

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ENTER INTO A DRINKING
WATER STATE REVOLVING LOAN FUND
LOAN AND SUBSIDY AGREEMENT**

Case No. 25-00___-UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

APPLICATION

EPCOR Water New Mexico Inc. (“EWNM” or “Company”) hereby petitions the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) for authorization to enter into a Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement (the “Loan and Subsidy Agreement”) for the purposes specified in this Application.

EWNM respectfully requests the Commission to waive hearing in this matter or, in the alternative, expedite any required hearings so that approvals and authorizations requested herein may be decided within thirty days of filing this Application, as provided under NMSA 1978, Sections 62-6-7 and 62-6-9, and 17.1.2.8(C)(4) NMAC.

In support of this Application, EWNM states:

1. EWNM's full legal name, mailing address, and telephone number are:

EPCOR Water New Mexico Inc.
Attn: Daniel S. Bailet, Vice President
1515 Lomas Blvd. NW
Albuquerque, NM 87104
(505) 633-8060

2. The name, mailing address, telephone number, and email addresses of EWNM’s attorneys are:

Spencer Fane, LLP.
Jeffrey J. Wechsler
Kari E. Olson
Kaleb Brooks
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
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3. EWNM is a New Mexico waterworks corporation engaged in the business of distributing and selling water to the public in Clovis, New Mexico and nearby areas and in Edgewood, New Mexico and nearby areas and is a public utility subject to regulation by the Commission under the New Mexico Public Utility Act, NMSA 1978, Section 62-3-1 et seq.

4. EWNM was formerly known as New Mexico-American Water Company, Inc. (“NMAW”). The Company’s name was changed to EPCOR Water New Mexico Inc. following the acquisition of the stock of NMAW by EUSA in 2012 as authorized by the Final Order issued on December 22, 2011 in case No. 11-00085-UT.

5. As a public utility EWNM is required to furnish adequate, efficient, and reasonable service and, in order to do so, must, from time to time, raise capital from outside sources through the issuance and sale of its securities.

6. With requisite authority from the Commission, EWNM will enter into the Loan and Subsidy Agreement with the New Mexico Finance Authority (“NMFA”) under the Drinking Water State Revolving Loan Fund Act and the Safe Drinking Water Act of 1974. The Loan and Subsidy Agreement will be in substantially the form of **Exhibit A** to this Application.

7. NMFA will award EWNM an amount not to exceed the maximum principal

amount of three million dollars (\$3,000,000.00). NMFA will disburse the proceeds of the loan (or any portion thereof, as applicable) to EWNM upon NMFA's approval of payment requisitions that EWNM submits to NMFA for costs that EWNM incurs in work on the "Project," as defined in the Loan and Subsidy Agreement.

8. If EWNM completes the Project within the period specified in the Loan and Subsidy Agreement, then NMFA is bound to forgive the entire principal amount of the loan and EWNM is not obligated to repay the disbursed proceeds.

9. If EWNM fails to complete the Project within the specified period or otherwise defaults (without subsequent cure) on the Loan and Subsidy Agreement, then NMFA will determine terms and conditions of repayment of the loan. In no event shall the length of repayment be established for a term of less than ten (10) years and/or the interest rate charged exceed the lesser of: (a) ten (10) percent per annum; or (b) a rate per annum that is equal to two (2) percent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H.15 or any superseding publication.

10. The issuance of the Loan and Subsidy Agreement from NMFA does not constitute an affiliate transaction.

11. EWNM intends to use the proceeds from the Loan and Subsidy Agreement to finance the costs of a Preliminary Engineering Report, evaluate, identify, and select a treatment process, conduct bench scale pilot testing of the treatment technologies, and develop a pilot modular wellhead treatment system complete with standard details and drawings to ensure that certain groundwater wells that produce approximately twenty-five percent (25%) of the groundwater supply for the City of Clovis maintain compliance with the new U.S. Environmental Protection Agency ("EPA") maximum contaminant level for

Perfluorooctanoic acid (“PFOA”) and perfluoroalkyl substances (“PFAS”). Once developed, the pilot modular wellhead treatment system is expected to be transferable to and capable of implementation for other wellhead treatment needs both within EWNM and other public water systems obtaining water from wells where PFOA/PFAS are contaminants of concern, which may result in significant design savings for other utilities and public water systems.

12. The aggregate amount of EWNM's aggregate securities that are outstanding or anticipated to be outstanding after issuance of the Loan and Subsidy Agreement are less than the fair value of EWNM's utility property and business.

13. The proposed Loan and Subsidy Agreement is for lawful purposes consistent with the requirements of the Public Utility Act, is necessary and appropriate for the continued provision of utility service, and is consistent with the public interest.

14. Pursuant to 17.1.2.8(B) NMAC, EWNM’s Application is supported by the Direct Testimony and Exhibits of EWNM witness, Heather Krupa.

15. EWNM's proposed form of Notice is attached to this Application as **Exhibit B**.

16. As required by 17.1.2.8(B)(4)(e) NMAC, EWNM is serving a copy of this Application with the supporting testimony on the Office of the Attorney General.

17. EWNM requests that the Commission approve and authorize the Loan and Subsidy Agreement as soon as possible and, in any case, within the thirty-day statutory time frame.

WHEREFORE, EWNM respectfully requests that the Commission issue a Final Order at an open meeting on or before February 23, 2025, granting EWNM all

authorizations, consents, and approvals required under the New Mexico Public Utility Act for the Loan and Subsidy Agreement.

Respectfully submitted,

SPENCER FANE, LLP

/s/ Kari E. Olson

Jeffrey J. Wechsler

Kari E. Olson

Kaleb Brooks

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**ATTORNEYS FOR EPCOR WATER
NEW MEXICO INC.**

\$3,000,000 Maximum Principal Amount

Maximum Forgiven Principal Amount \$3,000,000

**DRINKING WATER STATE REVOLVING LOAN FUND
LOAN AND SUBSIDY AGREEMENT**

dated

[]

by and between the

NEW MEXICO FINANCE AUTHORITY

and

**EPCOR WATER NEW MEXICO INC.
CURRY COUNTY, NEW MEXICO**

**DRINKING WATER STATE REVOLVING LOAN FUND
LOAN AND SUBSIDY AGREEMENT**

This LOAN AND SUBSIDY AGREEMENT (the “Agreement”), dated [], is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the “NMFA”), and **EPCOR WATER NEW MEXICO INC.**, Curry County, New Mexico (the “Recipient”), a domestic corporation duly organized and existing under the laws of the State of New Mexico (the “State”) for the benefit of the Recipient and its customers in the City of Clovis, New Mexico (the “City”) a public entity served by the Recipient.

WITNESSETH:

Capitalized terms used in the following recitals of this Agreement and not defined in the first Paragraph above or in these recitals shall have the same meaning as defined in Article I of this Agreement, unless the context requires otherwise.

WHEREAS, the NMFA is authorized, pursuant to the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended (the “DWSRLF Act”) to implement a program to permit qualified local authorities, such as the Recipient, to enter into agreements with the NMFA to provide financial assistance in the acquisition, design, construction, improvement, expansion, repair and rehabilitation of drinking water supply facilities as authorized by the Safe Drinking Water Act of 1974 (“SDWA”); and

WHEREAS, the DWSRLF Act was adopted pursuant to the SDWA which authorizes the United States Environmental Protection Agency (“EPA”) to set national standards for drinking water and was originally passed by Congress in 1974 and amended in 1986, 1996, 2018 and 2021 with the passage of the Bipartisan Infrastructure Law signed into law on November 15, 2021 (“BIL”); and

WHEREAS, the BIL, also known as the Infrastructure Investment and Jobs Act was implemented with the purpose, among others, of expanding access to clean drinking water throughout the United States of America; and

WHEREAS, the BIL funds the Emerging Contaminants (“EC”) program with the purpose of addressing and removing emerging contaminants in drinking water, with a focus on perfluoroalkyl and polyfluoroalkyl substances, from water systems under the SDWA which includes financing studies, planning and design of treatment and construction of treatment facilities; and

WHEREAS, pursuant to the BIL, EC funding will be provided to eligible recipients as loans with one hundred percent (100%) principal forgiveness; and

WHEREAS, the BIL waives the requirement under section 1452(e) of the SDWA to provide a state match for the emerging contaminants capitalization grants and therefore no state funds are applied to the subsidized amount and the anti-donation clause under Article IX, Section 14 of the New Mexico Constitution does not apply to this Agreement; and

WHEREAS, the Recipient enters into this Agreement pursuant to the EC program authorized by the BIL; and

WHEREAS, the Board of the Recipient has determined that it is in the best interests of the Recipient and the public it serves, including the public it serves under the Water Service Franchise, that the Recipient enter into this Agreement with the NMFA and accept a loan and subsidy from the NMFA to finance the costs of the Project, as more fully described on the Term Sheet attached hereto as Exhibit “A”; and

WHEREAS, the funds made available under this Agreement pursuant to the DWSRLF Act and the SDWA, will be forgiven if the requirements of the Agreement are met, and, if forgiven, will not be required to be repaid; and

WHEREAS, as a condition of the funds made available herein to be forgiven, the Recipient assures and certifies that it is in compliance with and will comply in the course of this Agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, which hereby are incorporated into this Agreement by reference, and such other statutory provisions as are specifically set forth herein; and

WHEREAS, the Project appears on the Drinking Water Fundable Priority List; and

WHEREAS, the Project has been planned and authorized in conformity with the Intended Use Plan; and

WHEREAS, the NMFA, the New Mexico Environment Department (the “Department”), or other appropriate agency or entity on behalf of the NMFA, pursuant to an agreement between such agency or entity and the NMFA) shall have determined that the Recipient’s Project plans and specifications, if required for the project, comply with the provisions of 42 U.S.C. Section 300j-12 and the requirements of the laws and regulations of the State governing the construction and operation of drinking water systems prior to disbursement of any proceeds of the Loan for construction; and

WHEREAS, as provided by the BIL, the funds made available under this Agreement pursuant to the DWSRLF Act and the SDWA are federal funds categorized as CFDA 66.468; and

WHEREAS, pursuant to information provided by the Recipient and environmental review by applicable State and federal agencies, and in accordance with 40 C.F.R. Sections 6.204, 6.300(c)(1), and 6.301(f), and pursuant to the environmental review process of the State, the NMFA has determined that the Project meets the requirements for a Categorical Exclusion as defined in the State Environmental Review Process (SERP) for the Drinking Water State Revolving Loan Fund; and

WHEREAS, pursuant to 42 U.S.C. 300j-12(a)(3), the New Mexico Environment Department Drinking Water Bureau has determined that the Recipient has sufficient technical, managerial and financial capability to operate the Project for its useful life and ensure compliance with the requirements of the SDWA, as amended by the BIL.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the NMFA and the Recipient agree:

ARTICLE I

DEFINITIONS

Capitalized terms defined in this Article I, for all purposes, shall have the meaning specified in this Article I wherever used in this Agreement, including the foregoing recitals, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined). Capitalized terms defined in the foregoing recitals, if not defined in this Article I, shall have the same meaning as therein stated when used in this Agreement, unless the context clearly requires otherwise.

“Agreement” means this loan and subsidy agreement and any amendments or supplements hereto, including the exhibits attached to this loan and subsidy agreement.

“Agreement Term” means the term of this Agreement as provided under Article III of this Agreement.

“Aggregate Disbursements” means, at any time after the Closing Date, the sum of all Disbursements.

“Approved Requisition” means a requisition in the form of Exhibit “B” to this Agreement, together with the required supporting documentation set out in Exhibit “B” submitted to and approved by the NMFA pursuant to Section 4.2 of this Agreement.

“Authorized Officers” means, with respect to the Recipient, the President, Vice President and Vice President of Operations thereof; and with respect to the NMFA, any one or more of the Chairperson, Vice-Chairperson, Secretary and Chief Executive Officer, and any other officer or employee of the NMFA designated in writing by an Authorized Officer of the NMFA.

“Board” means the duly organized Board of Directors of the Recipient, or any successor governing body of the Recipient.

“City” means the City of Clovis, New Mexico.

“Closing Date” means the date of execution and delivery of this Agreement as shown on the Term Sheet.

“Department” means the New Mexico Environment Department.

“Disbursement” means an amount caused to be paid by the NMFA for an Approved Requisition for costs of the Project, calculated on the basis of the amount of such Approved Requisition.

“Drinking Water Fundable Priority List” means the list of drinking water projects compiled by the Department pursuant to the Memorandum of Understanding and the Intended Use Plan.

“DWSRLF Act” means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, the Business Corporation Act, NMSA 1978, §§53-11-1 through 53-18-12, all as amended, and enactments of the Board relating to this Agreement including the Unanimous Written Consent.

“Drinking Water State Revolving Loan Fund” means the drinking water state revolving loan fund established by the DWSRLF Act.

“Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.

“Event of Default” means one or more events of default as defined in Section 8.1 of this Agreement.

“Final Requisition” means the final requisition of moneys to be submitted by the Recipient, which shall be submitted by the Recipient on or before the date provided for in Section 4.1(b) of this Agreement.

“NMFA Act” means NMSA 1978, §§ 6-21-1 through 6-21-31, as amended.

“Fiscal Year” means a calendar year commencing on January 1 and ending on December 31 of the same year.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Recipient consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the NMFA establishing accounting principles applicable to the Recipient.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Agreement and not solely to the particular section or paragraph of this Agreement in which such word is used.

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

“Intended Use Plan” means the current plan prepared by the NMFA and the Department and approved by the Environmental Protection Agency pursuant to 42 U.S.C. Section 300j-12(b)

and 40 CFR §35.3555 which establish criteria for extending drinking water improvements financial assistance to qualifying public drinking water utility systems.

“Interim Period” means the period no greater than twenty-seven (27) months, or a longer period as may be approved by the NMFA as provided in Section 4.1(b) of this Agreement, beginning on the Closing Date, during which the NMFA will disburse moneys to the Recipient to pay costs of the Project, unless extended pursuant to Section 4.1(b) of this Agreement.

“Loan” means the funds to be loaned to the Recipient by the NMFA pursuant to this Agreement, up to the Maximum Principal Amount, which funds will be forgiven if the requirements of this Agreement are met, and if forgiven, will not be required to be repaid.

“Maximum Forgiven Principal Amount” means the maximum amount of loan subsidy available in the form of principal forgiveness up to the Maximum Principal Amount. The Maximum Forgiven Principal Amount is three million dollars (\$3,000,000).

“Maximum Principal Amount” means three million dollars (\$3,000,000).

“Memorandum of Understanding” means the current memorandum of understanding by and between the NMFA and the Department pursuant to the DWSRLF Act describing and allocating duties and responsibilities in connection with the Drinking Water State Revolving Loan Fund program.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Operating Agreement” means the operating agreement entered into between the NMFA and the Environmental Protection Agency, Region 6, for the Drinking Water State Revolving Loan Fund program.

“Project” means the project(s) described on the Term Sheet.

“Safe Drinking Water Act” or “SDWA” means 42 U.S.C. §§ 300f et seq.

“Service Area” means the area served by the System, whether situated within or without the limits of the City.

“State Environmental Review Process” or “SERP” means the environmental review process adopted by the NMFA, as required by and approved by the Environmental Protection Agency, pursuant to the Operating Agreement.

“System” means the works, systems, wells, plants, pipes, underground lines, supply sources, storage facilities and all related facilities for the appropriation, drilling, treatment, distribution and sale of water in the City pursuant to the Water Service Franchise under which the Recipient furnishes the inhabitants, occupants and businesses of the City of Clovis with water service in sufficient quantities to meet their requirements, and of which the Project, when

completed, will form part of. The System consists of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Recipient through purchase, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the system, or easements granted to the Recipient under the Water Service Franchise, and used in connection therewith or relating thereto, and any other related activity or enterprise of the Recipient designated by the Water Service Franchise as part of the system, whether situated within or without the limits of the City.

“Term Sheet” means Exhibit “A” attached to this Agreement.

“Unanimous Written Consent” means the EPCOR Water New Mexico, Inc. Unanimous Written Consent of the Directors in Lieu of a Special Meeting Authorizing and Approving the Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement adopted by the Board of the Recipient on October 25, 2024, approving this Agreement, as supplemented from time to time.

“Unrequisitioned Principal Amount” means the amount, if any, by which the Maximum Principal Amount exceeds the Aggregate Disbursements at the time the Recipient submits the certificate of completion required pursuant to Section 5.3 of this Agreement.

“Water Service Franchise” means the Water Service Franchise, Ordinance No. 2138-2020, adopted by the City on November 19, 2020 with an effective date of January 1, 2021.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Recipient. The Recipient represents, covenants and warrants as follows (unless the context provides otherwise, all such representations, covenants, and warranties are made as of the execution of this Agreement on []):

(a) Binding Nature of Covenants; Enforceability. All representations, covenants, stipulations, obligations and agreements of the Recipient contained in this Agreement shall be deemed to be the representations, covenants, stipulations, obligations and agreements of the Recipient to the full extent authorized or permitted by law, and such representations, covenants, stipulations, obligations and agreements shall be binding upon the Recipient and its successors and enforceable in accordance with their terms, and upon any board or body to which any powers or duties affecting such representations, covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Recipient by the provisions of this Agreement and the Unanimous Written Consent shall be exercised or performed by the Recipient or by such members, officers, or officials of the Recipient as may be required by law to exercise such powers and to perform such duties.

(b) Authorization of the Agreement and Readiness to Proceed. The Recipient is a domestic corporation and is duly organized and existing under the statutes and laws of the

State, including specifically the Business Corporation Act, NMSA 1978, §§ 53-11-1 through 53-18-12, as amended. The Recipient is a local authority as defined in the DWSRLF Act. The Recipient is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Recipient has duly authorized and approved the execution and delivery of this Agreement and the other documents related to the transaction. The Recipient has met all readiness to proceed requirements of the NMFA and has met and will continue to meet all requirements of law applicable to this Agreement.

(c) Use of Agreement Proceeds. The Recipient shall proceed without delay in applying the Maximum Principal Amount, pursuant to Section 5.1 of this Agreement to the completion of the Project and to no other purpose, as follows:

(i) The Recipient shall, within two (2) years after the Closing Date, have completed the Project, and shall within twenty-seven (27) months after the Closing Date have requisitioned the Maximum Principal Amount, or such portion thereof as shall be necessary to complete the Project, unless an extension is agreed to pursuant to Section 4.1(b) of this Agreement.

(d) Conduction and Completion of Project; Compliance with Laws. The Project will be conducted and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the conduction and completion of the Project.

(e) Necessity of Project. The conduction and completion of the Project under the terms and conditions provided for in this Agreement is necessary, convenient and in furtherance of the EC program and is in the best interests of the Recipient and the public purpose the Recipient serves.

(f) Legal, Valid and Binding Obligation. The Recipient has taken all required action necessary to authorize the execution and delivery of this Agreement. This Agreement constitutes a legal, valid and binding special obligation of the Recipient enforceable in accordance with its terms.

(g) Agreement Term. The Agreement Term does not exceed the anticipated useful life of the Project.

(h) Use of Project. During the Agreement Term, the Project will at all times be used for the purpose of benefiting the Recipient and the public purpose the Recipient serves.

(i) No Breach or Default Caused by the Agreement. Neither the execution and delivery of this Agreement and the other documents related to this transaction, nor the fulfillment of or compliance with the terms and conditions in this Agreement and the other documents related to this transaction, nor the consummation of the transactions contemplated herein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Recipient is a party or by which the Recipient is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the

Recipient or its properties are subject, or constitutes a default under any of the foregoing.

(j) No Litigation. To the knowledge of the Recipient after due investigation, no litigation or proceeding is pending or threatened against the Recipient, or any other person affecting the right of the Recipient to execute or deliver this Agreement and the other documents related to this transaction or to comply with its obligations under this Agreement and documents related to the transaction. Neither the execution and delivery of this Agreement and the other documents related to the transaction by the Recipient nor compliance by the Recipient with the obligations under this Agreement and the other documents related to the transaction, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(k) No Event of Default. No event has occurred, and no condition exists which, upon the execution and delivery of this Agreement and the other documents related to the transaction, would constitute an Event of Default on the part of the Recipient under this Agreement and the other documents related to the transaction.

(l) Recipient's Existence. The Recipient will maintain its legal identity and existence until the lapse of the Agreement Term, unless another political subdivision, State agency or other entity by operation of law succeeds to the liabilities, rights and duties of the Recipient under this Agreement without adversely affecting to any substantial degree the privileges and rights of the NMFA.

(m) Continuing Disclosure. The Recipient covenants that it shall provide continuing disclosure to the NMFA, as the NMFA may require, that shall include, but not be limited to: Project documents, annual audits, operational data required to update information in any disclosure documents used in connection with assignment or securitizing this Agreement and notification of any event deemed material by the NMFA. For the purposes of this Agreement, a material event shall include, without limitation, any violation or alleged violation by a state or federal agency of appropriate jurisdiction, of federal law, regulation, or policy which governs or applies to participants in the Drinking Water State Revolving Loan Fund program.

(n) Single Audit Act Requirement. The Recipient acknowledges that the funding provided pursuant to this Agreement is derived from federal grants to the Drinking Water State Revolving Loan Fund program pursuant to the Operating Agreement. During the Agreement Term, the Recipient shall annually, so long as the Recipient expends more or equal to the threshold amount set forth in 2 C.F.R. Section 200.501 during any one Fiscal Year, cause an audit of the books and accounts of its operations in their entirety, in accordance with § 200.514, except when it elects to have a program-specific audit conducted in accordance with 2 C.F.R. 200.501(c) to be completed by an Independent Accountant in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. Section 7501 et seq.), and applicable regulations thereunder. The Recipient shall notify the NMFA and the Drinking Water State Revolving Loan Fund program when it conducts an audit in accordance with 2 C.F.R. Section 200.501. The Recipient shall provide a copy to the NMFA and the Drinking Water State Revolving Loan Fund program of such audit within 30 days of completion. The Recipient will inform the Drinking Water State Revolving Loan Fund program and the NMFA of any findings and recommendations pertaining to the Drinking Water

State Revolving Loan Fund contained in the audit. The Recipient will also submit the audit to the Federal Audit Clearinghouse within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months of the end of the audit period pursuant to 2 CFR § 200.512. The Recipient will inform the Drinking Water State Revolving Loan Fund program and NMFA that the audit has been submitted to the Federal Audit Clearinghouse and provide a copy to the Drinking Water State Revolving Loan Fund program and NMFA upon request. The audit will also be available for inspection by the NMFA Environmental Protection Agency.

(o) Construction Requirements. The Recipient shall require any contractor hired by it in connection with any construction required for the Project to post a performance and payment bond as provided by NMSA 1978, § 13-4-18, as amended.

(p) Compliance with BIL. The Recipient shall comply with all requirements of the EC program contained in the BIL and state and federal law and regulation.

Section 2.2 Protective Covenants Regarding Operation of the System. The Recipient further represents, covenants and warrants as follows:

(a) Records. So long as this Agreement remains outstanding, proper books of record and account will be kept by the Recipient in accordance with Generally Accepted Accounting Principles, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System.

(b) Right to Inspect. The NMFA, or its duly authorized agents, shall have the right to inspect at all reasonable times the Project and all records, accounts and data relating to the Project and the System.

(c) Audits. Within two hundred seventy (270) days following the close of each Fiscal Year, the Recipient will cause an audit of the books and accounts of the System and its separate systems to be made by an Independent Accountant and the audit to be made available for inspection by the NMFA. Each audit of the System shall comply with Generally Accepted Accounting Principles. The audit required by this section may, at the Recipient's discretion, be performed as a part of or in conjunction with the audit required under the Single Audit Act as set forth in Section 2.1(n) of this Agreement.

(d) Insurance. Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, the Recipient will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Board, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by entities which operate systems such as the System. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the Recipient may have a material interest and of which the Recipient 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 Recipient 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, and any remainder may be used in any legally permissible manner.

(e) Competent Management. The Recipient shall employ experienced and competent personnel to manage the System.

(f) Performing Duties. The Recipient will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State and the regulations, policies, resolutions or written consents in lieu of meetings of the Recipient relating to the System and this Agreement.

Section 2.3 Representations, Covenants and Warranties of the NMFA. The NMFA represents, covenants and warrants for the benefit of the Recipient:

(a) Legal Status and Authorization of this Agreement. The NMFA is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly the NMFA Act. The NMFA has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) No Breach or Default Caused by this Agreement. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement, nor the consummation of the transactions contemplated in this Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the NMFA is a party or by which the NMFA is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the NMFA, or its property and which conflict or violation will have a material adverse effect on the NMFA or the financing of the Project.

(c) No Litigation. To the knowledge of the NMFA, there is no litigation or proceeding pending or threatened against the NMFA or any other person affecting the right of the NMFA to execute or deliver this Agreement or to comply with its obligations under this Agreement. To the knowledge of the NMFA, neither the execution and delivery of this Agreement by the NMFA, nor compliance by the NMFA with its obligations under this Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(d) Legal, Valid and Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the NMFA enforceable in accordance with its terms.

ARTICLE III

AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate upon the earlier of: (a) forgiveness of all Loan amounts by the NMFA pursuant to Section 4.5(a) of this Agreement; or (b) final repayment by Recipient of any Loan amounts required to be repaid pursuant to Section 4.5(b) of this Agreement.

ARTICLE IV

LOAN; APPLICATION OF MONEYS

Section 4.1 Application of Agreement Proceeds.

(a) On the Closing Date, the amount shown on the Term Sheet as the Maximum Principal Amount shall be made available for disbursement by the NMFA to the Recipient pursuant to Section 5.2 of this Agreement at the request of the Recipient and as needed by the Recipient to implement the Project.

(b) The Final Requisition shall be submitted by the Recipient within twenty seven (27) months following the Closing Date, except only as otherwise approved in writing by an Authorized Officer of the NMFA, based on the Recipient's demonstration, to the reasonable satisfaction of the Authorized Officer of the NMFA, that unanticipated circumstances beyond the control of the Recipient resulted in delaying the acquisition and completion of the Project, and submission of the Recipient's Final Requisition.

Section 4.2 Disbursements; Approval of Payment Requests. The Recipient shall transmit payment requisitions in the form attached to this Agreement as Exhibit "B" and the supporting documentation required pursuant to Exhibit "B" to the NMFA. The NMFA or its designee shall review each requisition as set forth in Section 4.4 of this Agreement and for compliance with (i) the Project's construction plans and specifications, if any, and (ii) all applicable state and federal laws, rules and regulations, and shall approve or disapprove the requisition accordingly. The NMFA shall cause an Approved Requisition to be paid from the Drinking Water State Revolving Loan Fund in accordance with Section 5.2 of this Agreement. The Recipient may submit as many payment requisition requests, as long as the requisition totals to least one thousand dollars (\$1,000), as the Recipient believes are necessary, in the exercise of its good-faith discretion, are necessary and prudent to acquire and complete the Project.

Section 4.3 Loan to the Recipient.

(a) Award and Acceptance. The NMFA hereby awards the Recipient and the Recipient hereby accepts from the NMFA an amount not to exceed the Maximum Principal Amount.

(b) Project Account.

(i) NMFA shall establish and maintain the Project Account as a book account only, on behalf of the Recipient, which account shall be kept separate and apart from all other accounts of the NMFA.

(ii) The Recipient consents to the creation of the Project Account to be held and maintained by the NMFA as provided in the Agreement.

(iii) Until the conduction and completion of the Project or the date of the Final Requisition, the money disbursed pursuant to this Agreement shall be used and paid out solely for the purpose of conducting and completing the Project in compliance with applicable law and the provisions of the Agreement.

(iv) The Recipient will complete the Project with all due diligence.

(v) Upon the completion of the Project, the Recipient shall execute and send to the NMFA a certificate stating that the completion of and payment for the Project has been completed.

(vi) The NMFA shall in no manner be responsible for the application or disposal by the Recipient or by its officers of the funds derived from the Agreement or of any other funds herein designated.

Section 4.4 Application of the Loan. Following the determination by the NMFA in its sole and reasonable discretion that the conditions to the disbursement of the Loan have been satisfied and no Event of Default has occurred and remains unresolved in accordance with Section 8.1(a) of this Agreement, the NMFA shall disburse the proceeds of the Loan (or any portion thereof, as applicable) to the Recipient and make an entry in its accounts, and in particular in the Project Account, reflecting the proceeds of the Loan disbursed from the Drinking Water State Revolving Loan Fund to the Recipient at its request to acquire and complete the Project, as provided in Section 4.3 of this Agreement. The NMFA shall make its determination in relation to each payment requisition request and provide the Recipient with notice of such determination no later than fifteen (15) days after the Recipient delivers a payment requisition request as provided in Section 4.2 of this Agreement and in the form attached to this Agreement as Exhibit "B." If the NMFA fails to make a determination and provide the Recipient with notice of such determination within the foregoing fifteen (15) day period, the amount set forth in the applicable payment requisition request shall be deemed approved and required to be disbursed as set forth in Section 5.2 of this Agreement.

Section 4.5 Forgiveness of the Loan.

(a) Following the determination by the NMFA in its sole and reasonable discretion, that the conditions to the disbursement of the Loan have been satisfied including current and future compliance with this Agreement, all applicable laws, regulations, Executive Orders and other generally applicable requirements, which hereby are incorporated into this Agreement by reference, and such other statutory provisions as are specifically set forth herein, and that no Event

of Default has occurred and continued beyond the remedial cure period set forth in Section 8.1(a) of this Agreement, the NMFA shall forgive the Loan made available under this Agreement pursuant to the DWSRLF Act and the SDWA for the Maximum Principal Amount. The NMFA shall make its loan forgiveness determination and provide the Recipient with notice of such determination no later than thirty (30) days after the Recipient delivers a certificate of project completion to the NMFA pursuant to Section 5.3 of this Agreement. If the NMFA fails to make a determination and provide the Recipient with notice of such determination within the foregoing thirty (30) day period, the Loan shall be deemed forgiven for the Maximum Principal Amount.

(b) If any or all the conditions stated under Section 4.5(a) are not met, terms and conditions of repayment of the Loan will be determined and authorized by the NMFA Board of Directors or an Authorized Officer of NMFA in accordance with the DWSRLF Act, DWSRLF Policies and the applicable DWSRLF Intended Use Plan. Notwithstanding the foregoing, the NMFA shall consider the economics of the Recipient's System in establishing terms and conditions of repayment and in no event shall the length of repayment be established for a term of less than ten (10) years and/or the interest rate charged exceed the lesser of: (a) ten (10) percent per annum; or (b) a rate per annum that is equal to two (2) percent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H.15 or any superseding publication.

Section 4.6 Final Requisition. The Final Requisition shall be submitted by the Recipient within the Interim Period. The Interim Period may be extended pursuant to Section 4.1(b) of this Agreement.

ARTICLE V

THE PROJECT

Section 5.1 Agreement to Conduct and Complete the Project. The Recipient hereby agrees that in order to effectuate the purposes of this Agreement and to effectuate the conduction and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with or to any other applicable persons, firms or corporations and, in general do all things which are necessary to conduct and complete the Project.

The Recipient agrees to conduct and complete the Project through the application of moneys to be disbursed by the NMFA pursuant to Section 5.2 of this Agreement.

Section 5.2 Disbursements. So long as no Event of Default shall occur and remain unresolved in accordance with Section 8.1(a) of this Agreement, the NMFA or its designee shall, in accordance with Sections 4.2 and 4.4 of this Agreement, disburse moneys to pay a requisition within fifteen (15) days of receipt by the NMFA or its designee of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Recipient, with required supporting documentation.

Section 5.3 Completion of the Project. Upon completion of the Project, which shall occur no later than two (2) years after the Closing Date, unless a later date is approved as provided

in Section 4.1(b) of this Agreement, an Authorized Officer of the Recipient shall deliver a certificate to the NMFA, substantially in the form of Exhibit “C” attached hereto, stating that, to his or her knowledge, the Project has been completed and the Project has been accepted by the Recipient, and all costs have been paid, except for any reimbursements requested pursuant to requisitions submitted prior to the end of the Interim Period. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 5.4 Unrequisitioned Amounts. In the event that, (1) at the time of the delivery of the certificate of completion required by Section 5.3 hereof, there remains an Unrequisitioned Principal Amount, or (2) the NMFA shall not have received a Final Requisition, by the date that is twenty seven (27) months from the Closing Date, unless an extension is approved pursuant to Section 4.1(b) of this Agreement, then the Recipient shall have no right or title to the Unrequisitioned Principal Amount, nor any right to pledge, encumber or draw upon such Unrequisitioned Principal Amount, and the NMFA will not approve, honor, or enforce any requisition upon such Unrequisitioned Principal Amount pursuant to this Agreement.

ARTICLE VI

COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 6.1 Further Assurances and Corrective Instruments. The NMFA and the Recipient agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or inaccurate statements contained herein, or for otherwise carrying out the intention of the Agreement. Authorized Officers are authorized to execute, acknowledge and deliver any such supplements and further instruments.

Section 6.2 NMFA and Recipient Representatives. Whenever under the provisions hereof the approval of the NMFA or the Recipient is required, or the Recipient or the NMFA is required to take some action at the request of the other, such approval or such request shall be given for the NMFA or for the Recipient by an Authorized Officer of the NMFA or the Recipient, as the case may be, and any party hereto shall be authorized to rely and act on any such approval or request.

Section 6.3 Compliance with Court Orders. During the Agreement Term, the Recipient and the NMFA shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto or the Project.

Section 6.4 Compliance with Applicable State and Federal Laws. During the Agreement Term, the Recipient shall comply with all applicable State and federal laws, including, without limitation, each of the following to the extent applicable:

For all contracts, the Recipient shall comply with the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or its local procurement ordinances and regulations, as applicable and in accordance with NMSA 1978, 13-1-30(B).

For all construction contracts awarded in excess of \$10,000, the Recipient shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 12, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. chapters 40 and 60). In addition, for all contracts, the Recipient shall comply with all State laws and regulations and all executive orders of the Governor of the State pertaining to equal employment opportunity.

For all contracts awarded for construction or repair, the Recipient shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 C.F.R. part 3).

For all construction subcontracts, and subgrants of amounts in excess of \$100,000, the Recipient shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15). In addition, for all contracts, the Contractor shall comply with all applicable State laws and regulations and with all executive orders of the Governor of the State pertaining to protection of the environment.

For all contracts the Recipient shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with section 362 of the Energy Policy and Conservation Act (42 U.S.C. § 6322).

For all contracts, including subcontracts in excess of \$2,000 the Recipient shall comply with applicable standards of the Davis-Bacon Wage Act (40 U.S.C. § 3141 et seq.), as amended and supplemented, relating to wages paid to laborers and mechanics employed by contractors and sub-contractors on a Project funded directly by or assisted in whole or in part by and through the Recipient, and the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)), and shall include the contract clauses set out in the Environmental Protection Agency publication entitled "Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act Section 1450(e)".

For all contracts, the Recipient shall comply with the requirements of the Environmental Protection Agency's Program addressing Disadvantaged, Minority and Women's Business Enterprises, including Title 40, Chapter I, Subchapter B, Part 33 of the Code of Federal Regulations, Executive Order 12898 and 40 C.F.R. Part 33.

For all contracts, the Recipient shall comply with the requirements of Executive Order 13502 on Use of Project Agreements for Federal Construction Projects.

For all contracts, the Recipient shall comply with the requirements of the Federal Funding Accountability and Transparency Act (FFATA).

For all contracts, the Recipient shall comply with the requirements of Executive Order 13627 on Strengthening Protections Against Trafficking in Persons in Federal Contracts.

For all contracts, the Recipient shall comply with all federal requirements applicable to the Agreement (including those imposed by P.L. 113-76, 2014 Consolidated Appropriations Act, Section 436 and related SRF Policy Guidelines) which the Recipient understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Recipient has requested and obtained a waiver from the NMFA pertaining to the Project or (ii) the NMFA has otherwise advised the Recipient in writing that the American Iron and Steel Requirement is not applicable to the Project.

For all contracts, the Recipient shall comply with the requirements of the Build America, Buy America Act (BABA) included in the BIL, in Sections 70901 through 70927, 2 BABA 70912 and 70914, 3 87 FR 23888 and 2 CFR part 184, in all subawards, contracts, and purchase orders for the work performed, or products supplied under this Agreement. Under the BABA, the Recipient is obligated to use United States produced iron, steel, manufactured products and construction materials for the Project with the funds available under this Agreement unless the Recipient believes a waiver is justified and NMFA finds that a waiver shall apply consistent with such Federal law.

For all contracts, the Recipient shall comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the NMFA such as performance indicators of program deliverables, information on costs and project progress. The Recipient understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act applicable to this Agreement is a default under this Agreement.

For all contracts, the Recipient shall comply with the administration of the Clean Air Act and the Federal Water Pollution Control Act, including Section 306 of the Clean Air Act, 42 U.S.C. 7606 et seq, Section 508 of the Clean Water Act, 33 U.S.C. 1368, et seq. and Executive Order 11738

For all contracts, the Recipient shall comply with Executive Order 12549 – Debarment and Suspension and all rules, regulations and guidelines issued pursuant to Executive Order 12549, including compliance with the requirement that each prospective participant in transactions related to the Agreement execute a written certification that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in transactions related to the Agreement.

The Recipient shall comply with the requirement of the June 3, 2015 Guidelines for Enhancing Public Awareness of SRF Assistance Agreements issued by the Environmental Protection Agency relating to signage, posters, advertisements, website or press releases indicating that financial assistance was received from the Environmental Protection Agency for the Project.

The Recipient acknowledges that it is subject to the terms of the Environmental Protection Agency Memorandum titled “Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs” dated December 11, 2020. The Recipient shall comply with 2 CFR 200.216 and Section 889 of Public Law 115-232 and shall not use subsidy funds to obtain or enter into a contract to obtain covered telecommunications equipment produced or provided by companies listed in the system for Award Management exclusion list at SAM.gov. The exclusion list includes, but is not limited to, Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities.

The Recipient agrees to comply with all applicable New Mexico State cybersecurity laws and requirements and ensure that any connections between the Recipient’s network or information system and Environmental Protection Agency networks used by the recipient to transfer data under this Agreement, if any, are secure. If a connection does not go through the Environmental Information Exchange Network or Environmental Protection Agency’s Central Data Exchange, the Recipient agrees to contact the Environmental Protection Agency Project Officer (PO) and work with the designated Environmental Protection Agency Regional/Headquarters Information Security Officer to ensure that the connections meet Environmental Protection Agency security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the Recipient into systems operated and used by Environmental Protection Agency’s regulatory programs for the submission of reporting and/or compliance data. The Recipient is subject to monitoring as deemed necessary by the NMFA or the State of New Mexico under 2 CFR 200.331. In regard to this section a “connection” is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the Recipient gathers geospatial data, as defined in 43 U.S.C. §2801(2018), during the life of the Project, the data must be consistent with the Federal Geographic Data Committee endorsed standards.

In accordance with the EPA “Signage Requirement” and BIL requirements, the Recipient will place a sign and will maintain such sign in good condition throughout the Project period, at a visible location in the Project site identifying that this Project has been funded by President Biden’s Bipartisan Infrastructure Law in accordance with the EPA Office of Public Affairs requirements, unless placing such sign results in unreasonable cost, expense or burden to the Recipient.

The Recipient, as well as any contractors and subcontractors working with the Recipient in this Project, shall comply with federal anti-discrimination law requirements, pursuant to 40 C.F.R. 35.3575(a)(c), including Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq., EPA’s regulations 40 CFR §7.30 and 40 CFR §7.35, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq., and the Age Discrimination Act of 1975, 42 U.S.C. §6102 which 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 assistance.

The NMFA or its designee, acting reasonably, shall have the right to review all contracts, work orders and other documentation related to the Project that it deems necessary to assure compliance with applicable laws, rules and regulations, and may conduct such review as it deems appropriate prior to disbursing funds for payment of an Approved Requisition. However, any such review period shall not serve to extend the NMFA's timeline to disburse funds otherwise required by this Agreement.

ARTICLE VII

INDEMNIFICATION

To the extent permitted by law, the Recipient shall and hereby agrees to indemnify, defend, and save the NMFA and its designee, if any, harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Agreement Term, from: (i) any act of negligence of the Recipient or breach of any covenant or warranty by the Recipient hereunder; and (ii) the incurrence of any cost or expense in connection with the conduction or operation of the Project in excess of the Agreement proceeds and interest on the investment of the Agreement proceeds.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Agreement:

(a) Failure by the Recipient to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Recipient by the NMFA or its designee, if any, unless the NMFA or its designee, as applicable, shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the NMFA or its designee but cannot be cured within the applicable thirty (30) day period, the NMFA or its designee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Recipient within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Recipient is unable to carry out the agreements on its part herein contained, the Recipient shall not be deemed in default under this paragraph during the continuance of such inability (but force majeure shall not excuse any other Event of Default); or

(b) Any warranty, representation or other statement by the Recipient contained in this Agreement is false or misleading in any material respect; or

(c) A petition is filed against the Recipient under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days

after such filing, but the NMFA shall have the right to intervene in the proceedings to protect the NMFA's interests; or

(d) The Recipient files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or,

(e) The Recipient admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Recipient for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the NMFA shall have the right to intervene in the proceedings to protect its interests.

Section 8.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 8.3 hereof, the NMFA may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Recipient in this Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the NMFA under this Agreement against the Recipient, and compel the Recipient to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity enjoin any acts or things which are unlawful or violate the rights of the NMFA; or

(c) Intervene in judicial proceedings that affect this Agreement; or

(d) Cause the Recipient to account as if it were the trustee of an express trust for all of the Aggregate Disbursements; or,

(e) Take whatever other action at law or in equity may appear necessary or desirable to enforce the provisions under this Agreement or enforce any other of its rights thereunder.

Section 8.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the NMFA is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the NMFA to exercise any remedy reserved in this Article VIII, it shall not be necessary to give any

additional notice, other than such notice as may be required in this Article VIII, including but not limited to the remedial cure period established by Section 8.1(a) hereof.

Section 8.4 Waivers of Events of Default. The NMFA may in its discretion waive any Event of Default hereunder and the consequences of an Event of Default by written waiver. Such waiver shall be effective only if made by written statement of waiver issued by the NMFA. In case of any such waiver or rescission, or in case any proceeding taken by the NMFA on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the NMFA shall be restored to its former position and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 8.5 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.6 Agreement to Pay Attorneys' Fees and Expenses Related to Defaults. In the event that the Recipient should default under any of the provisions hereof and the NMFA employs attorneys or incurs other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Recipient contained in this Agreement, the Recipient agrees that it shall on demand therefor pay to the NMFA the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses are determined to be reasonable by a court of competent jurisdiction.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Recipient, then to:

EPCOR Water New Mexico Inc.
Attn: Shawn Bradford, President
2355 West Pinnacle Peak Road, Suite 300
Phoenix, Arizona 85027
Additional copy via email: sbradford@epcor.com

With a copy to:

EPCOR USA Inc.
Attn: Legal Department
2355 West Pinnacle Peak Road, Suite 300
Phoenix, Arizona 85027

Additional copy via email: uslegal@epcor.com

If to the NMFA, then to:

New Mexico NMFA
Attention: Chief Executive Officer
207 Shelby Street
Santa Fe, New Mexico 87501

And if to NMFA's designated servicing agent for this Agreement, if any, at the address to be provided by the servicing agent. The Recipient and the NMFA may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the NMFA, the Recipient and their respective successors and assigns, if any.

Section 9.3 Amendments. This Agreement may be amended only with the written consent of the NMFA and the Recipient, except as provided in Section 4.1(b) of this Agreement. The consent of the NMFA for amendments not affecting any terms of payment of the principal component of this Agreement may be given by an Authorized Officer of the NMFA. The execution of any such consent by an Authorized Officer of the NMFA shall constitute his or her determination that such amendment does not affect any terms of payment of the principal component of this Agreement, unless such change results in a decrease in the payment amount of the principal component.

Section 9.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement or in any instrument executed in conjunction or compliance with this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the NMFA, either directly or through the NMFA or against any officer, employee, director or member of the Recipient or the Board, past, present or future, either directly or through the Recipient or the Board, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Recipient or the Board or of the NMFA is hereby expressly waived and released by the Recipient and by the NMFA as a condition of and in consideration for the execution of this Agreement.

Section 9.5 Severability. In the event that any provision of this Agreement, other than the requirement of the Recipient to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.6 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.7 Assignment by the NMFA. This Agreement may be assigned and transferred by the NMFA to a trustee, which right to assign and transfer is hereby acknowledged and approved by the Recipient.

Section 9.8 Compliance with Governing Law. It is hereby declared by the Board that it is the intention of the Recipient by the execution of this Agreement to comply in all respects with the provisions of the New Mexico Constitution and State statutes.

Section 9.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State and applicable federal law.

Section 9.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

[Signature pages follow.]

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the NMFA, on behalf of itself has executed this Agreement, which was approved by the NMFA's Board of Directors on March 28, 2024, in its corporate name by its duly authorized officers; and the Recipient has executed this Agreement in its corporate name by its duly authorized officer. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By _____
Marquita D. Russel, Chief Executive Officer

Prepared for Execution by Officers of the NMFA:

VIRTUE & NAJJAR, PC
As Loan Counsel to the NMFA

By _____
Carla R. Najjar

Approved for Execution by Officers of the NMFA:

By _____
Daniel C. Opperman, Chief Legal Officer

EPCOR WATER NEW MEXICO INC.,
CURRY COUNTY, NEW MEXICO

By _____
Shawn Bradford, President

EXHIBIT "A"

TERM SHEET

**LOAN NO. DW-6394
TO EPCOR WATER NEW MEXICO INC., CURRY COUNTY, NEW MEXICO**

Recipient:	EPCOR Water New Mexico Inc., New Mexico
Project Description:	Finance the costs of a Preliminary Engineering Report, evaluate, identify, and select a treatment process, conduct bench scale pilot testing of the treatment technologies, and develop a pilot modular wellhead treatment system complete with standard details and drawings to ensure that certain groundwater wells that produce approximately twenty-five percent (25%) of the groundwater supply for the City of Clovis maintain compliance with the new U.S. Environmental Protection Agency (EPA) maximum contaminant level for Perfluorooctanoic acid (PFOA) and perfluoroalkyl substances (PFAS). Once developed, the pilot modular wellhead treatment system is expected to be transferable to and capable of implementation for other wellhead treatment needs both within EPCOR Water New Mexico, Inc. and other public water systems obtaining water from wells where PFOA/PFAS are contaminants of concern, which may result in significant design savings for other utilities and public water systems.
Authorizing Document	Recipient's Unanimous Written Consent adopted on October 25, 2024
Closing Date:	[]
Total Funding (Maximum Principal Amount):	\$3,000,000
Total Forgiven (Maximum Forgiven Principal Amount):	\$3,000,000
Disadvantaged Status:	Severely Disadvantaged

EXHIBIT "B"
FORM OF REQUISITION

RE: \$3,000,000 Loan and Subsidy Agreement by and between the NMFA and EPCOR Water New Mexico Inc. (the "Agreement")

TO: DW@nmfa.net
 New Mexico Finance Authority
 207 Shelby Street
 Santa Fe, New Mexico 87501
 Attn: Drinking Water

LOAN NO. DW-6394

CLOSING DATE: []

You are hereby authorized to disburse to the EPCOR Water New Mexico Inc. or its payee with regard to the above-referenced Agreement the following:

REQUISITION NUMBER:		<input type="checkbox"/> Interim Request <input type="checkbox"/> Final Request
AMOUNT OF PAYMENT:	\$	

For Period (work encumbered) _____ to _____

PURPOSE OF PAYMENT (concise description of work performed toward Project completion):

This is a request of REIMBURSEMENT of incurred and paid project expenses. (Attach proof of payment, e.g. check stubs, and corresponding invoices)

This is a request of DIRECT PAYMENT to vendor or service provider of incurred project expenses. (Attach invoices)

PAYEE INFORMATION

NAME:	
CONTACT NAME:	
ADDRESS:	
PHONE NUMBER:	
FAX NUMBER:	
E-MAIL ADDRESS:	

WIRING INFORMATION

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

Check here if bank account information is new or has changed.

Check here if bank account information is still current.

Please indicate if this Business is considered a

<input type="checkbox"/> SBE (Small Business Entrepreneur)	<input type="checkbox"/> MBE (Minority Business Entrepreneur)	<input type="checkbox"/> WBE (Women owned business Entrepreneur)	<input type="checkbox"/> N/A
--	---	--	------------------------------

(Attach SBE/MBE/WBE Certification)

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge for requisition and payment.

Each obligation, item of cost or expense mentioned herein is not for costs related to the purchase of land or easement.

All applicable representations contained in the Agreement, the General and No Litigation Certificate and the Right-of-Way Certificate remain true and correct and EPCOR Water New Mexico Inc. is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, EPCOR Water New Mexico Inc. understands its obligation to conduct the Project and shall complete the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Agreement.

DATED: _____

By: _____
Authorized Officer

(Print name and title)

EXHIBIT "C"

FORM OF CERTIFICATE OF COMPLETION

RE: \$3,000,000 Loan and Subsidy Agreement by and between the NMFA and EPCOR Water New Mexico Inc., New Mexico (the "Agreement")

Loan No. DW-6394

Closing Date: []

TO: NEW MEXICO FINANCE AUTHORITY

I, _____, the _____ of the
[Name] [Title or position]

EPCOR Water New Mexico Inc., hereby certify as follows:

1. The project described in the Agreement (the "Project") was completed and placed in service on _____, 20__.
2. The total cost of the Project was \$ _____.
3. Cost of the Project paid from the Loan was \$ _____.
4. The portion of the Maximum Principal Amount unexpended for the Project is \$ _____.
5. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

EPCOR WATER NEW MEXICO INC.
CURRY COUNTY, NEW MEXICO

By: _____

Its: _____

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ENTER INTO A DRINKING
WATER STATE REVOLVING LOAN FUND
LOAN AND SUBSIDY AGREEMENT**

Case No. 25-00___-UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

NOTICE

NOTICE is hereby given of the following matters in the above-captioned case pending before the New Mexico Public Regulation Commission ("Commission" or "NMPRC"):

1. On January 24, 2025, EPCOR Water New Mexico Inc. ("EWNM") filed an Application ("Application") with the Commission requesting the Commission's approval and authorization to enter into a Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement (the "Loan and Subsidy Agreement") with the New Mexico Finance Authority ("NMFA") under the Drinking Water State Revolving Loan Fund Act and the Safe Drinking Water Act of 1974. NMFA will award EWNM an amount not to exceed the maximum principal amount of three million dollars (\$3,000,000.00). EWNM intends to use the proceeds from the Loan and Subsidy Agreement to finance the costs of a Preliminary Engineering Report, evaluate and select a treatment process, conduct pilot testing of treatment technologies, and develop a recommended project to bring certain groundwater wells that produce approximately twenty-five percent (25%) of the groundwater supply for the City of Clovis into compliance with the new U.S. Environmental Protection Agency (EPA) maximum contaminant level for Perfluorooctanoic acid (PFOA) and perfluoroalkyl substances (PFAS). The proposed transaction is more fully described in EWNM's Application, testimony, and exhibits.

2. The Commission is required by law to act promptly on the Application.

3. This case has been docketed as Case No. 25-00____-UT, and any inquiries should reference this case number.

4. Any interested person may examine EWNM's Application and the pre-filed testimonies, exhibits, pleadings and other documents filed in the case online at <http://www.prc.nm.gov/case-lookup-e-docket/> under "Case Lookup EdoCKET", or by making arrangements for an in-person viewing at the Commission offices by calling 1-505-690-4191 during normal business hours.

The procedural schedule for this case is as follows:

5. Any person desiring to intervene to become a party ("intervenor") to this case shall file a motion for leave to intervene in conformity with NMPRC Rules of Procedure 1.2.2.23(A) and 1.2.2.23(B) NMAC on or before _____, 2025.

6. Staff of the Commission's Utility Division ("Staff") and any intervenors may file direct testimony on or before _____, 2025. Any rebuttal testimony shall be filed by _____, 2025.

7. A public hearing to hear and receive evidence, arguments, and any other appropriate matters relevant to this proceeding to determine whether the authorizations requested in EWNM's Application should be granted by the Commission is set to commence at 9:00 a.m. MT on _____, 2025. The public hearing may be vacated if deemed not required pursuant to 17.1.2.8(C)(3) NMAC, in which case, the Commission will take public comment and dispose of the Application at an Open Meeting. The hearing, if required, will be conducted either in person or via the Zoom videoconference platform. The Zoom hearing will be livestreamed through YouTube and will be displayed on the Commission's website at <https://www.nm-prc.org>.

8. Any interested person should contact the Commission by e-mailing Ana Kippenbrock at Ana.Kippenbrock@state.nm.us or by phone at (505)690-4191 for confirmation of the hearing date, time, and place since hearings are occasionally rescheduled.

9. Interested persons who are not affiliated with a party may submit written or oral comments pursuant to Rule 1.2.2.23 NMAC. Oral comments shall be taken at the beginning of the public hearing on _____, 2025 and shall be limited to 3 minutes per commenter. Persons

wishing to make an oral comment must register in advance no later than 4:00 P.M. MT on _____, 2025 by e-mailing Ana Kippenbrock at Ana.Kippenbrock@prc.nm.gov. Written comments may be submitted before the Commission takes final action by sending the comment, which shall reference NMPRC Case No. 25-00____-UT, to prc.records@state.nm.us. Pursuant to 1.2.2.23(F) NMAC, public comments, whether oral or written, shall not be considered as evidence in this proceeding.

10. The Commission's Rules of Practice and Procedure and Rule for Utility Applications, 1.2.2 NMAC and 17.1.2.8 NMAC respectively, apply to this case except as modified by Order of the Commission or Hearing Examiner. Those and other NMPRC rules are available online at <http://www.srca.nm.gov/nmac-home/nmac-titles>.

11. Anyone filing pleadings, testimony and other documents in this case shall comply with the Commission's electronic filing policy, as amended from time to time. This includes filings in .pdf format, with electronic signatures, sent to the Records Bureau's e-mail address, as set out in the Commission's procedural rules at prc.records@state.nm.us or another Records Bureau address as set out on the Commission's webpage (see 1.2.2.7(R)(1) NMAC), within regular business hours of the due date in order to be considered timely filed. Documents received after regular business hours will be considered as being filed the next business day. Regular business hours are from 8:00 a.m. to 5:00 p.m. MT. Parties shall serve a copy on all parties of record and Staff. All filings shall be e-mailed by no later than 5:00 p.m. MT on the date they are filed with the Commission. Any such filing shall also be e-mailed to the Hearing Examiner at the following address: _____

PERSONS WITH DISABILITIES

PERSONS WITH DISABILITIES REQUIRING SPECIAL ACCOMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COMMISSION AT 505 827-4500 TO REQUEST ASSISTANCE AS SOON AS POSSIBLE, PREFERABLY AS SOON AS THE PERSON RECEIVES NOTICE OF THIS PROCEEDING. THE COMMISSION WILL CONSIDER THE REQUEST AND ARRANGE FOR REASONABLE ACCOMMODATION IF

POSSIBLE.

The procedural dates and requirements provided herein are subject to further order of the Commission or Hearing Examiner.

ISSUED at Santa Fe, New Mexico this ___th day of January, 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ENTER INTO A DRINKING
WATER STATE REVOLVING LOAN FUND
LOAN AND SUBSIDY AGREEMENT**

Case No. 25-00 ___-UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

**DIRECT TESTIMONY
OF
HEATHER KRUPA**

January 24, 2025

**SPENCER FANE, LLP
Jeffrey J. Wechsler
Kari E. Olson
Kaleb W. Brooks
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873**

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1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TELEPHONE**
3 **NUMBER.**

4 A. My name is Heather Krupa. My business address is 5656 W. Talavi Boulevard, Glendale,
5 Arizona 85306. My business phone number is (623) 218-0028.

6
7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by EPCOR USA Inc. (“EUSA”), the owner of EPCOR Water New Mexico
9 Inc. (“EWNM” or “Company”) as Vice President and Controller of Regulated Water.

10

11 **Q. PLEASE DESCRIBE YOUR PRIMARY RESPONSIBILITIES FOR THE**
12 **COMPANY.**

13 A. My primary responsibilities with EUSA are to oversee, manage, and report on the
14 accounting and finance functions of EUSA Regulated Water, which includes EWNM in
15 New Mexico and EPCOR Water Arizona Inc. (“EWAZ”) in Arizona. In doing so I review
16 and oversee the accounting and finance departments, along with reviewing rate
17 applications and other regulatory filings consistent with applicable regulatory filing
18 requirements in Arizona and New Mexico.

19

20 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND EDUCATION.**

21 A. I joined EUSA in 2023 as Vice President and Controller of Regulated Water. My
22 professional experience includes more than six years of experience with public utility
23 accounting and regulation. Beforehand, I spent over 10 years in Securities and Exchange
24 Commission (“SEC”) reporting with various large filers, including one of the largest

Direct Testimony of Heather Krupa
NMPRC Case No. 25-00___-UT

1 publicly traded utilities in North America. I began my career as an auditor with Ernst &
2 Young LLP in finance and manufacturing, and representative clients included ABN
3 AMRO, AON, and BP.

4 Before joining EUSA, I worked in the water and wastewater industry for six of the
5 last nine years. My primary areas of responsibility were SEC reporting at quarterly and
6 annual intervals for water and wastewater operations, as well as annual budgeting and
7 fluctuations analysis. With EUSA, my primary responsibilities have been overseeing
8 technical accounting, capital investments, and financial reporting in Arizona and New
9 Mexico.

10 I have a Bachelor of Science in Accounting from DePaul University – Chicago,
11 Illinois. I am a Certified Public Accountant, licensed in the State of Illinois. I have also
12 attended the National Association of Regulatory Utility Commissioners (“NARUC”)
13 utility rate school.

14
15 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

16 **A.** No.

17
18 **Q. PLEASE DESCRIBE EWNM’S BUSINESS**

19 **A.** EWNM is a New Mexico waterworks corporation engaged in the business of distributing
20 water to the public in New Mexico, and is a public utility subject to regulation by the New
21 Mexico Public Regulation Commission (“NMPRC” or “Commission”) under the New
22 Mexico Public Utility Act. More specifically, the Company provides residential,
23 commercial, and industrial water service, including fire protection, in its Clovis,

1 Edgewood, and Thunder Mountain water districts in New Mexico, and nearby areas,
2 including municipal and county facilities in all three districts. The Company has owned
3 and operated the Clovis District since 1986. It acquired the Edgewood system and began
4 operations in that district in September 2002. The Thunder Mountain system was acquired
5 in January 2014 and serves areas adjacent to the Edgewood district. Each of the districts
6 is appropriately staffed for the size and complexity of the respective systems, and the
7 Company maintains an office in Albuquerque supporting district operations in Clovis,
8 Edgewood, and Thunder Mountain. EWNM was formerly known as New Mexico-
9 American Water Company, Inc. (“NMAW”). The Company’s name was changed to
10 EPCOR Water New Mexico Inc. following the acquisition of the stock of NMAW by
11 EUSA in 2012 as authorized by the Final Order issued on December 22, 2011 in Case No.
12 11-00085-UT.

13
14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 **A.** The purpose of my testimony is to support EWNM’s application to enter into a forgivable
16 Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement (“Loan and
17 Subsidy Agreement”).

18
19 **II. DRINKING WATER STATE REVOLVING LOAN FUND LOAN AND SUBSIDY**
20 **AGREEMENT**

21 **Q. ARE YOU FAMILIAR WITH THE FORGIVABLE LOAN THAT EWNM**
22 **PROPOSES AND THAT IS THE SUBJECT OF THIS CASE?**

1 A. Yes. EWNM is seeking authority from the Commission to enter into a forgivable Loan
2 and Subsidy Agreement with the New Mexico Finance Authority (“NMFA”) under the
3 Drinking Water State Revolving Loan Fund Act and the Safe Drinking Water Act of 1974.
4

5 **Q. ARE YOU FAMILIAR WITH THE CONTENTS OF EWNM’S APPLICATION?**

6 A. Yes.
7

8 **Q. ARE THE STATEMENTS CONTAINED IN THE APPLICATION TRUE TO THE
9 BEST OF YOUR KNOWLEDGE AND BELIEF?**

10 A. Yes.
11

12 **Q PLEASE DESCRIBE THE TERMS AND CONDITIONS ON WHICH EWNM
13 EXPECTS TO TAKE THE LOAN.**

14 A. If approved, EWNM will enter into a forgivable Loan and Subsidy Agreement with NMFA.
15 NMFA will award EWNM an amount not to exceed the maximum principal amount of
16 three million dollars (\$3,000,000.00). NMFA will disburse the proceeds of the loan (or
17 any portion thereof, as applicable) to EWNM upon NMFA’s approval of payment
18 requisitions that EWNM submits to NMFA for costs that EWNM incurs in work on the
19 “Project,” as defined in the Loan and Subsidy Agreement. Generally, the Project involves
20 work to develop a recommended project to ensure that certain groundwater wells serving
21 the City of Clovis maintain compliance with the new U.S. Environmental Protection
22 Agency (“EPA”) maximum contaminant levels for Perfluorooctanoic acid (“PFOA”) and
23 perfluoroalkyl substances (“PFAS”). If EWNM completes the Project within the period

1 specified in the Loan and Subsidy Agreement, then NMFA is bound to forgive the entire
2 principal amount of the loan, and EWNM is not obligated to repay the disbursed proceeds.
3 If EWNM fails to complete the Project within the specified period or otherwise defaults
4 (without subsequent cure) on the Loan and Subsidy Agreement, then NMFA will determine
5 terms and conditions of repayment of the loan. In no event shall the length of repayment
6 be established for a term of less than ten (10) years and/or the interest rate charged exceed
7 the lesser of: (a) ten (10) percent per annum; or (b) a rate per annum that is equal to two
8 (2) percent plus the prime rate as published by the board of governors of the federal reserve
9 system in statistical release H.15 or any superseding publication. The Loan and Subsidy
10 Agreement will be in the form of Exhibit A to the Application, which contains the complete
11 terms and conditions of the loan.
12

13 **Q. ARE THERE ANY TERMS OR CONDITIONS THAT ARE STILL BEING**
14 **NEGOTIATED?**

15 A. The substantive terms of the transaction, including the interest rates, dollar amounts,
16 maturities, terms of call and restrictions, and necessity for security are fully negotiated.
17 The only contemplated changes are changes to certain dates, such as the Closing Date
18 defined in the Loan and Subsidy Agreement to reflect that closing will occur after final
19 approval of the Application before the Commission.

20 EWNM will submit final documents when available following the close of the
21 transaction and identify any changes from Exhibit A.
22

23 **Q. HOW WILL EWNM USE THE PROCEEDS FROM THIS TRANSACTION?**

1 A. The proceeds will be used to finance the costs of a Preliminary Engineering Report,
2 evaluate, identify, and select a treatment process, conduct bench scale pilot testing of the
3 treatment technologies, and develop a pilot modular wellhead treatment system complete
4 with standard details and drawings to ensure that certain groundwater wells that produce
5 approximately twenty-five percent (25%) of the groundwater supply for the City of Clovis,
6 maintain compliance with the new EPA maximum contaminant levels for PFOA and
7 PFAS. Once developed, the pilot modular wellhead treatment system is expected to be
8 transferable to and capable of implementation for other wellhead treatment needs both
9 within EWNM and other public water systems obtaining water from wells where
10 PFOA/PFAS are contaminants of concern, which may result in significant design savings
11 for other utilities and public water systems.

12
13 **Q. PLEASE DESCRIBE THE OBLIGATIONS OR LIABILITIES ON EWNM THAT**
14 **MAY RESULT FROM THIS TRANSACTION.**

15 **A.** As stated within the above description of the terms and conditions, the potential liability
16 (though extremely unlikely) would be the repayment of the loan amounts disbursed up to
17 \$3 million through a repayment term of not less than ten (10) years and an interest rate
18 charged not to exceed the lesser of: (a) ten (10) percent per annum; or (b) a rate per annum
19 that is equal to two (2) percent plus the prime rate as published by the board of governors
20 of the federal reserve system in statistical release H.15 or any superseding publication. Due
21 to the forgivable nature of the loan, from the perspective of United States Generally
22 Accepted Accounting Principles (“US GAAP”), no liability or obligation will be placed on

1 the financials as the Loan and Subsidy Agreement operates similar to a reimbursement
2 grant on the basis that it is more likely than not to be fully forgiven.

3

4 **Q. HOW WILL EWNM SOURCE THE FUNDS FOR THE LOAN REPAYMENT?**

5 A. If required to be repaid, EWNM will source funds through its normal operations and
6 procedures.

7

8 **Q. DOES THE TRANSACTION CREATE ANY OBLIGATIONS OR LIABILITIES
9 FOR OTHER DEBT SECURITIES ISSUED BY EUSA?**

10 A. No. In the unlikely case that EWNM fails to complete the Project in the specified
11 timeframe, EWNM will only be obligated to repay the loan in accordance with the terms
12 of the Loan and Subsidy Agreement. It will have no obligations or liabilities respecting
13 other debt issued by EUSA.

14

15 **Q. WHAT ARE THE ADVANTAGES TO EWNM FROM BORROWING IN THIS
16 MANNER?**

17 A. In accepting the funding from the government sponsored loans/grants of this nature,
18 EPCOR can avoid using its own capital and minimize the associated impact to ratepayers
19 in incurring increased rates.

20

21 **Q. IS THE BORROWING FROM NMFA A CLASS I TRANSACTION?**

22 A. I do not believe it is. EWNM will be borrowing from NMFA, which is not an affiliated
23 interest.

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Q. WILL DISBURSEMENT OF THE LOAN PROCEEDS CHANGE EWNM'S CURRENT CAPITAL STRUCTURE?

A. No.

Q. WHAT EFFECT, IF ANY, DO YOU ANTICIPATE THIS TRANSACTION WILL HAVE ON THE FUTURE ABILITY OF EWNM TO RAISE MONEY EITHER BY ISSUING DEBT OR EQUITY SECURITIES?

A. None.

Q. DID EWNM INCLUDE THE FINANCING THAT IS THE SUBJECT OF THIS APPLICATION IN EWNM'S ANNUAL INFORMATION FINANCING FILING?

A. No, from a financial reporting (United States GAAP) perspective: (1) the Loan and Subsidy Agreement is not considered a "loan"; and (2) even if it was, the proceeds would not be reflected on the financials until the Loan and Subsidy Agreement is signed and/or monies have been received.

Q. ARE YOU ACQUAINTED WITH SECTION 62-6-7 OF THE NEW MEXICO PUBLIC UTILITY ACT AND THE STANDARDS SET FORTH THEREIN?

A. Yes.

Q. AMONG OTHER THINGS, THE COMMISSION MUST FIND THAT THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST AND THAT

1 **THE PURPOSES THEREOF ARE PERMITTED BY STATUTES. DO YOU**
2 **BELIEVE THAT THESE TESTS ARE SATISFIED?**

3 A. Yes.

4

5 **Q. FINALLY, IF THE COMMISSION AUTHORIZES THIS TRANSACTION,**
6 **WOULD THE AGGREGATE AMOUNT OF SECURITIES OUTSTANDING**
7 **EXCEED THE FAIR VALUE OF THE COMPANY'S PROPERTIES AND**
8 **BUSINESS?**

9 A. No.

10

11 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

12 A. Yes.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ENTER INTO A DRINKING
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LOAN AND SUBSIDY AGREEMENT**

Case No. 25-00___-UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

DECLARATION OF HEATHER KRUPA

I, *Heather Krupa*, pursuant to Rule 1-011 NMRA, state as follows:

1. I affirm in writing under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct.
2. I am employed by EPCOR USA Inc. (“EUSA”), the owner of EPCOR Water New Mexico Inc. (“EWNM”) as Vice President and Controller of Regulated Water.
3. I submit this Declaration based on my personal knowledge and upon information and belief, in support of EWNM’s Application for Authority to Enter into a Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement.
4. The foregoing Direct Testimony of Heather Krupa, together with all exhibits sponsored therein and attached thereto, is true and accurate based on my knowledge, information, and belief.

FURTHER, DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 24, 2025

/s/ Heather Krupa

HEATHER KRUPA

Vice President and Controller of Regulated Water

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF
EPCOR WATER NEW MEXICO INC. FOR
AUTHORITY TO ENTER INTO A DRINKING
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LOAN AND SUBSIDY AGREEMENT**

Case No. 25-00___-UT

EPCOR WATER NEW MEXICO INC.,

Applicant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Application of EPCOR Water New Mexico Inc. for Authority to Enter Into a Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement* was emailed to the following:

Ed Rilkoff	ed.rilkoff@prc.nm.gov ;
Timothy Martinez	timothy.martinez@prc.nm.gov ;
Elisha Leyba-Tervero	elisha.leyba-tercero@prc.nm.gov ;
Edgewood Town Clerk	clerk@edgewood-nm.gov ;
Edgewood Town Manager	townmanager@edgewood-nm.gov ;
Katharine Clerk	clerk@santafecountynm.gov ;
City of Clovis	administration@cityofclovis.org ;
Jared Morris	jmorris@hbmlaw.org ;
Gideon Elliot	gelliot@nm DOJ.gov ;
Jeffrey Wechsler	jwechsler@spencerfane.com ;
Kari Olson	kaolson@spencerfane.com ;
Teresa Pacheco	tpacheco@spencerfane.com ;
Daniel Bailet	dbailet@epcor.com ;

DATED: January 24, 2025

SPENCER FANE LLP

By /s/ Kari E. Olson
Kari E. Olson