Clean Water State Revolving Loan Fund Interim Loan Agreement

City of Santa Fe

$20,000,000 Environmental Services Division 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 Environmental Services Division 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**

$20,000,000 Environmental Services Division 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 the Environmental Services Funds (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. Projects under this agreement include:

- Solid Waste Collections Division Equipment and Administration Building
- Environmental Services Division Maintenance and Administrative Building.

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: $20,000,000_____(Environmental Services Division 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 thedate 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 Environmental Services Division owned and operated by the City of Santa Fe, as more specifically defined in the Covenants and Provisions Applicable to Net Solid Waste Collection 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 thewebsite at

https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/.

3. If these Funds are to be used for engineering design or for construction, the Borrower shall submit all plans, specifications, and any addenda for this project to NMED for review and approval before the project is advertised for construction bids. Plans, specifications, and addenda shall be prepared by a registered New Mexico Professional Engineer.

4. Following NMED approval of the proposed award, the Borrower shall submit to NMED for review the notice of the award and the minutes of meeting in which award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed. The selected contractor will be required to post a performance and payment bond in accordance with requirements of NMSA 1978, Section 13-4-18.

5. The selected contractor will be required to submit a construction schedule to the Borrower at the pre-construction conference.

6. The Borrower will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. NMED's written decision approving or disapproving the modification shall be rendered promptly to the Borrower. If immediate action is needed, a verbal notification of NMED's decision will be made, followed by written notification.

7. The Borrower shall provide a full-time construction inspector during construction of the project. The Borrower shall submit the inspector's résumé and inspection reports to NMED for review and approval.

8. NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans.

9. NMED may require proof of deposit and/or proof of payments to contractors and consultants, including the disbursement of funds other than those provided by the Agreement.

10. The Borrower (or the system owner) shall employ properly certified utility operators and shall comply with all provisions of the New Mexico Utility Operators Certification Act, NMSA 1978, Sections 61- 33-1 et seq.

11. With the exception of easements (See Section V.H), when real property is acquired by the Borrower, either through purchase or donation as a part of this project and within the project period, the Borrower will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser who was selected through applicable procurement procedures. These documents must be reviewed and approved by NMED prior to the acquisition of any real property. After real property acquisition, the Borrower will make available to NMED all documents of title pertaining to the acquired property and all easements or rights- of-way necessary for the completion of work under this agreement.

12. If the Funds are to be used for construction of wastewater collection lines or water distribution lines, the existing population served by the project shall be connected to the collection system or distribution system within a reasonable time after project completion. This will be accomplished by adoption and annual review of an Ordinance/Resolution and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.

13. Notwithstanding the other provisions of this Agreement the Borrower shall comply with the Prompt Payment Act, NMSA 1978, Sections 57-28-1 et seq. The Project will not be considered complete until the work as defined in this Agreement has been fully performed, and finally and unconditionally accepted by the Borrower and NMED.

14. If the Funds are to be used for construction, final disbursement will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:

    a) Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals.

    b) A final reimbursement request including the final certified construction pay request prepared by the Borrower's project engineer and approved by the Borrower.

    c) A certificate of substantial completion including punch list items.

    d) A letter certifying project acceptance by the Borrower and the Borrower's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Borrower, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Borrower and contractors will be submitted to NMED for final review and approval.

    e) Certification letter by the Borrower that the Labor Standards Contract Provisions have been met.

    f) Record drawings prepared by the Borrower's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings.

    g) Complete and legally effective releases or waivers (satisfactory to the Borrower) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished thereunder. In lieu thereof and as approved by the Borrower, contractor(s) may furnish receipts or releases in full an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Borrower or its property might in any way be responsible,

    have been paid or otherwise satisfied.

h) A written consent of the surety, if any, to final payment; and

i) Borrower's ledger sheets including all payments made by the Borrower may be requested with the final disbursement request and before the final disbursement request can be processed by NMED.

j) Verification to NMED of FSP and written certification that a FSP is in place.

15. 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 theBorrower'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 arenecessary, 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 NMSA 1978.

Q. The Borrower understands and agrees that the Project is subject to Federal and State regulations and acceptance of any disbursement pursuant to the Agreement constitutes an agreement by the Borrower that the amounts have been properly accounted for and expended in accordance with applicable Federal and State regulations.

R. The Borrower agrees to maintain separate Project accounts in accordance with Generally Accepted Accounting 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 Environmental Services Division 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/Resolution, as amended, and supplemented.

C. The Borrower shall not obligate the Pledged Funds for this Agreement except as set forth in the Ordinance/Resolution 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/Resolution) 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.

F. The Borrower shall not provide any free services of the Environmental Services Division System. The Borrower shall, to the full extent permitted by law, collect payment for Environmental Services Division 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 Environmental Services Division Services 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 Environmental Services Division System. Funds sufficient to provide for repayment, on scheduled due dates of the loan and proper operation and maintenance of the Environmental Services Division 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/Resolution 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/Resolution, 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/Resolution, 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 singed 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 ENVIRONMENTAL SERVICES DIVISION OBLIGATIONS ('SYSTEM OBLIGATIONS")

Bracketed section references refer to the corresponding sections in Ordinance No. 2017-5, adopted by the Governing Body of the City of Santa Fe on March 29, 2017 ("Ordinance No. 2017-5").

Section 1. Definitions.

"Agreement" means this Clean Water State Revolving Loan Fund Interim Loan Agreement made by NMED (as defined below) to the City of Santa Fe, in the principal amount of $20,000,000, as a portion of the Funding Package consisting of $151,000,0000 total Loan at 0.01%, secured by a subordinate lien on the Net Revenues of the City of Santa Fe Environmental Services Division , and shall include the Final Loan Agreement at the time that the Final Debt Service Schedule has been provided by NMED.

"Agreement Debt Service Account" means the account of the Debt Service Fund established and maintained by the City in Section 2 hereof for the deposit of Pledged Revenues in amounts sufficient to make timely payments of the debt service requirements of this Agreement.

"Aggregate Annual Debt Service Requirement" means the total principal, interest, and premium payments, if any, due and payable pursuant to the 2017 NMFA Loan Agreement and on all Superior Obligations and Parity Subordinate Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

"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.

"Governing Body" or "Council" means the City Council of the City, its governing body.

"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.

"Historic Test Period" means any period of 12 consecutive months out of the 24 calendar months next preceding the delivery of additional Parity Bonds.

"Income Fund" or "Environmental Services Division Enterprise Fund" means the "City of Santa Fe Environmental Services Division Gross Income Fund" which is authorized to be continued in Section 2 hereof.

"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.

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

"Net 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 Net Revenues, issued or incurred for any purpose permitted by the Act or the Exchange Act, as amended from time to time.

"Operation and Maintenance Fund" means the "City of Santa Fe Environmental Services Division Operation and Maintenance Fund" authorized hereby.

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

"Outstanding Superior Bonds" means the 2017 NMFA Loan Agreement and such other System Obligations as may be issued from time to time with a lien on Net Revenues on parity with the lien thereon of the 2017 NMFA Loan Agreement.

"Outstanding Parity Subordinate Obligations" means System Obligations with a lien on Net Revenues subordinate to the lien thereon of Superior Obligations, including, without limitation, this Agreement.

"Pledged Revenues" means Net Revenues of the System.

"Rate Stabilization Fund" means the Rate Stabilization Fund for System Bonds established in Section 2 herein.

"Rebate Fund" means a Rebate Fund that may be established by the City in connection with for System Bonds the interest on which is intended to be excludable from gross income for federal tax purposes.

"Replacement Fund" means the Replacement Fund established in Section 2 hereof.

"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 Superior Bonds on the Net Revenues and on parity wit the lien of Subordinate Bonds.

"System" means the municipally owned public utility designated as the City's Environmental Service Division, 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 Environmental Services Division, 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 Environmental Services Division, whether situated within or without the limits of the City.

"System Bonds" or "System Obligations" means the 2017 NMFA Loan Agreement, additional Parity Bonds, Subordinated Bonds, and other similar obligations payable solely or primarily from Net Revenues which may from time to time be issued by the City.

"2017 NMFA Loan Agreement" means Loan Agreement 3664-PP by and between the New Mexico Finance Authority, as lender, and the City, as borrower, dated May 5, 2017 in an original principal amount of $1,300,582."

Section 2. Establishment or Continuation of Funds and Accounts. The City hereby establishes or continues the following funds:

(a) The "City of Santa Fe Environmental Services Division Acquisition Fund" is hereby established and shall be maintained by the City for deposit or crediting of proceeds of System Obligations and applied to costs of improvements to the System.

(b) The "City of Santa Fe Environmental Services Division Debt Service Fund" is hereby established and shall be 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 Outstanding Parity Obligations, and Outstanding Subordinate Obligations, if any.

(c) The "City of Santa Fe Environmental Services Division Income Fund" is hereby continued and shall be maintained by the City for deposit of the Gross Revenues of the System.

(d) The "City of Santa Fe Environmental Services Division Operation and Maintenance Fund" is hereby established and shall be maintained by the City for the payment of Operation and Maintenance Expenses.

(e) The "City of Santa Fe Environmental Services Division Replacement Fund" is hereby established and shall be maintained by the City for the purposes set forth in Section 5 hereof.

(f) The "City of Santa Fe Environmental Services Division Rate Stabilization Fund" is hereby established and shall be maintained by the City and used as provided in Section 6 hereof.

Section 3. Use of Gross Revenues. 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:

(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.

(b) Debt Service Requirements of Superior Obligations. Net Revenues shall be transferred to the Debt Service Account established for each series of Outstanding Superior Bonds in approximately equal amounts each month to provide an amount sufficient to pay Debt Service Requirements on such series of Superior Bonds as they become due.

(c) Subsequent to the payments required by the outstanding Superior Obligations, any balance remaining in the Income Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of this Agreement and all other Outstanding Parity Subordinate Obligations or other obligations, if any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of Superior Obligations hereafter authorized, issued and payable from the Net Revenues, as the same become due. So long as this Agreement remains outstanding, either as to principal or interest or both, the following payments shall be made monthly from Net Revenues on a parity with the payments required by the outstanding Parity Subordinate Obligations:

(i) Agreement Debt Service Account Payments.

The following amounts shall be withdrawn from the Income Fund (and on parity with other outstanding Parity Subordinate Obligations), and shall be concurrently credited to the Agreement Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa) Monthly, commencing on the first day of the month immediately succeeding the delivery of the final debt service schedule for the Agreement, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Agreement, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Agreement.

(bb) Monthly, commencing on the first day of the month immediately succeeding the delivery of the final debt service schedule for the Agreement, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the Agreement, and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Agreement.

(ii) Concurrently with Agreement Debt Service Account Payments described in subparagraph (1) above, Net Revenues shall be credited to the Debt Service Funds for Outstanding Parity Subordinate Obligations (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Parity Subordinate Obligations, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Parity Subordinated Obligations, and monthly thereafter, commencing on each Interest Payment

Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Parity Subordinate Obligations.

(bb) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Parity Subordinate Obligations, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the Parity Subordinate Obligations, and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Parity Subordinate Obligations.

If, prior to any interest payment date or principal payment date, there has been accumulated in the Debt Service Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraphs (b), (c)(i) and (c)(ii) of this Section (whichever is applicable), may be appropriately reduced and the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date (whichever is applicable).

(d) Reserve Account. Net Revenues shall be transferred to the Reserve Account for each series of Superior 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 Superior Bonds.

(e) Subordinated Bonds. Subsequent to the payments required by Outstanding Superior 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, including this Agreement, and used to pay Debt Service Requirements on Subordinated Bonds and to fund any Reserve Requirement for Subordinated Bonds.

(f) Replacement Fund. While any Parity System Obligations 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 defeasance of, Outstanding Obligations payable from Net Revenues.

(g) 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 for which Gross Revenues may be used.

(h) 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.

(i) Accumulation of Revenues. Gross Revenues need not be retained for any use or in any fund or account described in this Section 18.01 in excess of the Gross Revenues required for any current use or deposit. For the purposes of this subparagraph, 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.

Section 4. Termination Upon Deposits to Maturity. No payments need be made into the Debt Service Account or Reserve Account for a series of System 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 System Bonds, both accrued and not accrued, and all proceeds paid under any Reserve Account Insurance Policy and Bond Insurance Policy for that series of System 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 System 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 System Bonds) shall be deposited in the Replacement Fund.

Section 5. 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 the ordinance authorizing such series, 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.

Section 6. 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 9 hereof.

Section 7. 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).

Section 8. Additional Parity Subordinate Obligations.

No provision of this Agreement shall be construed in such a manner as to prevent the issuance by the City of additional Parity Subordinate Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this

Agreement; provided, however, that before any such additional Parity Subordinate Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Subordinate Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 9 hereof), it must be determined that:

(a) The City is then current in all of the accumulations required to be made into the Agreement Debt Service Account, the debt service account established in connection with the 2017 NMFA Loan, and the debt service accounts established in connection with any other Outstanding Superior Obligations and Parity Subordinate Obligations.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinance or this Agreement.

(c) The Pledged Revenues received by or credited to the City for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred twenty percent (120%) of the combined maximum Aggregate Annual Debt Service Requirements coming due in any subsequent Fiscal Year on the then Outstanding Parity Subordinate Obligations and the Parity Subordinate Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the City's Finance Director or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the Parity Subordinate Obligations proposed to be issued.

(e) No provision of this Agreement shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged

Revenues constituting a lien upon such Pledged Revenues (1) on parity with the lien thereon of Outstanding Superior Obligations, or (2) subordinate and junior to the lien of this Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Agreement as permitted by Section 5.6 hereof.

Section 10. Refunding Obligations. The provisions of Section 9 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Agreement, or any part thereof, is outstanding, the City shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Agreement or bonds to be refunded may not be compelled to surrender this Agreement or their bonds, unless this Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the City's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 9 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on parity with this Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 9 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Agreement or any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 9 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the City may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Agreement).

Section 11. Superior Obligations Prohibited. As long as Parity Superior 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 Superior Bonds on Net Revenues.

Section 12. Protective Covenants. The City hereby covenants and agrees with each and every registered owner of Obligations that: Rate Covenant.

(a) Use Charges. The City has established and will continue to charge reasonable rates for services rendered by the City for use of the System taking into account the cost and value of the System, Operation and Maintenance Expenses, proper allowances for depreciation, and the amounts necessary to make debt services payments from Net Revenues of the System. There shall be charged against users, rates and amounts which shall be increased from time to time, if necessary, and which shall produce Gross Revenues sufficient to pay the annual Operation and Maintenance Expenses and one hundred thirty percent (130%) of the Aggregate Annual Debt Service Requirement payable during the then current Fiscal Year.

(b) Efficient Operation. The City will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the Wastewater 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.

(c) Records. So long as there are Outstanding System Obligations, 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. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of customers for the Environmental Services Division ; (ii) the revenues separately received from charges by

classes of customers, including but not necessarily limited to classification by Environmental Services Division ; and (iii) a detailed statement of the expenses of the System.

(d) Right to Inspect. The Finance Authority and the Trustee shall have the right to inspect at all reasonable times all records, accounts and data relating to the System and to inspect the System and all properties comprising the System.

(e) Audits. The City agrees that, except where the State Auditor of the State performs the audit or where the due date for the audit has been postponed as may otherwise be required by the State Auditor or any other State office or agency with appropriate authority, the City will, within one hundred eighty (180) days following the close of each Fiscal Year, 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. Each audit will be available for inspection by the Finance Authority. The City will provide the holders of Outstanding Obligations with a copy of each audit promptly upon request. All expenses incurred in the making of the audits and reports required by this Section shall be regarded and paid as an Operation and Maintenance Expense.

(f) Billing Procedure. Bills for solid waste collection services 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. The rates and charges due shall be collected in a lawful manner. Solid waste services may be billed jointly with other utilities, provided that each such joint bill shall show separately the solid waste charges.

(g) 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 Gross Revenues except as provided in this Agreement, or it will make adequate provisions to satisfy and discharge within sixty (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 Gross 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, except as otherwise provided in the ordinances or agreements of the City authorizing Outstanding System Obligations other than this Agreement.

(f) Insurance. 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 in such amounts and against such risks as are, in the judgment of the Governing Body, 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 Environmental Services Division s. "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 Outstanding Obligations or be treated as Gross Revenues.

(g) Alienating System. The Ctu will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the System, or any part thereof, including any and all extensions and additions that may be made thereto, until all Outstanding System Obligations shall have been paid in full, except that the City may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of Outstanding System Obligations, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues of the System as provided herein.

(h) Competent Management. The City shall employ or contract for experienced and competent personnel to manage the System.

(i) Performing Duties. The City will faithfully and punctually perform all duties with respect to the System required by the Constitution and the laws of the State and the ordinances and resolutions of the City, relating to the System, this Agreement, and Outstanding System Obligations, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as hereinabove provided.

(j) Other Liens. Other than as disclosed to holders of Outstanding System Obligations, there are no liens or encumbrances of any nature, whatsoever, on or against the System or the revenues derived or to be derived from the operation of the same.

INTERIM PROMISSORY NOTE
($20,000,000 Environmental Services Division 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

Twenty Million Dollars ($20,000,000)

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 Environmental Services Division 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: