'primarily iron or steel' mean?

'Primarily iron or steel' places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem coupling, valve, seals, etc.).
However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product

be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does 'produced in the United States' mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example, trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of 'municipal castings?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

Access Hatches;
Ballast Screen.
Benches (Iron or Steel);
Bollards.
Cast Bases.
Cast Iron Hinged Hatches, Square and
Rectangular; Cast Iron Riser Rings.
Catch Basin Inlet;
Cleanout/Monument Boxes;
Construction Covers and Frames;
Curb and Corner Guards.
Curb Openings.
Detectable Warning Plates;
Downspout Shoes (Boot,
Inlet).
Drainage Grates, Frames and Curb Inlets;
Inlets.
Junction
Boxes.
Lampposts.
Manhole Covers, Rings and Frames, Risers,
Meter Boxes.
Service Boxes.
Steel Hinged Hatches, Square and Rectangular;
Steel Riser Rings.
Trash
receptacles;
Tree Grates.
Tree Guards;
Trench Grates;
and
Valve Boxes, Covers and Risers.

20) What is 'structural steel'?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a 'construction material' for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical

components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a 'construction material' for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters,
heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

<u>Certification and Compliance</u>

NMED Form #C4 "American Iron and Steel (AIS) Certification" must be executed and included in the bid package. Failure to complete the certification will result the bid being returned. The contractor will

supply to the loan recipient manufacturers' certifications for each iron and steel item documenting/asserting that all manufacturing processes occurred in the United States. Such certifications will be submitted with shop drawings.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework is described in the guidance document found at: https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-waiver-process

Approved and denied waivers may be reviewed at: https://www.epa.gov/cwsrf/american-iron-and- steel-requirement-approved-project-waivers and https://www.epa.gov/cwsrf/american-iron-and- steel-requirement-withdrawn-or-denied-waivers

De Minimis Materials Waiver

The EPA has granted a nationwide waiver of the AIS requirements of the Consolidated Appropriations Act under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible infrastructure projects. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the total materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the total materials used in and incorporated into a project. Contractors who wish to use this waiver should determine the costs of all items installed or supplied for the project. The contractor must retain relevant documentation (i.e., invoices) for each of these items in their project files and must summarize the

items in monthly draw requests to the owner: the total cost of all materials, the total cost of "incidental" materials, and the calculations by which they determined the percentage of incidental products installed or supplied for the project. None of the products specifically listed as "Covered Iron and Steel Products" are incidental, nor are the products identified in detail in the technical specifications.

New Mexico CWSRF Loan Agreement Provision LA9 Environmental Review Requirements

The Federal Water Pollution Control Act section 511(c)(1) applies the National Environmental Policy Act (NEPA) to assistance for the construction of treatment works. All CWSRF-funded projects involving the construction of treatment works, regardless of the source of the funding, must undergo an environmental review following the procedures in NMED's State Environmental Review Process.

Assistance recipients ("sub-recipients") for CWSRF-funded treatment works projects are required to comply with Section 513 of the Federal Water Pollution Control Act (P.L. 92-500, as amended by the Water Resources Reform and Development Act of 2014) requiring all laborers and mechanics employed by contractors working on treatment works to be paid prevailing wages as determined by the Secretary of Labor. It is considered a Davis-Bacon related Act.

DAVIS-BACON REQUIREMENT (GOVERNMENTAL ENTITIES)

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA), DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/ weekly to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(c) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify

that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2014 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site,

www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably

anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for

this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work

they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until

an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii)The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing hat the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB

prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub-recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

DAVIS-BACON REQUIREMENT (NON-GOVERNMENTAL ENTITIES)

Under these terms and conditions, the sub-recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2014 Water Resource Reform and Development Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients must obtain proposed wage determinations for specific localities at https://beta.sam.gov/. After the Sub-recipient obtains its proposed wage determination, it must submit the wage determination to the **New Mexico Environment Department Construction Programs Bureau** ((505)-469-3459) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(d) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the

contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2014

(b) Water Resource Reform and Development Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any

other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the

Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer

and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the

Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii)Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. **4. Contract Provision for Contracts in Excess of $100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years

from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub- recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

New Mexico CWSRF Loan Provision LA15 Fiscal Sustainability Plan

	Fiscal Sustainability Plan Requirement	LA15

The 2014 Clean Water Act amendments require recipients of CWRF loans for projects involving a publicly owned treatment works to certify that they have developed and implemented a Fiscal Sustainability Plan (FSP) or another plan that meets minimum requirements, or that they will prepare an FSP. The minimum required elements for an FSP are listed in Section 603(d)(1)(E) of the Clean Water Act. Loan recipients shall develop and implement a FSP that includes the following:

- An inventory of critical assets that are part of the system. Critical assets are those that are necessary for sustained system performance.
- An evaluation of the condition and performance of critical assets.
- A plan for maintaining, repairing and replacing critical assets and for funding those activities.
- An evaluation and implementation plan for water and energy conservation.

The FSP requirement applies to all publicly owned treatment works construction or design/ construction projects funded in-part or in-full of State Revolving Fund (SRF) loans. The FSP must cover the entire project for which SRF funding is provided.

At the completion of the project, the loan recipient can:

Certify that a Fiscal Sustainability Plan (FSP) has been developed and implemented that meets the minimum required elements listed above. The FSP certification statement must be submitted before a final loan agreement is executed. The FSP will be available for NMED review during a site visit or inspection.

Agree to develop and implement a Fiscal Sustainability Plan (FSP) that will meet the minimum required elements listed above. The certification statement must be submitted before a final loan agreement is executed. The FSP must be completed prior to final disbursement. The FSP will be available for NMED review during a site visit or inspection.

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

BY:

_____

Signature of duly authorized Recipient
Official City of Santa Fe

_____

Print Name

_____

Title

_____

Date

Issued and administered by:

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

BY: _____

Constructions Programs Bureau, Bureau Chief
Signed pursuant to February 19, 2024, Secretary of Environment Delegation Order

ATTACHMENT 1

COVENANTS AND PROVISIONS APPLICABLE
TO NET WATER UTILTY SYSTEM OBLIGATIONS ('SYSTEM OBLIGATIONS")

Bracketed section references refer to the corresponding sections in Ordinance No. 2016-19, adopted by the Governing Body of the City of Santa Fe on May 1, 2016 (the "Master Ordinance").

Section 1. Definitions.

"Agreement Debt Service Fund" means the fund established and maintained by the City for the deposit of Pledged Revenues in amounts sufficient to make timely payments of the Debt Service Requirements of this Agreement.

"Authorized Officer" means the City's Mayor, Manager, Finance Director and Treasurer, or other officer or employee of the City when designated by a certificate signed by the Mayor of the City from time to time.

"Finance Director" or his or her successor in function, provided that for purposes hereof, the designation of any successor in title by the City Manager, if given in writing, shall be conclusive.

"Consulting Engineer" means any registered or licensed professional engineer or firm of engineers or Independent Accountant, entitled to practice and practicing as such under the laws of the State, retained and compensated by the City but not in the regular employ of the City; but, as to any construction drawings and specifications prepared for the System by City employees under the supervision of the City Engineer, this term may include the City Engineer.

"Debt Service Requirements" for any given period, means the sum of: (a) the amount required to pay the interest becoming due on the applicable System Bonds during that period, or

to make reimbursements for payments of interest; and (b) the amount required to pay the principal or Accreted Value becoming due on the applicable System Bonds during that period, whether at maturity, the Accreted Term Date or upon mandatory sinking fund redemption dates, or to make reimbursements for payments of that principal or Accreted Value. For purposes of calculating the maximum annual Debt Service Requirements, the following assumptions shall be used:

(a) in determining the principal due in each year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made on System Bonds in accordance with any amortization schedule established by Ordinance, the Supplemental Ordinance or Related Documents setting forth the terms of such System Bonds, including, as a principal payment, the Accreted Value of any Capital Appreciation Bonds maturing or scheduled for redemption in such year; in determining the interest due in each year, interest payable at a fixed rate shall (except to the extent subsection (b), (c), (d), (e) or (f) of this definition applies) be assumed to be made at such fixed rate and on the required payment dates;

(b) if all or any portion or portions of an Outstanding series of System Bonds constitute Balloon Indebtedness, or if all or any portion or portions of a series of System Bonds then proposed to be issued would constitute Balloon Indebtedness, then, for purposes of determining Debt Service Requirements, each maturity which constitutes Balloon Indebtedness shall, unless provision (c) of this definition then applies to such maturity, be treated as if it were to be amortized over a term of 20 years commencing in the year the stated maturity of such Balloon Indebtedness occurs and with substantially level annual debt service payments; the interest rate used for such computation shall be that rate determined by a Consultant to be a reasonable market rate for 20-year fixed-rate

System Bonds issued under the Master Ordinance on the date of such calculation, with no credit enhancement and taking into consideration whether such System Bonds bear interest which is or is not excluded from gross income for federal income tax purposes; with respect to any series of System Bonds only a portion of which constitutes Balloon Indebtedness, the remaining portion shall be treated as described in (a) above or such other provision of this definition as shall be applicable and, with respect to any series or that portion of a series which constitutes Balloon Indebtedness, all payments of principal and interest becoming due prior to the year of the stated maturity of the Balloon Indebtedness shall be treated as described in (a) above or such other provision of this definition as shall be applicable;

(c) any maturity which constitutes Balloon Indebtedness as described in provision (b) of this definition and for which the stated maturity date occurs within 12 months from the date such calculation is made, shall be assumed to become due and payable on the stated maturity date and provision (b) above shall not apply thereto unless there is delivered to the entity making the calculation a certificate of an Authorized Officer stating that the City intends to refinance such maturity and stating the probable terms of such refinancing and that the debt capacity of the City is sufficient to successfully complete such refinancing; upon the receipt of such certificate, such Balloon Indebtedness shall be assumed to be refinanced in accordance with the probable terms set out in such certificate and such terms shall be used for purposes of calculating Debt Service Requirements, provided that such assumption shall not result in an amortization period longer than or an interest rate lower than that which would be assumed under provision (b) above;

(d) if any of the Outstanding series of System Bonds constitute Tender Indebtedness or if System Bonds then proposed to be issued would constitute Tender Indebtedness, then, for purposes of determining Debt Service Requirements, Tender Indebtedness shall be treated as if the principal amount of such System Bonds were to be amortized over a term of 25 years commencing in the year in which such series is first subject to tender and with substantially level annual debt service payments; the interest rate used for such computation shall be that rate determined by a Consultant to be a reasonable market rate for 25-year fixed-rate System Bonds issued under the Master Ordinance on the date of such calculation, with no credit enhancement and taking into consideration whether such System Bonds bear interest which is or is not excluded from gross income for federal income tax purposes; with respect to all principal and interest payments becoming due prior to the year in which such Tender Indebtedness is first subject to tender such payments shall be treated as described in (a) above unless the interest during that period is subject to fluctuation, in which case the interest becoming due prior to such first tender date shall be determined as provided in (e) or (f) below, as appropriate;

(e) if any Outstanding System Bonds constitute Variable Rate Bonds (except to the extent subsection (b) or (c) relating to Balloon Indebtedness or (d) relating to Tender Indebtedness applies), the interest rate on such System Bonds and the interest rate for funding any Reserve Requirement for such Variable Rate Bonds shall be assumed to be the lesser of the 30-year Revenue Bond Index (published by The Bond Buyer no more than two weeks prior to date of sale), as certified by the City's financial advisor, the Purchaser of the System Bonds or other investment banker, as designated by the City from time to time or the maximum allowable rate permitted under Section 6.03(b)(i) of the Master

Ordinance. The prospective computations of interest payable on Variable Rate Bonds relating to the issuance of additional Parity Bonds required by Section 5 [Article XXIV] shall be as described therein. The prospective computations of interest payable on Variable Rate Bonds required by the Rate Covenant shall be made on the lesser of the maximum short-term rate prevailing in the preceding twelve months or the maximum allowable rate permitted under Section 6.03(b)(i) of the Master Ordinance;

(f) in any computation relating to the issuance of additional System Bonds or the Rate Covenant, there shall be deducted from the computation of the Debt Service Requirements amounts and investments (unless funded by Net Revenues during the applicable period) which are irrevocably committed to make designated payments on System Bonds during the applicable period, including, without limitation, money on deposit in a Debt Service Account for a series of System Bonds, amounts representing capitalized interest for a series of System Bonds and amounts on deposit in an escrow account irrevocably committed to make designated payments on System Bonds during the applicable period;

(g) interest or principal being paid for reimbursements of Debt Service Requirements made pursuant to a Credit Facility, if such obligations rank on parity with the obligation to pay System Bonds, or if a System Bond is a Bank Bond on the date of computation, shall be considered in the computation of Debt Service Requirements; and

(h) should the City enter into an interest rate swap contract or its equivalent with respect to all or a portion of any series of System Bonds, the amount of interest required to be paid with respect to that series shall be the interest rate paid by the City under its interest rate swap contract, so as to properly reflect the actual savings of the swap.

Any termination or similar fees which may become payable by the City pursuant to such swap contract or its equivalent shall not be considered in the computation of Debt Service Requirements. Such swap contract or its equivalent shall be approved by the New Mexico Board of Finance or any other governmental entity if required by State law.

"Gross Revenues" means all income and revenues directly or indirectly derived by the City from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the City, or any municipal corporation or agency succeeding to the rights of the City, from the System and from the sale and use of water or water facilities furnished to the inhabitants in the Service Area. Such term also includes:

(a) All income derived from the investment of any money in the Acquisition Fund, Income Fund, Debt Service Fund, Reserve Fund and Rate Stabilization Fund and from surplus Net Revenues;

(b) Money released from the Rebate Fund to the City;

(c) Money released from the Rate Stabilization Fund to the extent that the amount released is used to pay Operation and Maintenance Expenses or Debt Service Requirements on System Bonds in the year released;

(d) Property insurance proceeds which are not necessary to restore or replace the property lost or damaged and the proceeds of the sale or other disposition of any part of the System; and

(e) Such other amounts that may be designated as Gross Revenues in a Supplemental Ordinance.

Gross Revenues do not include:

(a) any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefor or other capital contributions from any source which are restricted as to use;

(b) gross receipts taxes, other taxes and/or fees collected by the City and remitted to other governmental agencies; and

(c) condemnation proceeds or the proceeds of any insurance policy, except for (d) above and any insurance proceeds derived in respect of loss of use or business interruption.

"Historic Test Period" means any period of 12 consecutive months out of the 18 calendar months next preceding the delivery of additional Parity Bonds pursuant to Section 24.02.

"Income Fund" means the "City of Santa Fe Water Utility System Gross Income Fund" which is authorized to be continued in Section 2 hereof [Article XVII] .

"Independent Accountant" means (i) the State Auditor and any accountant working under the supervision and control of the State Auditor, and (ii) any certified public accountant, registered accountant or firm of accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the City who (a) is, in fact, independent and not under the domination of the City, (b) does not have any substantial interest, direct or indirect, with the City, and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

"Master Ordinance" means Ordinance No. 2016-19, amending and restating Ordinance No. 2006-47, and as amended or supplemented from time to time in accordance with its terms.

"Moody's" means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation does

not provide a rating for a series of System Bonds, "Moody's" shall be deemed to refer to any other nationally recognized securities rating organization rating that series of System Bonds.

"NMSA" means New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

"Net Revenues" or "Pledged Revenues" means Gross Revenues after deducting Operation and Maintenance Expenses.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the System;

(b) insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;

(c) premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay Debt Service Requirements on System Bonds) for Credit Facilities;

(d) Expenses other than Expenses paid from the proceeds of System Bonds;

(e) the costs of audits of the books and accounts of the System;

(f) amounts required to be deposited in the Rebate Fund;

(g) salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the City's general fund, liabilities incurred by the City as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Obligations" means bonds, notes or any other instrument which evidences a borrowing or other obligation of the City, including Qualified Exchange Agreements, secured by Pledged Revenues, issued or incurred for any purpose permitted by the Act or the Exchange Act, as amended from time to time.

"Outstanding Obligations" means, collectively, Outstanding Superior Obligations and Outstanding Subordinate Obligations.

"Outstanding Subordinate Obligations" or "Outstanding Parity Subordinate Obligations" means Obligations with a lien on Net Revenues subordinate to the lien thereon of Outstanding Superior Obligations, and on parity with the lien thereon of this Agreement, and include (1) New Mexico Finance Authority Drinking Water State Revolving Loan Fund Loan Agreement dated May 16, 2008 in an original principal amount of $15,150,000, as amended by First Amendment dated June 10, 2016 (the "2008 NMFA Loan"); (2) New Mexico Finance Authority Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement dated May 3, 2013 in an original principal amount of $5,050,000, as amended by First Amendment dated June 10, 2016 (the "2013 NMFA Loan"), (3) this Agreement, and (4) any other Obligations issued from time to time with a lien on Net Revenues on parity with the lien thereon of this Agreement.

"Outstanding Superior Obligations" or "Parity Bonds" means the Series 2016 Bonds and other System Obligations issued with a lien on Net Revenues on parity with the lien thereon of the Series 2016 Bonds.

"Outstanding Super Subordinate Obligations" means the 2007 Water Trust Board Loan Agreement maturing in 2027, the 2009 Water Trust Board Loan maturing in 2029, the 2010 Water Trust Board Loan WTB-170 maturing in 2030, the 2011 Water Trust Board Loan WTB-202 maturing in 2031, and the 2011 Water Trust Board Loan WTB-203 maturing in 2031.

"Pledged Revenues" means Net Revenues.

"Rate Covenant" means the covenant in Section 26.03(b) relating to charging rates for use of the System to pay Debt Service Requirements.

"Rate Stabilization Fund" means the Rate Stabilization Fund for System Bonds established in Article XVII of the Master Ordinance and continued in Section 2(h) hereof.

"Rebate Fund" means the Rebate Fund for System Bonds established in Article XVII of the Master Ordinance and continued in Section 2(f) hereof.

"Related Documents" means, in connection with Outstanding Obligations, the Pricing Certificate, the Bond Purchase Agreement, the Continuing Disclosure Undertaking, the Preliminary Official Statement, the Official Statement, and any other document or agreement containing an obligation of the City as may be required in connection with the issuance of the Obligations.

"Replacement Fund" means the Water System Replacement Fund established in Article XVII of the Master Ordinance and continued in Section 2(g) hereof and the applicable section of other ordinances in which Outstanding Obligations were authorized.

"Subordinated Bonds" means all bonds and other obligations of the City hereafter issued with a lien on the Net Revenues subordinate to the lien of Parity Bonds on the Net Revenues.

"Supplemental Ordinance" means, except with respect to the Series 2016 Bonds which are authorized and issued pursuant to the terms of the Master Ordinance, an ordinance and all resolutions, amendments and supplements relating thereto of the Council adopted prior to the initial issuance and delivery of each series of System Bonds, authorizing the issuance of a series of System Bonds, the sale and administration thereof and approving specific terms with respect to that series of System Bonds.

"System" means the municipally owned public utility designated as the City's water utility system consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the water utility system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the City designated by the Council as part of the water utility system, whether situated within or without the limits of the City.

"System Bonds" means the Series 2016 Bonds, additional Parity Bonds, Subordinated Bonds and other similar obligations payable solely or primarily from Net Revenues which may from time to time be issued pursuant to the Master Ordinance.

"2025 NMED Acquisition Account" means the account so-named and established in Section 2(b) hereof.

"2025 NMED Debt Service Account" means the account so-named and established in Section 2(c) hereof.

"2025 NMED Interest Account" means account so-named and established in Section 2(c) hereof.

"2025 NMED Loan" means the Water State Revolving Fund loan made by NMED to the City in a maximum principal amount of $17,000,000, as initially evidenced by this Agreement and Interim Note.

"2025 NMED Principal Account" means account so-named and established in Section 2(c) hereof.

Section 2. Funds and Accounts.

(a) [Section 17.01] Income Fund. The City shall continue the Income Fund as a separate, distinct and segregated fund. As long as any System Bonds are Outstanding, all Gross Revenues shall continue to be set aside and credited to the Income Fund.

(b) [Section 17.02] Acquisition Fund. The Acquisition Fund established pursuant to Ordinance as a separate and distinct fund of the City to be maintained and controlled by the City or its designee is hereby continued. The City hereby establishes the 2025 NMED Acquisition Account.

(c) [Section 17.03] Debt Service Fund. The City shall continue the Debt Service Fund as a separate and distinct fund of the City to be maintained and controlled by the City or its designee for the payment of the Debt Service Requirements on Parity Bonds and, if applicable, proceeds of Parity Bonds to be used for the payment of Parity Bonds. The City hereby establishes the 2025 NMED Debt Service Account, the 2025 NMED Interest Account, and the 2025 NMED Principal Account.

(d) [Section 17.04] Reserve Fund. The City shall continue the Reserve Fund as a separate and distinct fund to be maintained and controlled by the City or its designee for the

purposes described in Section 18.03 of Ordinance. The City shall establish a separate Reserve Account in the Reserve Fund for each series of Parity Bonds for which there is a Reserve Requirement. No Reserve Account is established for the 2025 NMED Loan.

(e) [Section 17.06] Subordinate Lien Funds and Accounts. The City may establish separate and distinct funds and accounts to be maintained and controlled by the City or its designee to pay Debt Service Requirements on, and to fund Reserve Accounts for, Subordinated Bonds.

(f) [Section 17.07] Rebate Fund. The City shall continue the Rebate Fund as a special and separate fund to be maintained and controlled by the City or its designee. The City shall, to the extent that rebate payments may be required to be made pursuant to Section 148(f) of the Code, establish within the Rebate Fund a separate account for each series of System Bonds. No Rebate Account is established for the 2025 NMED Loan.

(g) [Section 17.08] Replacement Fund. The City shall continue the Replacement Fund as a special and separate fund to be maintained and controlled by the City or its designee for the purposes described in Section 3([f])) [Section 18.06].

(h) [Section 17.09] Rate Stabilization Fund. The City shall continue the Rate Stabilization Fund as a special and separate fund to be maintained and controlled by the City or its designee for the purposes described in Section 3([g]) [Section 18.07].

(i) [Section 17.10] Operation and Maintenance Fund. The City shall continue the Operation and Maintenance Fund as a special and separate fund to be maintained and controlled by the City or its designee for the purposes described in Section 3(a) [Section 18.01].

(j) [Section 17.11] Other Funds. Other funds and accounts relating to any series of System Bonds, including escrow funds and accounts if System Bonds are to be refunded,

may be established by the Council or an officer of the City to be controlled and maintained by the City or its designee.

Section 3. [ARTICLE XVIII] Administration of Income Fund and Other Funds and Accounts.

(a) [Section 18.01] Use of Gross Revenues. As long as any System Bonds are Outstanding, all Gross Revenues shall be deposited in the Income Fund and transferred from that Fund to the following funds and accounts or for payment of the following amounts in the order listed:

(1) [18.01(a)] Operation and Maintenance Expenses. A sufficient amount of Gross Revenues shall be set aside each month into the Operation and Maintenance Fund to be used to pay the current Operation and Maintenance Expenses as they become due.

(2) [18.01(b)] Debt Service Accounts for Parity Bonds. Net Revenues shall be transferred to the Debt Service Accounts established for each series of Outstanding Parity Bonds in approximately equal amounts each month to provide an amount sufficient to pay Debt Service Requirements on the Outstanding Parity Bonds as they become due.

(3) [18.01(c)] Reserve Account. Net Revenues shall be transferred to the Reserve Account for each series of Parity Bonds with a Reserve Requirement each month to the extent that deposits are required to be made as a result of any draws on a Reserve Account Insurance Policy or deficiency in the Reserve Requirement for a series of Parity Bonds.

(4) [18.01(d)] Subordinated Bonds. Net Revenues shall be transferred to such funds and accounts as may be established by Supplemental Ordinance with respect to one or more series of Subordinated Bonds and used to pay Debt Service Requirements on Subordinated Bonds and to fund any Reserve Requirement for Subordinated Bonds.

(5) [18.01(e)] Replacement Fund. At the option of the City, Net Revenues may be transferred to the Replacement Fund to be used for the purposes stated in Section 3(a)(6) hereof [Section 18.01(f)].

(6) [18.01(f)] Rate Stabilization Fund. At the option of the City, Net Revenues may be transferred to the Rate Stabilization Fund to be used for the purposes stated in Section 3(a)(7) hereof [Section 18.01(f)].

(7) [18.01((g)] Surplus Net Revenues. Net Revenues shall be retained in the Income Fund or used for any other lawful System purpose including, but not limited to, redeeming or purchasing System Bonds or paying costs and expenses of the City relating to the administration of System Bonds but shall not be transferred to the general fund of the City except for Operation and Maintenance Expenses owed by the System to the City and except for taxes, payments in lieu of taxes, franchise fees, surcharges, assessments and other municipal or governmental charges of the City lawfully levied or assessed upon the System.

(8) [18.01(h)] Accumulation of Revenues. Gross Revenues need not be retained for any use or in any fund or account described in this Section 3(a) [Section 18.01] in excess of the Gross Revenues required for any current use or deposit. For the purposes of this Section 3(a)(8), the term current shall mean the month during which the Net Revenues are being distributed and the immediately following period until the next payment date for Debt Service Requirements on System Bonds.

(b) [Section 18.02] Debt Service Fund. Net Revenues shall be transferred in approximately equal amounts each month to each Debt Service Account sufficient to pay when due the Debt Service Requirements on each series of Parity Bonds.

(1) [18.02(a)] Except as stated in Section 3(d) [Section 18.04] or required by the Supplemental Ordinance relating to a series of Parity Bonds, approximately equal monthly deposits of Net Revenues shall be made to each Debt Service Account beginning six months before each Interest Payment Date for any Outstanding Parity Bonds in order to make the next payment of interest on each such System Bond when due. However, if the first Interest Payment Date for a series of System Bonds is less than seven months after the date of the original issuance of that series of System Bonds, equal monthly deposits of Net Revenues before the first Interest Payment Date shall begin in the first full month following the date of issuance of that series of System Bonds.

(2) [18.02(b)] Except as stated in Section 3(d) [Section 18.04] or as required by the Supplemental Ordinance relating to a series of System Bonds, substantially equal monthly deposits of Net Revenues shall be made to each Debt Service Account beginning 12 months before each principal or Accreted Value payment date for any Outstanding Parity Bonds in order to make the next scheduled payment of principal or Accreted Value on each such System Bond when due whether at maturity on a mandatory sinking fund redemption date or other Accretion Term Date. However, if the first principal payment date for a series of System Bonds is less than thirteen months after the date of the original issuance of that series of System Bonds, equal monthly deposits of Net Revenues before the first principal payment date shall begin in the first full month following the date of issuance of that series of System Bonds. Principal payments include scheduled payments at maturity, by mandatory sinking fund installment or otherwise scheduled payments of principal. Accreted Value payments include scheduled payments on the Accretion Term Date, if any, and as otherwise stated in the applicable Supplemental Ordinance.

If in the month immediately preceding any payment date for the Series 2016 Bonds and any series of Parity Bonds, the City determines that there are not sufficient funds accumulated in a Debt Service Account to pay the amount becoming due on such series of System Bonds on the payment date, the City shall promptly deposit any available Net Revenues in that Debt Service Account in an amount equal to the deficiency. If, prior to any payment date for a series of System Bonds, there has accumulated in the applicable Debt Service Account the entire amount necessary to pay the amount becoming due on those System Bonds on that payment date, no additional Net Revenues need be deposited in that Debt Service Account prior to that payment date. In making the determinations permitted by this Section 3(b)(2), the City may take into account the amount on deposit in any other fund or account or escrow relating to the applicable series of System Bonds irrevocably set aside for the next payment of those System Bonds.

Unless otherwise stated in the Supplemental Ordinance relating to any series of Parity Bonds, amounts deposited in any Debt Service Account shall be applied first to the payment of interest and then to pay or satisfy any sinking fund requirements for the payment of principal.

Except as provided in Section 3(d) [Section 18.04], money in a Debt Service Account shall be used only to pay the Debt Service Requirements on any series of System Bonds for which the Debt Service Account was created. Transfers of amounts equal to the Debt Service Requirements shall be made by the City on a timely basis to the appropriate Fiscal Agent.

Any amount owed by the City to a Bond Insurer for payment of Debt Service Requirements on Insured Bonds of a series of Parity Bonds pursuant to a Bond Insurance Policy shall be paid from Net Revenues with the same priority as other payments of Debt Service Requirements on that series of Parity Bonds.

(c) [Section 18.03]. Reserve Account. As provided in a Supplemental Ordinance, the City may establish a separate Reserve Account in the Reserve Fund for each series of Parity Bonds for which there is a Reserve Requirement. Each Reserve Account may be funded with the proceeds of the applicable series of Parity Bonds, a Reserve Account Insurance Policy, Net Revenues or any combination thereof. A Reserve Account Insurance Policy may be substituted for an equivalent amount of cash in a Reserve Account.

No payments need be made into a Reserve Account, if created, as long as the sum of the money in that Reserve Account and the insurance in effect under any Reserve Account Insurance Policy for the applicable series of Parity Bonds is equal to or greater than the Reserve Requirement for that series of System Bonds and all proceeds of the Reserve Account Insurance Policy used to pay Debt Service Requirement have been repaid. Money in each Reserve Account shall be accumulated and maintained as a continuing reserve to be used, except as provided in this Section 3(c) [18.03] and Section 3(d) [18.04], only to prevent deficiencies in the payment of the principal of, Accreted Value or interest on the series of Parity Bonds for which the Reserve Account was established and to reimburse the Insurer under any applicable Reserve Account Insurance Policy.

If the amount on deposit in the Debt Service Account for a series of Parity Bonds on a payment date for that series of System Bonds and available Net Revenues are not enough to pay the amount becoming due on that series on that date, an amount equal to the deficiency shall be transferred from the applicable Reserve Account to the Debt Service Account for that series of Parity Bonds. If the amount of money on deposit in the Reserve Account is not sufficient to make up the deficiency in the Debt Service Account for that series of Parity Bonds when due, a demand for payment shall be made on any applicable Reserve Account Insurance Policy.

A sum equal to the amount in such other Reserve Account and the proceeds of a Reserve Account Insurance Policy used to pay Debt Service Requirements on a series of Parity Bonds plus interest, if any, owed on amounts advanced pursuant to a Reserve Account Insurance Policy shall be deposited in that Reserve Account from the first Net Revenues received by the City which are not required by Section 3(a) [18.01] to be used for another purpose. The amount received shall first be used to reimburse the Reserve Account Insurer for amounts paid under the Reserve Account Insurance Policy used to pay Debt Service Requirements, second to pay interest or fees owed to a Reserve Account Insurer in connection with amounts advanced pursuant to a Reserve Account Insurance Policy, and third to replace amounts of money drawn from the Reserve Account. Any interest or fees due to a Reserve Account Insurer shall be subordinate to any amounts required to be paid for the benefit of the Owners of the series of Parity Bonds. The priority for the use of money deposited in a Reserve Account for a series of System Bonds may be changed by the Supplemental Ordinance for that Series.

If all proceeds drawn on a Reserve Account Insurance Policy and accrued interest thereon for a series of Parity Bonds have been reimbursed and paid, any amount on deposit in the Reserve Account relating to that series of System Bonds in excess of the Reserve Requirement for that series (taking into consideration the amount of insurance available under any applicable Reserve Account Insurance Policy) may be withdrawn at any time from the Reserve Account and deposited in the Replacement Fund. However, any excess which represents original proceeds of a series of Outstanding System Bonds or interest thereon shall first be used to pay Debt Service Requirements on that series of System Bonds or costs of the Project for which that series of System Bonds was issued.

If a Reserve Account Insurance Policy is used to satisfy the Reserve Requirement for a series of Parity Bonds, the City shall give notice thereof to each rating agency providing a rating for that series of System Bonds.

(d) [Section 18.04] Termination Upon Deposits to Maturity. No payments need be made into the Debt Service Account or Reserve Account for a series of Parity Bonds if the sum of the amounts in that Debt Service Account and Reserve Account (without regard for the coverage available under any Reserve Account Insurance Policy) is not less than the Debt Service Requirements due and to become due on and before the final maturity date of that series of Parity Bonds, both accrued and not accrued, and all proceeds paid under any Reserve Account Insurance Policy and Bond Insurance Policy for that series of Parity Bonds have been reimbursed and all amounts owed to the providers of such policies have been paid in full. Unless otherwise provided in the Supplemental Ordinance applicable to a series of Parity Bonds, the money retained in those two accounts shall be used only to pay the Debt Service Requirements on that series of System Bonds when due except that any money on deposit in any such Debt Service Account which is not necessary to pay such Debt Service Requirements shall be used as surplus Net Revenues and any money on deposit in any such Reserve Account which is not necessary to pay such Debt Service Requirements (other than proceeds of Outstanding Parity Bonds) shall be deposited in the Replacement Fund.

(e) [Section 18.05] Subordinated Bonds. Net Revenues shall be used as required in the 2025 NMED Loan and by the applicable ordinances of the Council authorizing the issuance of other Subordinated Bonds, the payment of Debt Service Requirements thereof and the funding of reserves for Subordinated Bonds. Subordinated Bonds shall have the order of priority

with respect to other Subordinated Bonds as set forth in the Supplemental Ordinances authorizing the issuance of Subordinated Bonds.

(f) [Section 18.06] Replacement Fund. In addition to Net Revenues, the City shall deposit in the Replacement Fund, all money released from a Reserve Account for a series of System Bonds in excess of the Reserve Requirement for that series pursuant to Section 18.03, except for any such excess which is designated for another System purpose by resolution or ordinance of the Council or which is proceeds of Outstanding System Bonds, together with such other moneys from other sources as may be designated by the Council.

While any System Bonds are outstanding, money on deposit in the Replacement Fund shall be used only (i) for replacement costs and capital improvements to the System, (ii) for extraordinary charges relating to the financing or refinancing of the System, and (iii) to purchase or otherwise defease, or provide for the defeasance of, Outstanding System Bonds.

(g) [Section 18.07] Rate Stabilization Fund. Money on deposit in the Rate Stabilization Fund may be withdrawn at any time and used for any purpose for which Gross Revenues may be used. If deposits to the Rate Stabilization Fund are made by the City from sources of legally available moneys other than Gross Revenues, then such deposits shall be excluded from computations required pursuant to Section 5 [Article XXIV] and Section 7(c) [Section 26.03].

(h) [Section 18.08] Pro Rata Deposits. If the amount of Net Revenues available for deposit in the Debt Service Fund is not sufficient to pay the entire amount required to be deposited in the Debt Service Accounts and/or Reserve Accounts, the Net Revenues available shall be deposited first in the Debt Service Accounts and then in the Reserve Accounts, in each case,

pro rata based upon the amount required to be deposited in each Account to the total Net Revenues available for deposit.

Reimbursements owed to a Bond Insurer, Reserve Account Insurer or provider of another Credit Facility for amounts used to pay Debt Service Requirements on a series of System Bonds shall be paid on the same pro rata basis and with the same priority as are amounts to be deposited in the Debt Service Account or Reserve Account, as applicable, with respect to the applicable series of Parity Bonds (or comparable accounts with respect to a series of Subordinated Bonds).

(i) [Section 18.09] Variable Rate Bonds. In making computations required by this Article, interest on Variable Rate Bonds which cannot be determined exactly for a future period shall be deemed to bear the interest rate required by the definition of Debt Service Requirements in the Master Ordinance or the applicable Supplemental Ordinance. To determine the amount required to be on deposit in any Debt Service Account for the payment of interest, computations of the interest rate on Variable Rate Bonds shall be made whenever there is a change in the interest rate on the applicable Variable Rate Bonds except that the computation need not be made more often than once in any month.

Section 4. [ARTICLE XIX] Transfers to Pay Principal of, Premium, if any, and Interest on System Bonds; Payment of Expenses.

(a) [Section 19.01] Transfer to Paying Agent. The City shall transfer legally available funds for the payment of Debt Service Requirements on each series of System Bonds to the applicable Paying Agent on or before the date on which each such payment is due.

(b) [Section 19.02] Expenses. The City or its designee shall pay all Expenses directly to the party entitled thereto from proceeds of a series of System Bonds, from amounts on deposit in the Acquisition Account for a series of System Bonds and from other Net Revenues, as applicable.

Section 5. [Article XXIV] Additional System Bonds.

(a) [Section 24.01] Limitations Upon Issuance of System Bonds. Subject to the limitations of this Section 5 and Section 6 [Article XXIV and Article XXV], nothing in Ordinance or the Ordinance authorizing execution and delivery of the 2025 NMED Loan Agreement shall be construed to prevent the issuance by the City of additional System Bonds.

(b) [Section 24.02] Parity Bonds. Parity Bonds may be issued for the System purposes including, but not limited to, (i) financing the Costs of a Project; or (ii) providing additional funds for deposit into a Reserve Account or the Replacement Fund and paying the costs incident to the issuance of such Parity Bonds or any combination of the foregoing.

The tests required in this Section 5 [Section 24.02] shall be performed without adjustment for payments to or withdrawals from the Rate Stabilization Fund or interest accrued (other than amounts representing capitalized interest) in the Acquisition Fund. For Parity Bonds with a funded Reserve Account (excluding any insurance coverage through a Reserve Fund Insurer), determination of average annual combined Debt Service Requirements or maximum combined annual Debt Service Requirements shall include application of the funds in the Reserve Account to the final debt service payment for the applicable Parity Bonds. Except as permitted herein and by Section 6 [Article XXV], prior to the issuance of additional Parity Bonds, the City shall be current in making all deposits required by Section 2 [Article XVIII] and the following test shall be satisfied:

(1) [24.02(a)] a certificate prepared by an Authorized Officer of the City showing that the Net Revenues for the Historic Test Period were at least equal to 130% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds after the issuance of the proposed Parity Bonds, or

(2) [24.02(b)] a certificate prepared by a Consulting Engineer showing that:

(aa) the Net Revenues for the Historic Test Period were at least equal to 130% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds immediately preceding the issuance of the proposed additional Parity Bonds;

(bb) for each Fiscal Year during the period from the date of delivery of such certificate until the latest estimated Completion Date of the Project being financed, the Consulting Engineer estimates that the City will be in compliance with the Rate Covenant; and

(cc) the estimated Net Revenues for each of the three Fiscal Years immediately following the latest estimated Completion Date for the specified Project to be financed with proceeds of the proposed additional Parity Bonds, as certified to the Consulting Engineer by an Authorized Officer of the City, will be at least equal to 130% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds which will be outstanding immediately after the issuance of the proposed additional Parity Bonds.

For purposes of subsections (2)(aa) and (bb) [24.02(b)(i) and (ii)] above, in estimating Net Revenues, the Consulting Engineer may take into account (1) reasonable Gross Revenues from specified Projects expected to become available, (2) any increase in fees, rates, charges, rentals or other sources of Gross Revenues which have been approved by the City and

will be in effect during the period for which the estimates are provided, and (3) any other increases in Gross Revenues for such period which the Consulting Engineer certifies to be reasonable for purposes of such certificate. With respect to Operation and Maintenance Expenses, the Consulting Engineer shall use such assumptions as the Consulting Engineer believes to be reasonable, and taking into account, (i) historical Operation and Maintenance Expenses, (ii) Operation and Maintenance Expenses associated with the specified Projects and (iii) such other factors, including inflation and changing operations or policies of the City, as the Consulting Engineer believes to be appropriate. The Consulting Engineer shall include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made in determining the estimated Net Revenues and shall also set forth the calculations of the maximum combined annual Debt Service Requirements, which calculations may be based upon information provided by another Consulting Engineer or Consultant.

For purposes of preparing the certificate or certificates described above, the Consulting Engineer or Consulting Engineers may rely upon financial statements prepared by the City which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Officer of the City shall certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

(c) [Section 24.03] Subordinate Obligations. Additional Subordinated Bonds in addition to the Outstanding Subordinate Obligations, including the 2025 NMED, Loan may be issued for the System purposes including, but not limited to, (i) financing the Costs of a Project; or (ii) providing additional funds for deposit into a Reserve Account or the Replacement Fund and

paying the costs incident to the issuance of such Subordinated Bonds or any combination of the foregoing.

The tests required in this Section 5(c) [Section 24.03] shall be performed without adjustment for payments to or withdrawals from the Rate Stabilization Fund or interest accrued (other than amounts representing capitalized interest) in the Acquisition Fund. For Subordinate Bonds with a funded Reserve Account (excluding any insurance coverage through a Reserve Fund Insurer), determination of average annual combined Debt Service Requirements or maximum combined annual Debt Service Requirements shall include application of the funds in the Reserve Account to the final debt service payment for the applicable Subordinate Bonds. Except as permitted herein and by Section 6 [Article XXV], prior to the issuance of additional Subordinated Bonds, the City shall be current in making all deposits required by Section 2 [Article XVIII] and the following test shall be satisfied:

(1) a certificate prepared by an Authorized Officer of the City showing that the Net Revenues for the Historic Test Period were at least equal to 120% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Outstanding Subordinated Bonds after the issuance of the proposed Subordinated Bonds, or

(2) a certificate prepared by a Consulting Engineer showing that:

(aa) the Net Revenues for the Historic Test Period were at least equal to 120% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Outstanding Subordinated Bonds immediately preceding the issuance of the proposed additional Subordinated Bonds;

(bb) for each Fiscal Year during the period from the date of delivery of such certificate until the latest estimated Completion Date of the Project being financed, the Consulting Engineer estimates that the City will be in compliance with the Rate Covenant; and

(cc) the estimated Net Revenues for each of the three Fiscal Years immediately following the latest estimated Completion Date for the specified Project to be financed with proceeds of the proposed additional Subordinated Bonds, as certified to the Consulting Engineer by an Authorized Officer of the City, will be at least equal to 120% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Outstanding Subordinated Bonds which will be outstanding immediately after the issuance of the proposed additional Subordinated Bonds.

For purposes of subsections Section 5(c)(2)(aa) and (bb) [24.03(b)(i) and (ii)] above, in estimating Net Revenues, the Consulting Engineer may take into account (1) reasonable Gross Revenues from specified Projects expected to become available, (2) any increase in fees, rates, charges, rentals or other sources of Gross Revenues which have been approved by the City and will be in effect during the period for which the estimates are provided, and (3) any other increases in Gross Revenues for such period which the Consulting Engineer certifies to be reasonable for purposes of such certificate. With respect to Operation and Maintenance Expenses, the Consulting Engineer shall use such assumptions as the Consulting Engineer believes to be reasonable, and taking into account, (i) historical Operation and Maintenance Expenses, (ii) Operation and Maintenance Expenses associated with the specified Projects and (iii) such other factors, including inflation and changing operations or policies of the City, as the Consulting Engineer believes to be appropriate. The Consulting Engineer shall include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made

in determining the estimated Net Revenues and shall also set forth the calculations of the maximum combined annual Debt Service Requirements, which calculations may be based upon information provided by another Consulting Engineer or Consultant.

For purposes of preparing the certificate or certificates described above, the Consulting Engineer or Consulting Engineers may rely upon financial statements prepared by the City which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Officer of the City shall certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

(d) [Section 24.04] Certificates. In determining whether additional Parity Bonds may be issued pursuant to Section 5(b) [Section 24.02] or additional Subordinated Bonds may be issued pursuant to Section 5(c) [Section 24.03], a written certificate or opinion of an Authorized Officer of the City or a Consulting Engineer shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the additional Parity Bonds or additional Subordinated Bonds, respectively.

(e) [Section 24.05] Superior Obligations Prohibited. As long as Parity Bonds are outstanding, the City shall not issue additional System Bonds having a lien on the Net Revenues prior and superior to the lien of Parity Bonds on Net Revenues.

(f) [Section 24.06] Variable Rate Bonds and Tender Indebtedness.

(1) [24.06(a)] In making the computations required by this Section 5 [Article XXIV], to determine if additional System Bonds may be issued, Variable Rate Bonds shall be deemed to bear a rate of interest at the 30-year Revenue Bond Index (published by The

Bond Buyer no more than two weeks prior to the date of sale) certified as described in the definition of Debt Service Requirements.

(2) [24.06(b)] No Variable Rate Bonds or Tender Indebtedness shall be issued unless such series of System Bonds is rated, based upon a Credit Facility or otherwise, at the time of issuance at the minimum level as required for investment by money market funds by at least one of the recognized major rating agencies.

(3) [24.06(c)] If the computations required by this Article are made assuming (i) interest at the maximum interest rate payable to the Bank providing a Credit Facility for the Variable Rate Bonds or Tender Indebtedness and (ii) the accelerated principal repayment schedule due to such Bank, then the acceleration of principal payments and excess interest due to such Bank may be on a parity with the payment of Debt Service Requirements on Parity Bonds; provided, however, if such assumptions are not made in making the computations required by this Article, then any accelerated principal payments due to such Bank or any interest due in excess of the rate on the Variable Rate Bonds or Tender Indebtedness must be subordinated to the payment of Debt Service Requirements on Parity Bonds.

(4) [24.06(d)] Any Bank providing a Credit Facility for liquidity support of Variable Rate Bonds or Tender Indebtedness must be rated at the minimum level as required for investment by money market funds by at least one of the recognized major rating agencies.

(5) [24.06(e)] Any trustee, tender agent or paying agent employed with respect to Variable Rate Bonds or Tender Indebtedness must be a commercial bank with trust powers and any remarketing agent employed with respect to Variable Rate Bonds or Tender Indebtedness must have trust powers if it is responsible for holding monies or receiving bonds.

(6) [24.06(f)] The provisions of this Section 24.06 and the other provisions of the Master Ordinance stating terms and conditions relating to the issuance of Variable Rate Bonds and Tender Indebtedness may be modified at the time of issuance of Variable Rate Bonds or Tender Indebtedness in accordance with the Supplemental Ordinance authorizing issuance thereof.

Section 6. [ARTICLE XXV] Refunding Bonds.

The provisions of Section 6 [Article XXIV of Ordinance] are subject to the following exceptions:

(a) Privilege of Issuing Refunding Obligations. If at any time while System Bonds remain Outstanding, the City desires to refund any Outstanding System Bonds or other obligations payable from Net Revenues, those System Bonds or other obligations, or any part thereof, may be refunded regardless of whether the priority of the lien for the payment of the refunding System Bonds on the Net Revenues is changed (except as provided in Sections 24.04 and in subsections (b), (c), and (d) of this Section 6 [Article XXV].

(b) Limitations Upon Issuance of Refunding Parity Bonds. No refunding bonds or other refunding obligations shall be issued as Parity Bonds unless:

(i) there is delivered a certificate of the Authorized Officer of the City showing that the combined Debt Service Requirements on all Outstanding Parity Bonds for any Fiscal Year after the issuance of refunding Parity Bonds will not exceed the combined Debt Service Requirements for such Fiscal Year on all Outstanding Parity Bonds authorized prior to the issuance of such refunding Parity Bonds by more than ten percent (10%) in any such Fiscal Year, and the City is in current compliance with the Rate Covenant, or

(ii) The refunding Parity Bonds are issued in compliance with Section 5(b) [Section 24.02].

(c) Limitations Upon Issuance of Refunding Subordinated Bonds. No refunding bonds or other refunding obligations shall be issued as Subordinated Bonds unless:

(i) there is delivered a certificate of the Authorized Officer of the City showing that the combined Debt Service Requirements on all Outstanding Subordinated Bonds for any Fiscal Year after the issuance of refunding Subordinated Bonds will not exceed the combined Debt Service Requirements for such Fiscal Year on all Outstanding Subordinated Bonds authorized prior to the issuance of such refunding Subordinated Bonds by more than ten percent (10%) in any such Fiscal Year, and the City is in current compliance with the Rate Covenant, or

(ii) The refunding Subordinated Bonds are issued in compliance with Section 5(c) [Section 24.03].

(d) Limitations Upon Issuance of Any Refunding System Bonds. Any refunding System Bonds shall be issued with such details as the Council may provide by appropriate proceedings but without impairment of any contractual obligation imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of the series of System Bonds or other obligations payable from Net Revenues to which the refunding was applicable.

Section 7. Protective Covenants. The City hereby covenants and agrees with each and every registered owner of Obligations that:

(a) [Section 26.01] Use of System Bond Proceeds. The City covenants and agrees that it will promptly apply the proceeds of each series of System Bonds to the Project for which they were issued or for the refunding of Outstanding System Bonds, as applicable, and for the other purposes permitted by the Master Ordinance or applicable Supplemental Ordinance.

(b) [Section 26.02]. Payment of System Bonds. The City covenants and agrees that it will promptly pay the Debt Service Requirements on System Bonds at the place, on the dates and in the manner specified in the Master Ordinance, the applicable Supplemental Ordinance, Related Documents and the System Bonds.

(c) [Section 26.03] Rate Covenant.

(1) The City covenants that it will at all times fix rates and collect charges for each class of service rendered by the System, and to, from time to time, amend or adjust such rates so that Gross Revenues of the System shall always be sufficient to provide for the payment of expenses of administration, Operation and Maintenance Expenses, other expenses which may be necessary to preserve the System in good repair and working order, including the necessary reserves therefor and all other payments necessary to meet ongoing legal obligations to be paid at that time; and

(2) The City further covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year the Net Revenues shall at least equal (i) 130% of the Debt Service Requirements on the Series 2016 Bonds and any additional Parity Bonds Outstanding in such Fiscal Year and (ii) 120% of the Debt Service Requirements on Outstanding Parity Bonds and Subordinated Bonds, including the 2025 NMED Loan, Outstanding in such Fiscal Year.

(3) Failure by the City to comply with the foregoing Rate Covenant in any Fiscal Year will not constitute an event of default under the Master Ordinance so long as the City, within 180 days after the end of any such Fiscal Year, adopts the schedule of rates and charges recommended or approved by a Consulting Engineer which would bring the City into compliance

with the Rate Covenant. The City is also required under the Master Ordinance in each Fiscal Year to complete a review of its financial condition for the purpose of estimating whether the Net Revenues for such Fiscal Year and for the next succeeding Fiscal Year will be sufficient to comply with the Rate Covenant set forth above. If the City determines that the Net Revenues may not be so sufficient, it shall forthwith cause the Consulting Engineer to make a study for the purpose of recommending a schedule of fees, rates and charges for the System which, in the opinion of the Consulting Engineer, will cause sufficient Gross Revenues to be collected in such Fiscal Year to comply with the Rate Covenant set forth above and will cause additional Gross Revenues to be collected in such Fiscal Year sufficient to eliminate the amount of any deficiency at the earliest practicable time within such Fiscal Year. The City shall as promptly as practicable adopt and place in effect the schedule of fees, rates and charges recommended or approved by the Consulting Engineer pursuant to the Master Ordinance. In the alternative of establishing fees, rates and charges necessary to meet the Rate Covenant set forth above, the City may implement reductions in Operation and Maintenance Expenses for the System in an amount sufficient to meet the Rate Covenant.

(d) [Section 26.04] Lien on Lands Serviced by System. State law grants the City a lien upon each lot or parcel of land for the charges imposed for water and sanitary sewer services supplied by the System to the owner of such lot or parcel (except as otherwise provided in Section 3-23-6 NMSA). The City will cause each lien to be perfected in accordance with the provisions of Sections 3-23-6 and 3-36-1 through 3-36-5 NMSA. The City will take all necessary steps to enforce the lien against any parcel of property the owner of which is delinquent for more than six months in the payment of charges imposed for the use of the System.

(e) [Section 26.05] Levy of Charges. The City will promptly fix, establish and levy the rates and charges which are required by Section 7(c) [Section 26.03]. Unless contrary to any provision of applicable law, any resolution or ordinance adopted by the Council to fix, establish and levy such rates and charges shall be deemed an administrative or executive matter not subject to the referendum provisions of the Charter or State law. No reduction in any initial or existing rate schedule for the System may be made unless:

(1) the City has fully complied with the requirements of the Rate Covenant contained in Section 7(c) [Section 26.03] for any 12 consecutive months out of the 16 calendar months immediately preceding the reduction of the rate schedule, and

(2) the audit required by Section 7(i) [Section 26.09] or a separate certificate by an Independent Accountant for or relating to any 12 consecutive months out of the 16 calendar months immediately preceding any reduction discloses that the Net Revenues resulting from the proposed reduced rate schedule would have been sufficient to meet the Rate Covenant contained in Section 26.03 during the applicable 12-month period.

(f) [Section 26.06] Efficient Operation. The City will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and to supply reasonable public and private demands for System services within the Service Area.

(g) [Section 26.07] Records. So long as System Bonds remain Outstanding, proper books of record and account will be kept by the City, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System.

However, pursuant to Section 6-14-10(E) NMSA, records with regard to the ownership or pledge of System Bonds are not subject to inspection or copying.

(h) [Section 26.08] Right to Inspect. Owners, or their duly authorized agents, shall have the right to inspect at all reasonable times all records, accounts and data relating to the System.

(i) [Section 26.09] Audits. Within 180 days following the close of each Fiscal Year, the City will cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant.

(j) [Section 26.10] Billing Procedure. Bills for water or water facilities furnished by or through the System shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the City. If permitted by law, if a bill is not paid within the period of time required by such ordinance, water service shall be discontinued as required by such ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection.

(k) [Section 26.11] Charges and Liens Upon System. The City will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the System. The City will not create or permit any lien or charge upon the System or the Net Revenues except as permitted by the Master Ordinance, or it will make adequate provisions to satisfy and discharge within 60 days after the same accrue, all lawful claims and demands for labor, materials,

supplies or other objects, which, if unpaid, might by law become a lien upon the System or the Net Revenues. However, the City shall not be required to pay or cause to be discharged, or make provision for any tax, assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings and there is no adverse effect on Owners.

(l) [Section 26.12] Insurance. Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, the City will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Council, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by municipalities which operate water systems. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the City may have a material interest and of which the City may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the City determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged

and thereafter, any remainder may be used to redeem System Bonds or be treated as Gross Revenues and used in the manner provided in Article XVIII.

(m) [Section 26.13] Competing System. Unless contrary to any provision of, or required by, applicable law, as long as System Bonds are outstanding, the City will not grant any franchise or license to a competing water utility system, or permit any person, association, firm or corporation to sell water utility services or facilities to any consumer, public or private, within the Service Area of the System; provided, however, that nothing shall prevent the City from annexing land into its boundaries solely due to the fact that there is a competing utility system or person, association, firm or corporation providing such utility services or facilities within or for the land to be annexed.

(n) [Section 26.14] Alienating System. While the System Bonds are Outstanding, the City shall not, except as permitted below, transfer, sell or otherwise dispose of the System. For purposes of this Section, any transfer of an asset over which the City retains or regains substantial control shall not, for so long as the City has such control, be deemed a disposition of the System.

The City may transfer, sell or otherwise dispose of the System only if such transfer, sale or disposition complies with one or more of the following provisions:

(1) The property being disposed of is inadequate, obsolete or worn out; or

(2) The property proposed to be disposed of and all other property of the System disposed of during the 12-month period ending on the day of such transfer (but excluding property disposed of under (a) above), will not, in the aggregate, constitute a Significant

Portion of the System determined as described below and the proceeds are deposited into the Income Fund to be used as described below; or

(3) The City receives fair market value for the property, the proceeds are deposited into the Income Fund to be used as described below and, prior to the disposition of such property, there is delivered to the Fiscal Agent a certificate of a Consultant to the effect that notwithstanding such disposition, but taking into account the use of such proceeds in accordance with the expectations of the City as evidenced by a certificate of an Authorized Officer, the Consultant estimates that the City will be in compliance with the Rate Covenant during each of the five Fiscal Years immediately following such disposition.

For purposes of this Section, the term "Significant Portion" of the System means property of the System which, if such property had been disposed of by the City at the beginning of the Fiscal Year which includes the month of commencement of the 12-month period referred to in (b) above would have resulted in a reduction in Net Revenues for such Fiscal Year of more than 4% when the actual Net Revenues for such Fiscal Year are decreased by the revenues directly attributable to such property of the System and increased by the expenses of the City directly attributable to such property of the System.

Proceeds of the disposition of assets under (b) or (c) above shall be deposited into the Income Fund and used, within a reasonable period of time, not to exceed three years, to (i) provide additional revenue-producing properties to the System, (ii) redeem System Bonds or (iii) create an escrow fund pledged to pay specified System Bonds and thereby cause such System Bonds to be deemed to be paid as provided in Article XXXI of Ordinance.

Properties of the System which were financed with the proceeds of obligations the interest on which is then excluded from gross income for federal income tax purposes shall not be

disposed of, except under the terms of provision (a) above, unless the City has first received a written opinion of Bond Counsel to the effect that such disposition will not cause the interest on such obligations to become includable in gross income for federal income tax purposes.

No such disposition shall be permitted which would cause the City to be in default of any other covenant contained in Ordinance.

(o) [Section 26.15] Extending Interest Payments. To prevent any accumulation of claims for interest after maturity, except as permitted by the Master Ordinance, Supplemental Ordinance or Related Documents, the City will not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on System Bonds. If the time for payment of interest is extended contrary to the provisions of this Section, the installments of interest extended shall not be entitled, in case of an event of default under the Master Ordinance, Supplemental Ordinance or Related Documents, to the benefit or security of the Master Ordinance, Supplemental Ordinance or Related Documents until the prior payment in full of the principal of, Accreted Value and interest on all other System Bonds then outstanding.

(p) [Section 26.16] Competent Management. The City shall employ experienced and competent personnel to manage the System.

(q) [Section 26.17] Performing Duties. The City will faithfully and punctually perform all duties with respect to the System required by State and City laws, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as required by this Section and the proper segregation and application of the Gross Revenues.

(r) [Section 26.18] Other Liens. Other than as stated in or provided by the Master Ordinance or applicable disclosure document for a series of System Bonds, there are no liens or encumbrances of any nature whatsoever, on or against the System, the Gross Revenues or the Net Revenues.

(s) [Section 26.19] City's Existence. The City will maintain its corporate identity and existence as long as System Bonds remain outstanding unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any Owner. However, the City may, annex or de-annex land if the City complies with other applicable covenants contained in the Master Ordinance.

(t) [Section 26.20] Tax Compliance.

(1) With respect to System Bonds to be issued as tax-exempt bonds under Sections 103 and 141 of the Code, the City will restrict the use and investment of the proceeds of the System Bonds and any funds reasonably expected to be used to pay the System Bonds to the extent necessary so that the System Bonds will not constitute arbitrage bonds under Section 148 of the Code. Authorized Officers having responsibility for issuing System Bonds will give appropriate certificates of the City for inclusion in transcripts of proceedings for System Bonds setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the System Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on System Bonds.

(2) With respect to System Bonds to be issued as tax-exempt bonds under Sections 103 and 141 of the Code, the City (i) will take or cause to be taken such actions that may be required of it for the interest on the System Bonds to be and remain excluded from

gross income for federal income tax purposes, and (ii) will not take or permit to be taken any action that would adversely affect such exclusion, and the City will, among other acts of compliance to the extent necessary to assure the exclusion of interest on System Bonds under the Code, (A) apply, or cause to be applied, the proceeds of the System Bonds to the governmental purpose of the borrowing, (B) restrict the yield as necessary on investment property defined in Section 148(b)(2) of the Code acquired with gross proceeds of the System Bonds, (C) make timely rebate payments to the federal government in accordance with Section 148(f) of the Code, the Rebate Regulations (as defined in Article XXVII of Ordinance) and Ordinance, (D) maintain proper books and records and make, or have made, calculations and reports, and (E) refrain from certain uses of System Bond proceeds. Authorized officers are authorized and directed to take action, make or have made calculations and rebate payments, and make or give covenants, representations, reports and certifications as may be required or appropriate to assure the exclusion of interest on the System Bonds from gross income for federal income tax purposes.

(3) The City covenants that it will not make or cause to be made any investment or deposit described or permitted in the Master Ordinance at other than the value permitted for any such investment or deposit under Sections 1.148-0 through 1.148-11 and 1.150-1 and 1.150-2 of the Regulations or any successor provision applicable to the System Bonds.

(4) The provisions of this Section 7(t) [Section 26.20] shall not apply to the System Bonds, or any series of System Bonds, if at any time and to the extent that the City receives an opinion of Bond Counsel that the failure to comply will not adversely affect the exclusion from gross income of interest on the System Bonds for federal income tax purposes under Section 103(a) of the Code.

(5) The City may issue System Bonds that are not tax-exempt bonds under the Code.

(u) [Section 26.21] Free Services Prohibited. No free service, facilities nor commodities shall be furnished by the System. Should the City use water services or facilities supplied by the System for municipal purposes, or any combination thereof, or in any other manner use the System, or any part thereof, any use of the System by or of the services rendered thereby to the City, or any department, board or agency thereof, will be paid for from the City's general fund or other available revenues at the reasonable value of the use so made, or service so rendered, which shall in no event be less than the rates charged to a System customer with similar consumption; and all the revenue so derived from the City shall be deemed to be income derived from the operation of the System, to be used and accounted for in the same manner as any other income derived from the operation of the System.

INTERIM PROMISSORY NOTE
($17,000,000 Water Utility System Loan)

To the New Mexico Environment Department (NMED)
Clean Water State Revolving Loan Fund (CWSRF)
-also known as-
Wastewater Facility Construction Loan Program

FOR VALUE RECEIVED, the **City of Santa Fe** (Borrower) promises to pay the NMED at:

New Mexico Environment Department
Construction Programs Bureau
1190 S. St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87505

or by electronic funds transfer (EFT)

or at such other place as NMED may hereafter designate in writing, the principal amount of

Seventeen Million Dollars ($17,000,000)

or so much of that amount as has been paid by NMED to the Borrower pursuant to the terms of the Interim Loan Agreement (Agreement) or any amendment to the Agreement for CWSRF 140 A-F between NMED and the Borrower plus **0.01% project interest annually** from the date of each respective disbursement annually until paid in full. Effective on the execution of the Agreement.

The principal plus interest due, if applicable, and payable on this Note shall be payable as follows: Principal loaned, and the subsequent interest shall be due and paid according to the Final Promissory Note as described.

Repayment Rate and Schedule

Annual principal and interest payments will commence not later than one year after completion of the project and shall be paid in annual installments due on the anniversary of the first annual installment. A Final Promissory Note will be processed and executed, and the Agreement will be amended and executed as a Final Loan Agreement to reflect the final amount loaned by NMED to Borrower. The principal amount of the Final Promissory Note and Agreement, as amended, will be an amount equal to that loaned and paid to Borrower under this Note.

Source of Repayment

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as **Net Water Utility System Revenue**. 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.

Assignment

No assignment by NMED of the right to receive payments under this Note shall affect the Borrower's obligations or rights other than to make payments either by EFT or at the address designated by NMED to the Borrower in writing.

Collection and Default

At the option of NMED, any amount paid by NMED to collect amounts due under this Note or to preserve or protect NMED's rights under the Agreement shall become a part of, and bear interest at the interest rate as set forth in the previous REPAYMENT RATE AND SCHEDULE section above and shall become immediately due and payable by the Borrower to NMED upon demand by NMED. Events of default and remedies upon an event of default as described in the Agreement in COVENANTS are incorporated herein by reference.

Prepayment

The Borrower may prepay all or any part of the principal of this Note without penalty. Extra payments, 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 Agreement and Final Promissory Note until the entire principal and interest are paid in full.

Authority

This Note is authorized by 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, the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC, and the Borrower's Ordinance No. 2024-6.

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 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 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.

_____
Borrower's Authorized Signature

_____
Borrower's Printed Name

_____
Title

_____
Date

State of _

County of

Signed or attested before me on _____ by _____ ,
Date Witness for City of Sant Fe

_____
Notarial Officer Signature

[Official Stamp] Title of Office: