



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 10/26/2023

File ID: TMP-3530

Department: Huntsville Utilities

Subject:

Type of Action: Unanimous Consent

Ordinance authorizing the issuance of a \$5,635,000 Subordinated Water Revenue Warrant, Series 2023-DWSRF-DL, and execution of a Special Authority Loan Conditions Agreement for a loan from the Alabama Drinking Water Finance Authority to pay for drinking water system improvements.

Ordinance No.

Finance Information:

Account Number: TBD

City Cost Amount: TBD

Total Cost: TBD

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address:

District: District 1 District 2 District 3 District 4 District 5

Additional Comments:

**AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF ONE
SUBORDINATED WATER REVENUE WARRANT,
SERIES 2023-DWSRF-DL
OF THE CITY OF HUNTSVILLE
IN THE PRINCIPAL AMOUNT OF \$5,635,000**

BE IT ORDAINED by the City Council of the City of Huntsville, a municipal corporation organized and existing under the laws of the State of Alabama (the "Issuer"), as follows:

ARTICLE I

DEFINITIONS AND USE OF PHRASES

Section 1.1 Definitions. The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations as used herein:

"**ADEM**" means Alabama Department of Environmental Management, an agency of the State of Alabama created pursuant to Title 22, Chapter 22A of the Code of Alabama 1975.

"**Additional Warrants**" means Additional Warrants issued pursuant to the Issuer Indenture.

"**Additional Subordinate Obligations**" means any warrants, bonds, notes or other obligations of the Issuer which are issued on a parity of lien with the Warrant, the Series 2021 Warrant and the Series 2021-B Warrant with respect to the Net System Revenues.

"**Authority**" means Alabama Drinking Water Finance Authority, a public corporation under the laws of the State of Alabama.

"**Authority Indenture**" means the Master Direct Loan Trust Indenture from the Authority to the Authority Trustee dated as of January 1, 2004.

"**Authority Loan**" means the loan made to the Issuer by the Authority, the repayment of which is evidenced by the Warrant.

"**Authority Trustee**" means The Bank of New York Mellon Trust Company, N.A., as successor to J.P. Morgan Trust Company, National Association, as trustee under the Authority Indenture, including successors and assigns.

"**Authority Trustee Prime Rate**" means the rate of interest established (whether or not charged) from time to time by the Authority Trustee, as its general reference rate of interest, after taking into account such factors as the Authority Trustee, may from time to time deem appropriate in its sole discretion (it being understood, however, that the Authority Trustee, may from time to

time make various loans at rates of interest having no relationship to such general reference rate of interest).

"City" means the City of Huntsville, Alabama.

"City Clerk " means the City Clerk of the Issuer.

"City Council" means the governing body of the Issuer as from time to time constituted.

"City Treasurer" means the Treasurer of the Issuer.

"Construction Amount" has the meaning given in the Special Conditions Agreement.

"Davis-Bacon Act" means the Davis-Bacon Act of 1931, P.L. No. 403.

"Estimated Final Completion Date" has the meaning given in the Special Conditions Agreement.

"Fiscal Year" means a fiscal year of the Issuer beginning on October 1 of each calendar year and ending on September 30 of each ensuing calendar year.

"Holder" means the person in whose name the Warrant is registered on the registry book of the Authority Trustee pertaining to the Warrant.

"Independent Auditor" a certified public accountant (or firm thereof) licensed to practice public accounting in the State of Alabama and who is not regularly employed full-time by the Issuer.

"Interest Payment Date" means each August 15 and February 15, commencing February 15, 2024.

"Issuer" means the City of Huntsville, a municipal corporation organized and existing under the laws of the State of Alabama, and includes its successors and assigns and any municipal corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Issuer Debt" means any bonds, notes, warrants or other obligations issued by the Issuer and payable in whole or in part out of all or any part of the revenues derived from the System.

"Issuer Indenture" means the Trust Indenture, dated as of May 1, 2008, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee, as supplemented and amended, pursuant to which the Outstanding Prior Lien Obligations were issued and under which Additional Warrants may hereafter be issued.

"Loan Amount" has the meaning given in the Special Conditions Agreement.

"Loan Repayment Fund-2023-DW" means the Loan Repayment Fund-2023-DW created in Section 8.1 hereof.

"Mayor" means the Mayor of the Issuer.

"Net System Revenues" means (i) at any time when any debt is outstanding under the Issuer Indenture, the Net System Revenues as defined in the Issuer Indenture and (ii) at any time when no debt is outstanding under the Issuer Indenture, the System Revenues during a Fiscal Year of the Issuer less the total Operating Expenses incurred during that Fiscal Year.

"Operating Expenses" means, (i) at any time when any debt is outstanding under the Issuer Indenture, Operating Expenses as defined in the Issuer Indenture and (ii) at any time when no debt is outstanding under the Issuer Indenture, for the applicable period or periods, the reasonable and necessary expenses of efficiently and economically administering and operating the System and in maintaining it in good repair and operating condition, any and all payments required with respect to any franchises held by the Issuer, the cost of water purchased or otherwise supplied by the Issuer including without limitation any and all payments required pursuant to any agreements or contracts therefor to which the Issuer is a party, insurance premiums and audit fees, the expenses of an insurance consultant and any other charges expressly stated herein to constitute an operating expense (but not including depreciation, amortization, tax equivalent payments to any governmental body, interest on any securities or other obligations payable from revenues of the System, or any expenses for items properly chargeable by generally accepted accounting principles to a fixed capital account).

"Ordinance" means an ordinance adopted by the City Council of the Issuer.

"Outstanding Prior Lien Obligations" means the Issuer's (i) Water Revenue Warrants, Series 2013, (ii) Water Revenue Warrants, Series 2015, (iii) Water Revenue Warrants, Series 2016, (iii) Water Revenue Warrant, Series 2019, (iv) Water Revenue Warrants, Series 2021-A and (v) Taxable Water Revenue Warrants, Series 2021-B.

"Overdue Interest" means the interest due but not paid on the Interest Payment Date on which such interest is required to be paid.

"Overdue Interest Payment Date" means the date fixed by the Authority Trustee, pursuant to the provisions of Section 3.1(c) hereof, for the payment of Overdue Interest.

"Project" means the improvements to the System that are to be constructed with proceeds of the Authority Loan in accordance with the provisions of the Special Conditions Agreement.

"Redemption Date" means the date fixed for redemption of the Warrant in any notice of redemption.

"Redemption Price" means the price at which the Warrant may be redeemed.

"Series 2021 Warrant" means the Issuer's \$10,615,000 Subordinated Water Revenue Warrant, Series 2021-DWSRF-DL.

"Series 2021-B Warrant" means the Issuer's \$15,715,000 Subordinated Water Revenue Warrant, Series 2021-B-DWSRF-DL.

"Special Conditions Agreement" means the Special Authority Loan Conditions Agreement among the Issuer, the Authority and ADEM, dated as of October 1, 2023.

"System" means the Issuer's water works plant and distribution system and related facilities, including all additions thereto and replacements thereof hereafter made.

"System Revenues" means all revenues and income of whatever nature derived by the Issuer from the operation of the System, including without limitation cash, accounts receivable and contract rights; provided, however, that (i) grants or borrowed funds, (ii) deposits or payments by contractors to offset the cost of extensions or new connections, and (iii) customer deposits to ensure payment of utility services shall not be considered part of the System Revenues.

"Warrant" without other qualifying words, means the \$5,635,000 Subordinated Water Revenue Warrant, Series 2023-DWSRF-DL, herein authorized.

"United States Securities" means any securities that are direct obligations of the United States of America and any securities with respect to which payment of the principal thereof and the interest thereon is unconditionally guaranteed by the United States of America.

Section 1.2 Use of Words and Phrases. "Herein", "hereby", "hereunder", "hereof" and other equivalent words refer to this Ordinance as an entirety and not solely to the particular portion hereof in which any such word is used. The definitions set forth in Section 1.1 hereof shall be deemed applicable whether the words defined are herein used in the singular or the plural. Any pronoun or pronouns used herein in any fashion shall be deemed to include both singular and plural and to cover all genders.

ARTICLE II

REPRESENTATIONS AND FINDINGS

Section 2.1 Representations. The Issuer represents, as a basis for the undertakings herein contained, that it is a municipal corporation of the State of Alabama.

Section 2.2 Findings. The City Council does hereby find and declare that the following facts are true and correct:

(1) The City Council has determined to make capital improvements to the System of the Issuer, the estimated costs of the said improvements being in excess of \$5,635,000.

(2) The Issuer has heretofore filed an application with ADEM for the purpose of obtaining a loan from the Authority to provide funds to pay a portion of the costs of the Project. The award of the loan to the Issuer will be of substantial economic benefit to the Issuer and its customers by reducing the amount of interest that would be payable by the Issuer if the funds were provided from sources other than from the Authority Loan.

(3) The current capitalization grant agreement between the Authority and the United States Environmental Protection Agency requires, among other things, that all projects funded in whole or part with Authority funds, including the Project, be constructed in accordance with certain provisions of the Davis-Bacon Act, the Bi-Partisan Infrastructure Investment and Jobs Act, the Build America, Buy America Act, and with certain requirements pertaining to use of United States-produced iron and steel.

(4) The City Council deems it necessary, desirable and in the public interest that the Issuer obtain the Authority Loan for the purpose of providing funds to finance the costs of the Project. In order to evidence the repayment of the Authority Loan by the Issuer to the Authority, the Issuer deems it necessary, desirable and in the public interest that the Warrant hereinafter authorized be issued for the purpose of evidencing the debt of the Issuer to the Authority.

(5) The Issuer has no bonds, warrants or other indebtedness to which the revenues of the System (or any portion thereof) are pledged and which are presently outstanding, except the Outstanding Prior Lien Obligations, the Series 2021 Warrant and the Series 2021-B Warrant.

(6) The Issuer is not in default under any ordinance, resolution, trust indenture or other document authorizing any outstanding indebtedness of the Issuer, and no default is imminent.

(7) The Issuer hereby finds that the Net System Revenues will, immediately following the issuance of the Warrant, be sufficient to make timely payment of all principal and interest on the Warrant and all other outstanding Issuer Debt.

ARTICLE III

ACCEPTANCE OF AUTHORITY LOAN AND ISSUANCE OF WARRANT

Section 3.1 (a) Authority Loan Made and Accepted. In consideration of the mutual promises made in the Special Conditions Agreement, in this Ordinance and in the Warrant, and subject to the terms and conditions of each thereof, the Issuer by the delivery of the Warrant, accepts the Authority Loan and the Authority has, upon delivery to it of the Warrant, made available in the Authority Indenture, the Loan Amount.

(b) Authorization and Description of the Warrant. Pursuant to the applicable provisions of the constitution and laws of the State of Alabama, including particularly Section 11-47-2 of the Code of Alabama (1975), as amended, and for the purpose of evidencing repayment of the Authority Loan made to the Issuer by the Authority, there is hereby authorized to be issued one fully registered Subordinated Water Revenue Warrant, Series 2023-DWSRF-DL, in the aggregate principal amount of \$5,635,000, subject to the right of the Authority, as set out in the Special Conditions Agreement, to reduce the amount of the Authority Loan evidenced by the Warrant and to provide, in such case, a revised amortization schedule setting forth the remaining amounts of principal owed under the Warrant following any such reduction. The Warrant shall be issued as one fully registered Warrant, without coupons, in the form prescribed in Section 3.2 hereof. The principal of the Warrant shall mature and become payable on August 15 in the following principal installments in the following years (subject to adjustments as provided in the Special Conditions Agreement):

Year (August 15)	Principal
2024	\$235,000
2025	235,000
2026	240,000
2027	245,000
2028	250,000
2029	255,000
2030	260,000
2031	265,000
2032	270,000
2033	280,000
2034	285,000
2035	290,000
2036	295,000
2037	300,000
2038	305,000
2039	310,000
2040	320,000
2041	325,000
2042	330,000
2043 (Final Maturity)	340,000

The Warrant shall be initially issued and registered in the name of the Authority.

(c) Interest; Interest Rate. The principal installments of the Warrant shall bear interest from September 1, 2023, until their respective due dates at the per annum rate of interest of 0.10%, computed on the basis of a 360 day year of twelve (12) consecutive thirty (30) day months, and continuing until the due date of the last maturing installment of principal of the Warrant, all as reflected in the column entitled "Interest" on the amortization schedule set forth in Appendix C to the Special Conditions Agreement. Such interest shall be payable semiannually on each August 15 and February 15, commencing February 15, 2024, until and at the final maturity of the Warrant.

(d) Administrative Fee; Administrative Fee Rate. The Issuer covenants and agrees to timely pay the Administrative Fee (as such term is defined in the Special Conditions Agreement) charged by ADEM, which such Administrative Fee shall be charged based on the outstanding principal amount of the Warrant as of any date of calculation, and calculated at the per annum rate of 1.89%, computed on the basis of a 360 day year consisting of 12 consecutive 30 day months, all as reflected in the column entitled "Admin Fee" on the amortization schedule set forth in Appendix C to the Special Loan Conditions Agreement. The Administrative Fee shall be payable semiannually on each August 15 and February 15, commencing February 15, 2024, until and at the final maturity of the Warrant.

(e) Payment of Principal, Payment of Interest and Payment of Administrative Fee. Payment of the principal of and interest on, and the Administrative Fee respecting, the

Warrant shall be payable in lawful money of the United States of America by check or draft mailed by the Authority Trustee to the lawful Holder of the Warrant at the address shown on the registry books of the Issuer pertaining to the Warrant; provided, that so long as the Authority is the registered Holder of the Warrant, payment of the principal of and the interest on the Warrant, and payment of the Administrative Fee respecting the Warrant, shall be made to the Authority by the Authority Trustee in accordance with directions given to the Authority Trustee by the Authority. Payment of the interest and Administrative Fee on the Warrant shall be deemed timely made if mailed on the Interest Payment Date, or if such Interest Payment Date is not a business day, then on the first business day immediately following such Interest Payment Date. The final installment of principal, interest and Administrative Fee shall be payable at the designated office of the Authority Trustee upon presentation and surrender of the Warrant.

Any provisions hereof to the contrary notwithstanding, Overdue Interest and Administrative Fee shall not be payable to the Holder of the Warrant solely by reason of such Holder having been the Holder on the Interest Payment Date on which such interest and Administrative Fee became due and payable, but shall be payable by the Authority Trustee as follows:

(i) Not more than ten (10) days following receipt by the Authority Trustee of immediately available funds in an amount sufficient to enable the Authority Trustee to pay all Overdue Interest and Administrative Fee, the Authority Trustee shall fix an Overdue Interest and Administrative Fee Payment Date for payment of such Overdue Interest and Administrative Fee.

(ii) Such Overdue Interest and Administrative Fee Payment Date fixed by the Authority Trustee shall be a date not more than twenty (20) days following the expiration of the period described in the foregoing subparagraph (i).

(iii) Overdue Interest and Administrative Fee shall be paid by check or draft mailed by the Authority Trustee to the persons in whose names the Warrant was registered on the Overdue Interest and Administrative Fee Payment Date.

Payment of Overdue Interest and Administrative Fee in the manner prescribed in this paragraph to the persons in whose names the Warrant was registered on the Overdue Interest and Administrative Fee Payment Date shall fully discharge and satisfy all liability for the same.

(d) Interest Rate and Loan Amount after Maturity. Each installment of principal and interest on the Warrant shall bear interest from its due date until paid at a per annum rate of interest equal to 2% above the Authority Trustee Prime Rate, such interest to be computed daily.

Section 3.2 Form of Warrant. The Warrant and the Certificate of Registration and the Form of Assignment applicable thereto shall be in substantially the following forms, respectively, with such insertions, omissions and other variations as may be necessary to conform to the provisions hereof:

**CITY OF HUNTSVILLE, ALABAMA
SUBORDINATED WATER REVENUE WARRANT
SERIES 2023-DWSRF-DL**

For value received, the **CITY OF HUNTSVILLE, ALABAMA**, a municipal corporation of the State of Alabama (herein called the "City"), hereby acknowledges that it is indebted to, and hereby orders its City Treasurer to pay to, **ALABAMA DRINKING WATER FINANCE AUTHORITY** (the "Authority"), or registered assigns, solely out of the revenues hereinafter referred to, the aggregate principal sum of

FIVE MILLION SIX HUNDRED THIRTY-FIVE THOUSAND DOLLARS

in installments on August 15 in the following respective years and principal amounts (subject to the adjustment of the principal installments on the Warrant as provided in the Authorizing Ordinance hereinafter defined):

Year (August 15)	Principal
2024	\$235,000
2025	235,000
2026	240,000
2027	245,000
2028	250,000
2029	255,000
2030	260,000
2031	265,000
2032	270,000
2033	280,000
2034	285,000
2035	290,000
2036	295,000
2037	300,000
2038	305,000
2039	310,000
2040	320,000
2041	325,000
2042	330,000
2043 (Final Maturity)	340,000

with (i) interest on the then unpaid principal balance hereof at the per annum rate of interest of 0.10% from September 1, 2023, computed on the basis of a 360 day year of twelve (12) consecutive thirty (30) day months, as reflected in the column entitled "Interest" on the amortization schedule set forth in Appendix C to the Special Conditions Agreement, and (ii) the Administrative Fee due on the then unpaid principal balance hereof from September 1, 2023, at the per annum rate of 1.89%, computed on the basis of a 360 day year consisting of 12 consecutive 30 day months, as reflected in the column entitled "Admin Fee" on the amortization schedule set forth in Appendix C to the Special Conditions Agreement. Such interest and Administrative Fee shall be payable on February 15, 2024, and semiannually thereafter on each February 15 and August 15 thereafter until and including the due date of the last maturing installment of principal hereof.

The principal of and interest on, and the Administrative Fee with respect to, this Warrant are payable in lawful money of the United States of America by check or draft mailed by The Bank of New York Mellon Trust Company, N.A. (the "Authority Trustee"), to the then registered holder hereof at the address shown on the registry books of the Issuer pertaining to the Warrant; provided, that so long as the Authority is the registered holder of the Warrant, payment of the principal of and interest on the Warrant shall be made to the Authority by the Authority Trustee in accordance with instructions given to the Authority Trustee by the Authority. The final installment of principal of and interest on, and Administrative Fee with respect to, the Warrant shall be payable at the designated office of the Authority Trustee upon presentation and surrender of the Warrant. Each installment of principal and interest on, and Administrative Fee with respect to, the Warrant shall bear interest after its due date until paid at a per annum rate of interest equal to 2% above the Authority Trustee Prime Rate, as defined in the Authorizing Ordinance (as defined below). The Authorizing Ordinance provides that all payments by the City or the Authority Trustee to the person in whose name this Warrant is registered shall to the extent thereof fully discharge and satisfy all liability for the same. Any transferee of this Warrant takes it subject to all payments of principal, interest and Administrative Fee in fact made with respect hereto.

The warrant evidenced hereby is designated Subordinated Water Revenue Warrant, Series 2023-DWSRF-DL (the "Warrant") and is authorized to be issued in the aggregate principal amount of \$5,635,000 and payable solely out of the Net System Revenues of the City, as defined in the ordinance adopted by the City Council of the City (the "Authorizing Ordinance") pursuant to which the Warrant is issued. **THE PLEDGE OF THE NET SYSTEM REVENUES IN FAVOR OF THE WARRANT IS SUBORDINATE TO THE PLEDGE OF THE REVENUES OF THE SYSTEM IN FAVOR OF THE OUTSTANDING PRIOR LIEN OBLIGATIONS AND ANY ADDITIONAL WARRANTS (AS DEFINED IN THE AUTHORIZING ORDINANCE) AND IS ON A PARITY OF LIEN WITH THE PLEDGE OF THE NET SYSTEM REVENUES IN FAVOR OF THE SERIES 2021 WARRANT AND THE SERIES 2021-B WARRANT (AS DEFINED IN THE AUTHORIZING ORDINANCE) AND ANY ADDITIONAL SUBORDINATE OBLIGATIONS (AS DEFINED IN THE AUTHORIZING ORDINANCE).**

The principal installments of the Warrant having stated maturities on August 15, 2034, and thereafter may be redeemed and paid prior to their respective maturities, at the option of the City, as a whole or in part (but if in part, in the inverse order of installments of principal and in \$5,000 increments), on August 15, 2033, and on any date thereafter, at and for a redemption

price with respect to each principal installment of the Warrant equal to the principal prepaid plus accrued interest thereon, and accrued Administrative Fee with respect thereto, to the redemption date.

The Authorizing Ordinance requires that written notice of the call of redemption of this Warrant (or principal installment thereof) be forwarded by United States Registered or Certified Mail to the registered owner of such Warrant, not less than forty-five (45) days prior to the date fixed for redemption. In the event that less than all the outstanding principal of this Warrant is to be redeemed, the registered Holder hereof shall surrender this Warrant to the Authority Trustee in exchange for a new Warrant of like tenor herewith except in a principal amount equal to the unredeemed portion of this Warrant. Not later than the date fixed for redemption, the City shall make available at the office of the Authority Trustee the redemption price of the Warrant (or principal portion thereof) that is to be prepaid and redeemed on said redemption date. Upon the giving of notice of redemption and the payment to the Authority Trustee of the redemption price in accordance with the provisions of the Authorizing Ordinance, and if the City is not in default on the payment of principal, or interest or Administrative Fee on the redemption date, the Warrant (or principal installments thereof) so called for redemption and prepayment shall become due and payable on the date specified in such notice, anything herein or in the Authorizing Ordinance to the contrary notwithstanding, and the Holder thereof shall then and there surrender for prepayment, and all future interest and Administrative Fee on the Warrant (or principal installments thereof) so called for prepayment shall cease to accrue after the date specified in such notice, whether or not the Warrant is so presented.

It is hereby certified and recited that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description; that this Warrant has been registered in the manner provided by law; that all conditions, actions and things required by the constitution and laws of the State of Alabama to exist, be performed or happen precedent to and in the issuance of this Warrant do exist, have been performed and have happened; and that the indebtedness evidenced and ordered paid by this Warrant, together with all other indebtedness of the Issuer, was at the time the same was created and is now within every debt and other limit prescribed by the constitution and laws of the State of Alabama.

This Warrant is transferable by the registered holder hereof, in person or by authorized attorney, only upon the books of the City and only upon surrender of this Warrant to the City for cancellation, and upon such transfer a new Warrant of like tenor hereof will be issued to the transferee in exchange therefore, all as more particularly described in the Authorizing Ordinance. Each holder, by receiving or accepting this Warrant, shall be deemed to consent and agree and shall be estopped to deny that, insofar as the City and the Authority Trustee are concerned, this Warrant may be transferred only in accordance with the provisions of the Authorizing Ordinance.

The City shall not be required to transfer or exchange this Warrant during the period of fifteen (15) days next preceding any interest payment date; and in the event that this Warrant (or any principal portion hereof) is duly called for redemption and prepayment, the City shall not be required to register or transfer this Warrant during the period of forty-five (45) days next preceding the date fixed for such redemption and prepayment.

IN WITNESS WHEREOF, the City has caused this warrant to be executed in its name and behalf by its Mayor, has caused its seal to be hereunto affixed and attested by its City Clerk, both of said officers being hereunto duly authorized, and has caused this warrant to be dated October ____, 2023.

CITY OF HUNTSVILLE, ALABAMA

[SEAL]

By _____
Mayor

Attest:

City Clerk

(Form of Registration Certificate)

I hereby certify that this warrant has been duly registered by me as a claim against the **CITY OF HUNTSVILLE, ALABAMA**.

City Treasurer
City of Huntsville, Alabama

(Form of Assignment)

For value received, _____ hereby sell(s), assign(s) and transfer(s) unto _____ the within warrant and hereby irrevocably constitute(s) and appoint(s) _____, attorney, with full power of substitution in the premises, to transfer this warrant on the books of the within-mentioned registrar.

Dated this _____ day of _____, _____.

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in every particular, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

(Bank, Trust Company or Firm)

By _____
Authorized Officer

*Signature(s) must be guaranteed by an eligible guarantor institution which is a member of the recognized signature guarantee program, i.e., Securities Transfer Agents Medallion Program (STAMP), Stock Exchanges Medallion Program (SEMP), or New York Stock Exchange Medallion Signature Program (MSP).

Section 3.3 Redemption Provisions. Those of the principal installments of the Warrant having stated maturities on August 15, 2034, and thereafter may be redeemed and paid prior to their respective maturities, at the option of the City, as a whole or in part (but if in part, in the inverse order of installments of principal and in \$5,000 increments), on August 15, 2033, and on any date thereafter, at and for a Redemption Price with respect to each principal installment of the Warrant redeemed equal to the principal prepaid plus (i) accrued interest thereon to the Redemption Date and (ii) the accrued amount of the Administrative Fee related thereto, to the Redemption Date (the "Redemption Price"). Any such redemption or prepayment of the Warrant shall be effected in the following manner:

(1) **Call.** The Issuer shall adopt a resolution containing the following: (1) a call for redemption, on a specified date when the principal installments of the Warrant are subject to redemption and prepayment, stating the year or years in which such principal installments have due dates, (2) a statement that the Issuer is not in default hereunder, and (3) a summary of any applicable restrictions upon or conditions precedent to such redemption and the provisions made to comply therewith.

(2) **Notice.** Not less than forty-five (45) days prior to the Redemption Date, the Authority Trustee shall give, or cause to be given, written notice of such redemption and prepayment by United States Registered Mail or United States Certified Mail to the Holder of the Warrant stating the following: that the Warrant (or principal portions thereof) has been called for redemption and will become due and payable at the Redemption Price, on a specified Redemption Date and that all interest on, and all Administrative Fee respecting, the Warrant will cease after the Redemption Date. The Holder of the Warrant may waive the requirements of this subsection.

(3) **Payment of Redemption Price.** Not later than the Redemption Date, the Issuer shall make available at the office of the Authority Trustee the total Redemption Price of the Warrant (or principal portions thereof) that is to be prepaid and redeemed on the Redemption Date.

Upon compliance with the foregoing requirements on its part contained in this subsection, and if the Issuer is not on the Redemption Date in default on the payment of the principal of or interest on the Warrant, or the amount of the Administrative Fee theretofore due, the Warrant (or principal portions thereof) called for redemption shall become due and payable at the Redemption Price on the Redemption Date specified in such notice, anything herein or in the Warrant to the contrary notwithstanding, and the Holder thereof shall then and there surrender the Warrant for redemption; provided however, that in the event that less than all of the outstanding principal of the Warrant is to be redeemed, the registered Holder thereof shall surrender the Warrant that is to be prepaid in part to the Authority Trustee in exchange, without expense to the Holder, for a new Warrant of like tenor, except in a principal amount, equal to the unredeemed portion of the Warrant. Upon redemption, all future interest and Administrative Fee on the Warrant (or principal portions thereof) so called for redemption shall cease to accrue after the Redemption Date. Out of the moneys so deposited with it, the Authority Trustee shall make provision for payment of the

Warrant (or principal portions thereof) so called for redemption at the Redemption Price and on the Redemption Date.

ARTICLE IV

ADDITIONAL SUBORDINATE OBLIGATIONS

Section 4.1 Additional Subordinate Obligations - In General. While the Issuer is not in default in payment of the principal of or the interest on the Warrant or any other Issuer Debt, or the obligation to pay the Administrative Fee respecting the Warrant, it may, subject to the provisions of Section 4.2 hereof, at any time and from time to time issue Additional Subordinate Obligations for any purpose for which the Issuer may issue its warrants. The Additional Subordinate Obligations may be in such denomination or denominations, shall bear interest at such rate or rates, shall mature in such amounts and at such times, and may contain such other provisions as the Issuer shall determine.

Section 4.2 Conditions Precedent to Issuance of Additional Subordinate Obligations. Prior to the issuance of any Additional Subordinate Obligations, the Issuer will either:

(a) obtain the written consent of the Authority to the issuance of such Additional Subordinate Obligations; or

(b) not less than twenty (20) days prior to the issuance of any such Additional Subordinate Obligations, furnish to the Authority a certificate of an Independent Auditor certifying that the Net System Revenues for the fiscal year of the Issuer next preceding that during which the Additional Subordinate Obligations are to be issued was not less than 110% of maximum annual debt service (including Administrative Fee payable on any outstanding loans from the Authority or Alabama Water Pollution Control Authority) during the then current or any succeeding fiscal year payable on (i) all outstanding Issuer Debt plus (ii) the Additional Subordinate Obligations then proposed to be issued. Any principal installments of any Issuer Debt to be paid or defeased upon the issuance of such Additional Subordinate Obligations shall not be taken into account as outstanding Issuer Debt for purposes of this subsection (b).

Section 4.3 Issuance of Subordinate Obligations. Without in any way limiting the foregoing, nothing contained in this Article IV shall be construed as a limitation on the ability of the Issuer to issue bonds, warrants, notes or other obligations payable from revenues of the System subject to and subordinate in all respects to the pledge of System revenues as contained in this Ordinance.

ARTICLE V

EXECUTION OF THE WARRANT

Section 5.1 Execution of Warrant. The Warrant shall be executed on behalf of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto and attested by the City Clerk and the City Treasurer shall register the Warrant and execute the registration certificate thereon. Signatures on the Warrant by persons who were officers of the Issuer at the time such signatures were written or printed shall continue effective although such persons cease to be such officers prior to the delivery of the Warrant.

Section 5.2 Replacement of Mutilated, Lost, Stolen or Destroyed Warrant. In the event any warrant is mutilated, lost, stolen or destroyed, the Issuer will execute and deliver a new warrant of like tenor and denomination as that mutilated, lost, stolen or destroyed; provided that (a) in the case of any such mutilated warrant, such warrant is first surrendered to the Issuer, and (b) in the case of any such lost, stolen or destroyed warrant, there is first furnished to the Issuer evidence of such loss, theft or destruction satisfactory to it, together with indemnity satisfactory to it. The Issuer may charge the Holder with the expense of issuing any such new warrant.

ARTICLE VI

REGISTRATION AND NEGOTIABILITY OF THE WARRANT

Section 6.1 Registration of Warrant. The Warrant shall be registered as to principal, interest and Administrative Fee, and shall be transferable only on the registry books of the Issuer.

No transfer of the Warrant shall be valid hereunder except upon presentation and surrender of such Warrant at the office of the Issuer with written power to transfer signed by the registered Holder thereof in person or by duly authorized attorney, properly stamped if required, in form and with guaranty of signature satisfactory to the Issuer, whereupon the Issuer shall execute, register and deliver to the transferee, a new warrant, registered in the name of such transferee and of like tenor as that presented for transfer. The person in whose name the Warrant is registered on the books of the Issuer shall be the sole person to whom or on whose order payments on account of the principal thereof and interest (and premium, if any) thereon, and of the Administrative Fee relating thereto, shall be made. Each Holder of the Warrant, by receiving or accepting such Warrant shall consent and agree and shall be estopped to deny that, insofar as the Issuer and the Authority Trustee are concerned, the Warrant may be transferred only in accordance with the provisions of this Ordinance.

The Issuer shall not be required to register or transfer any Warrant during the period of fifteen (15) days next preceding any interest payment date with respect thereto; and if any Warrant is duly called for redemption (in whole or in part), the Authority Trustee shall not be required to register or transfer such Warrant during the period of forty-five (45) days next preceding the redemption date.

Section 6.2 Owner of Warrant. The Issuer and the Authority Trustee may deem and treat the person in whose name the Warrant is registered as the absolute owner thereof for all purposes; they shall not be affected by notice to the contrary; and all payments by any of them to the person in whose name the Warrant is registered shall, to the extent thereof, fully discharge and satisfy all liability for the same.

Section 6.3 Registration Certificate on Warrant. A registration certificate, in substantially the form appearing in Section 3.2 hereof, duly executed by the manual signature of an authorized officer of the Authority Trustee, shall be endorsed on the Warrant and shall be essential to its validity.

ARTICLE VII SOURCE OF PAYMENT OF THE WARRANT

Section 7.1 Source of Payment of Warrant. (a) The indebtedness evidenced and ordered paid by the Warrant is and shall be payable solely from the Net System Revenues of the Issuer. The Issuer hereby pledges so much as may be necessary of the Net System Revenues for payment of the principal of and interest on the Warrant, the Series 2021 Warrant, the Series 2021-B Warrant and any Additional Subordinate Obligations hereafter issued. The pledge of the Net System Revenues for the benefit of the Warrant, the Series 2021 Warrant, the Series 2021-B Warrant and any Additional Subordinate Obligations is subordinate to the pledge of the revenues of the System made in the Issuer Indenture for the Outstanding Prior Lien Obligations and any Additional Warrants. Neither the Warrant nor any agreement herein or in the Special Conditions Agreement shall constitute a general indebtedness of the Issuer within the meaning of any state constitutional or statutory provision or limitation. The full faith and credit of the Issuer shall not be pledged for payment of principal of or interest on the Warrant. The covenants and agreements contained herein or in the Special Conditions Agreement do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the general credit of the Issuer, and in the event of a breach of any such covenant or agreement, no personal or pecuniary liability from the general assets or revenues of the Issuer, except the Net System Revenues, shall arise therefrom.

(b) By its acceptance of the Warrant, the Authority and any subsequent holder of the Warrant agrees that (i) the payment of the Warrant when due in each month is fully subordinated in priority to the prior payment in full of all Additional Warrants issued under the Issuer Indenture when due in each such month; (ii) the right, title and interest of the Trustee in and to Net System Revenues (as defined in the Issuer Indenture) from the System is prior and superior to that of the Authority and any subsequent holder of the Warrant for all purposes; and (iii) upon an Event of Default under the Issuer Indenture, or a default under this ordinance or with respect to the Warrant, or the distribution of System assets of the Issuer upon any voluntary or involuntary act of insolvency under federal or state law, each of the Authority and any subsequent holder of the Warrant agrees (i) the trustee under the Issuer Indenture (the "Issuer Trustee") is entitled to, and will, receive all System Revenues and all System assets of the Issuer, when and as available, in prior payment of the Issuer Debt issued as Additional Warrants in full, and the consequent defeasance of the Issuer Indenture, before any of such revenues or assets are distributed to the Authority or to any subsequent holder of the Warrant, and (ii) it will promptly deliver to the Issuer

Trustee any assets or funds of the Issuer made available to, or received by, it in violation of this Section 7.1(b).

Section 7.2 Pledge. The amounts on deposit in the Loan Repayment Fund-2023-DW (as hereinafter defined) from time to time are hereby irrevocably pledged for payment of the principal of and the interest on the Warrant.

Section 7.3 Defeasance. The Warrant may be defeased and no longer considered outstanding by (A) making provision with the Authority Trustee for the retirement of the Warrant by creating for such purpose an irrevocable trust fund sufficient to provide for payment and retirement of the Warrant (including payment of the interest and Administrative Fee that will mature or become payable thereon until and on the date it is retired, as such interest and Administrative Fee becomes due and payable), either by redemption prior to the respective maturities of the principal installments, by payment at their respective maturities or by payment of part thereof at their respective maturities and redemption of the remainder prior to their respective maturities, which said trust fund shall consist of (i) United States Securities which are not subject to redemption prior to their respective maturities at the option of the issuer and which, if the principal thereof and the interest thereon are paid at their respective maturities, will produce funds sufficient so to provide for payment and retirement of the Warrant, or (ii) both cash and such United States Securities which together will produce funds sufficient for such purpose, or (iii) cash sufficient for such purpose, (B) providing to the Authority Trustee a certified copy of a resolution adopted by the Issuer calling for redemption the principal installments of the Warrant that, according to said trust agreement, are to be redeemed prior to their respective maturities, and (C) providing the Authority with a verification report prepared by a certified public accountant confirming the sufficiency of the cash and/or United States Securities to provide for the retirement of the Warrant.

Section 7.4 Issuance of Additional Warrants Under the Issuer Indenture. Prior to the issuance of any Additional Warrants under the Issuer Indenture, other than Additional Warrants issued to refund obligations of the Issuer, the Issuer will either:

(a) obtain the written consent of the Authority to the issuance of such obligations; or

(b) furnish to the Authority a certificate of an Independent Auditor (as defined in the Issuer Indenture) certifying that the "Annual Net Income" (as defined in the Issuer Indenture) during any twelve consecutive months during the prior eighteen month period next preceding the date of issuance of such Additional Warrants are to be issued was not less than 120% of maximum annual debt service (including Administrative Fee payable on any outstanding loans from the Authority) during any fiscal year payable on (i) all outstanding Issuer Debt (excluding any defeased indebtedness of the Issuer), plus (ii) the Additional Warrants then proposed to be issued.

ARTICLE VIII

CREATION OF LOAN REPAYMENT FUND AND PAYMENTS THEREIN

Section 8.1 Loan Repayment Fund. There is hereby established a special trust fund, designated the "Loan Repayment Fund-2023-DW" that shall be continued and maintained until the principal of and interest on the Warrant are paid in full.

Or before February 15, 2024, and on each February 15 and August 15 thereafter until the principal of and the interest on, and the Administrative Fee with respect to, the Warrant shall have been paid in full, the Issuer shall pay into the Loan Repayment Fund-2023-DW an amount equal to the sum of (i) the semiannual installment of interest that will mature on the Warrant on such February 15 or August 15, as the case may be, plus (ii) the Administrative Fee due on such February 15 or August 15, as the case may be, plus (iii) the principal that will mature on the Warrant on such August 15.

Section 8.2 Use of Moneys in Loan Repayment Fund. All moneys paid into the Loan Repayment Fund-2023-DW shall be used only for payment of the principal of and the interest on, and the Administrative Fee respecting, the Warrant upon or after the respective maturities of such principal, interest and Administrative Fee; provided, that if at the final maturity of the Warrant, however the same may mature, there shall be in the Loan Repayment Fund-2023-DW moneys in excess of what shall be required to pay in full the principal of and the interest on, and the Administrative Fee respecting, the Warrant, then any such excess shall thereupon be returned to the Issuer.

Section 8.3 Security for the Loan Repayment Fund. The Loan Repayment Fund-2023-DW shall be and at all times shall remain public funds impressed with a trust for the purpose for which the Loan Repayment Fund-2023-DW is herein created. Each depository for any part of the Loan Repayment Fund-2023-DW shall at all times keep the moneys on deposit with it in the Loan Repayment Fund-2023-DW continuously secured for the benefit of the Issuer and the holders of the Warrant either:

(1) by holding on deposit as collateral security, United States Securities or other marketable securities eligible as security for the deposit of trust funds under regulations of the Board of Governors of the Federal Reserve System, having a market value (exclusive of accrued interest) not less than the amount of moneys on deposit in the Loan Repayment Fund-2023-DW, or

(2) if the furnishing of security in the manner provided in the foregoing clause (1) of this sentence is not permitted by the then applicable law and regulations, then in such other manner as may be required or permitted by the applicable state and federal laws and regulations respecting the security for, or granting a preference in the case of, the deposit of public funds;

provided, however, that it shall not be necessary for any such depository to secure any portion of the moneys on deposit in Loan Repayment Fund-2023-DW that may be insured by the Federal Deposit Insurance Corporation (or by any agency of the United States of America that may succeed to its functions).

ARTICLE IX

CERTAIN WARRANTIES AND COVENANTS OF THE ISSUER

Section 9.1 To Maintain Adequate Rates. The Issuer will make and maintain such rates and charges for water and other services supplied from the System and will make collections from the users thereof so that the available System revenues will at all times be sufficient to make timely payment of the debt service and Administrative Fee on all Issuer Debt.

Section 9.2 To Respect Priority of Pledge. The pledge herein made of the Net System Revenues (or any portion thereof) shall be prior and superior to any pledge or agreement hereafter made for the benefit of any securities hereafter issued or any contract hereafter made by the Issuer, except for Additional Warrants or Additional Subordinate Obligations issued pursuant to the provisions hereof.

Section 9.3 No Conflicting Transactions. The Issuer warrants and represents that (a) the Warrant is a valid and binding special obligation of the Issuer payable out of the Net System Revenues, and (b) the provisions of the Warrant and this Ordinance will not result in any breach of, or constitute a default under, any mortgage, deed of trust, security agreement, ordinance, resolution, bank loan, credit agreement or other instrument to which the Issuer is a party or by which it is bound.

Section 9.4 To Furnish Authority With Reports. The Issuer agrees to furnish to the Authority, within 180 days after the close of its Fiscal Year, the audited financial statements of the Issuer for such Fiscal Year.

Section 9.5 Par Clearance. All remittances of principal of and interest on the Warrant to the Holder thereof shall be made at par without any deduction for exchange or other costs, fees or expenses. The Authority Trustee shall be considered, by acceptance of its duties hereunder, to have agreed that it will make or cause to be made, out of moneys supplied to it for that purpose, remittances of principal and interest on the Warrant to the Holder thereof in bankable funds at par without any deduction for exchange or other costs, fees or expenses.

Section 9.6 No Sale or Disposal of Project. The Issuer will not sell or otherwise dispose of any part of the Project prior to the last maturity of the Authority Loan (except such minor parts or portions of the Project that may be disposed of due to normal wear, obsolescence, or depreciation), unless any such sale or disposal will not adversely affect the ability of the issuer to pay the principal of and interest on the Warrant.

Section 9.7 Insurance on Physical Properties. The Issuer will maintain adequate insurance on the properties and facilities comprising the System and adequate liability insurance for so long as the Warrant is outstanding; provided, that the Issuer shall be allowed to be self-insured for all such purposes.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES OF WARRANTHOLDERS

Section 10.1 Events of Default Defined. Any of the following shall constitute default hereunder by the Issuer:

(a) Failure by the Issuer to pay the principal of, the interest on, or the Administrative Fee respecting, the Warrant when such principal, interest and Administrative Fee respectively becomes due and payable, whether by maturity or otherwise;

(b) A default by the Issuer under the ordinance or other authorizing document pursuant to which any Issuer Debt has been (or is hereafter) issued;

(c) A default by the Issuer under the Special Conditions Agreement entered into in connection with the issuance of the Warrant;

(d) Failure by the Issuer to perform any of the agreements on its part herein contained (other than payment of the principal of and interest on the Warrant) after thirty (30) days' written notice to it of such failure made by the Authority; or

(e) Determination by a court having jurisdiction that the Issuer is insolvent or bankrupt, or appointment by a court having jurisdiction of a receiver for the Issuer or for all or a substantial part of the System, or the approval by a court of competent jurisdiction of any petition for reorganization of the Issuer or rearrangement or readjustment of its obligations under any provisions of the bankruptcy laws of the United States.

Section 10.2 Remedies on Default. Upon any default by the Issuer in any one of the ways defined in Section 10.1 hereof, the Authority shall have the following rights and remedies and any other rights and remedies permitted by law:

(a) **Acceleration.** The Authority may, by written notice to the Issuer, declare all principal of the Warrant forthwith due and payable, and thereupon it shall be so, anything herein or therein to the contrary notwithstanding. If, however, the Issuer shall make good that default and every other default hereunder (except the principal so declared payable), with interest on all overdue payments of

principal and interest, then the Authority, by written notice to the Issuer, may waive such default and its consequences, but no such waiver shall affect any subsequent default or right relative thereto.

(b) Suits at Law or in Equity. The Authority is empowered to sue on such Warrant (i) by mandamus, suit or other proceeding, to enforce all agreements of the Issuer herein contained, including the fixing of rates, the collection and proper segregation and application of the revenues from the System, (ii) by action or suit in equity, to require the Issuer to account as if it were the trustee of an express trust for the Authority, and (iii) by action or suit in equity, to enjoin any act or things which may be unlawful or a violation of the rights of the Authority.

Nothing herein contained, however, shall be construed to give the Authority or the Authority Trustee the right to compel a sale of the System or any part thereof, and no foreclosure proceedings or sale shall ever be had with respect to the System or any part thereof under the authority of this Ordinance.

Section 10.3 Waiver of Rights against Officials and Others. As a condition hereof, the Holder waives and releases any right, cause of action or remedy now or hereafter existing or imposed in any jurisdiction against any past, present or future officer or employee of the Issuer for the payment of the principal of or the interest on the Warrant or for the performance of any agreements by the Issuer herein contained. Nothing contained in this section, however, shall relieve any such officer or employee from the obligation of performing all the duties of his office and of taking all actions that may be necessary to enable the Issuer to perform the agreements on its part herein contained.

Section 10.4 Delay No Waiver. No delay or omission by the Authority or the Authority Trustee to exercise any available right, power or remedy hereunder shall impair or be construed a waiver thereof or an acquiescence in the circumstances giving rise thereto; every right, power or remedy given herein to the Holder may be exercised from time to time and as often as deemed expedient.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.1 Sale of Warrant. The Warrant is hereby sold and awarded to the Authority at and for a purchase price equal to \$5,635,000. The Warrant shall be issued in the form provided in Section 3.2 hereof.

Section 11.2 Application of Authority Loan Proceeds. The entire proceeds derived from the Authority Loan evidenced by the Warrant shall be held and applied in accordance with the provisions of the Authority Indenture and the Special Conditions Agreement.

Section 11.3 Authorization of Special Conditions Agreement. The Mayor is hereby authorized and directed to execute and deliver, in the name and behalf of the Issuer, the Special Conditions Agreement, in substantially the form marked Exhibit A to the minutes of the meeting at which this Ordinance is adopted and made a part hereof as if set out in full herein, and the City Clerk is hereby authorized and directed to affix the seal of the Issuer to the said Special Conditions Agreement and to attest the same.

Section 11.4 Additional Documents Authorized. The Mayor and the City Clerk, or either of them, are each hereby authorized and directed to execute such other documents or certificates deemed necessary by them in order to carry out the transactions contemplated by this Ordinance.

Section 11.5 Disclaimer of General Liability. It is hereby expressly made a condition of this Ordinance that any agreements or representations herein contained or contained in the Warrant do not and shall never constitute a personal or pecuniary liability or charge against the general credit of the Issuer, and in the event of a breach of any such agreement or representation no personal or pecuniary liability or charge payable directly or indirectly from the general revenues of the Issuer, except the Net System Revenues, shall arise therefrom. Nothing contained in this section, however, shall relieve the Issuer from the observance and performance of the several covenants, representations and agreements on its part herein contained.

Section 11.6 Provisions Constitute Contract. The provisions of this Ordinance shall constitute a contract between the Issuer and the Authority.

Section 11.7 Severability. The provisions of this Ordinance are hereby declared to be severable. In the event any court of competent jurisdiction should hold any provision hereof to be invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Ordinance.

ADOPTED this 26TH day of October, 2023.

City Council President
City of Huntsville, Alabama

APPROVED this 26th day of October, 2023.

Mayor
City of Huntsville, Alabama

EXHIBIT A

Special Authority Loan Conditions Agreement

SPECIAL AUTHORITY LOAN CONDITIONS AGREEMENT
(Series 2023-DWSRF-DL)

among

CITY OF HUNTSVILLE

and

ALABAMA DRINKING WATER FINANCE AUTHORITY

and

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

Dated as of October 1, 2023

Loan Amount:	
Project Fund Amount	\$5,624,000.90
Capitalized Interest	0.00
Capitalized Administrative Fee	0.00
Loan Recipient Share of Finance Expenses	\$11,000.00
Total Loan Amount	\$5,635,000.00
Repayment Amount:	
Total Loan Amount	\$5,635,000.00
Total Loan Repayment Amount	\$5,635,000.00
Project Name:	Huntsville Utilities Water System Improvements (SUPP)
Repayment Collateral:	Subordinated Water Revenue Warrant

SPECIAL AUTHORITY LOAN CONDITIONS AGREEMENT among **ALABAMA DRINKING WATER FINANCE AUTHORITY**, a public corporation under the laws of Alabama (the "Authority"), **ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**, an agency of the State of Alabama created pursuant to Chapter 22A of Title 22 of the Code of Alabama 1975 ("ADEM"), and the **CITY OF HUNTSVILLE**, a municipal corporation under the laws of the State of Alabama (the "Loan Recipient").

RECITALS:

The parties hereto make the following recitals and representations as the basis for the undertakings herein contained:

(1) The State of Alabama has, pursuant to the provisions of Act No. 97-415 adopted at the 1987 Regular Session of the Legislature of Alabama (now codified as Title 22, Chapter 23B of the Code of Alabama 1975, as amended) (the "State Revolving Fund Act"), made provision for the creation of a Revolving Fund (the "State Revolving Fund") for the purpose of making loans to local governmental units in the State.

(2) The State Revolving Fund is to be administered jointly by the Authority and by ADEM. Contemporaneously with the execution and delivery of this Agreement, the Authority will make a loan to the Loan Recipient. The Loan Recipient has requested the loan in order to enable it to pay the costs of making certain improvements (the "Project") in connection with the water works plant and distribution system (the "System") of the Loan Recipient.

(3) The Authority is, pursuant to guidelines adopted by the Environmental Protection Agency of the United States of America ("EPA") and regulations adopted by ADEM, pursuant to the provisions of the Safe Drinking Water Act, required to obtain from each Loan Recipient certain assurances with respect to the operation and construction of the Project.

(4) Pursuant to the requirements imposed on the Authority respecting the use of funds made available from the current capitalization grant agreement with the EPA, the Authority is obligated to provide a subsidy to certain eligible borrowers in the form of reduced interest loans or grants (or a combination thereof).

(5) Contemporaneously with the execution and delivery of this Agreement, the Authority will make a loan to the Loan Recipient, and in evidence of its obligation to repay the same the Loan Recipient will, contemporaneously with the execution and delivery hereof, issue its \$5,635,000 Subordinated Water Revenue Warrant, Series 2023-DWSRF-DL.

(6) The parties hereto deem it necessary and desirable that this Agreement be entered into for the purpose of obtaining certain agreements from the Loan Recipient required to be obtained by the EPA and ADEM with respect to the design, operation and construction of the Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, it is hereby agreed among the parties hereto as follows:

ARTICLE I DEFINITIONS AND USE OF PHRASES

Section 1.1 Definitions. The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations as used herein:

"**ADEM**" means Alabama Department of Environmental Management, an agency of the State of Alabama created pursuant to Chapter 22A of Title 22 of the Code of Alabama 1975, as amended.

"**Administrative Fee**" shall mean the fee charged by ADEM in connection with the administration of the State Revolving Fund.

"**Allowable Costs**" means costs that are eligible to be paid with proceeds of the Authority Loan, as such costs are defined in the ADEM regulations.

"**Application**" shall have the meaning given to such term in Section 3.1 hereof.

"**Authority**" means the Alabama Drinking Water Finance Authority, a public corporation under the laws of the State of Alabama.

"**Authority Indenture**" means the Master Authority Trust Indenture from the Authority to the Authority Trustee dated as of January 1, 2004.

"**Authority Loan**" means the loan made by the Authority to the Loan Recipient hereunder.

"**Authority Trustee**" means The Bank of New York Mellon Trust Company, N.A., in its capacity as trustee under the Authority Indenture, and any successor thereto.

"**Bipartisan Infrastructure Investment and Jobs Act**" means the Infrastructure Investment and Jobs Act of 2021, P.L. No 177-58 (also known as the Bipartisan Infrastructure Law or "BIL").

"Build America, Buy America Act" means the domestic content procurement preference requirements enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act to include construction material and manufactured goods.

"Construction Amount" means the amount of proceeds of the Authority Loan to be used for payment of Allowable Costs.

"Davis-Bacon Act" means the Davis-Bacon Act of 1931, P.L. No. 403.

"Disbursement" means any payment out of Project Funds to or on behalf of the Loan Recipient.

"Estimated Final Completion Date" means the date estimated for the completion of the Project as shown in Appendix A.

"Evidence of Indebtedness" means the \$5,635,000 Subordinated Water Revenue Warrant, Series 2023-DWSRF-DL, 2023, issued by the Loan Recipient and payable to the Authority.

"Independent Auditor" means a certified public accountant or firm thereof, not employed full time by the Loan Recipient, and regularly engaged in the auditing of financial records.

"Loan Amount" means the sum of \$5,635,000.

"Loan Documents" means the proceedings taken by the Loan Recipient agreeing to the terms of the Authority Loan and evidencing the obligation of the Loan Recipient to repay the Authority Loan in accordance with its terms, along with the Evidence of Indebtedness.

"Loan Recipient Administrative Fee Rate" means a per annum rate of 1.89%, i.e., 189 basis points, computed on the basis of a three hundred sixty (360) day year of twelve (12) consecutive thirty (30) day months.

"Loan Recipient Interest Rate" means the per annum rate of interest of 0.10%, i.e., 10 basis points computed on the basis of a three hundred sixty (360) day year of twelve (12) consecutive thirty (30) day months.

"Loan Recipient Representative" means the official representative of the Loan Recipient designated by the Loan Recipient to ADEM.

"Loan Recipient Share of Finance Expenses" means the amount identified as "Loan Recipient Share of Finance Expenses" on Appendix A and totaling \$11,000.

"Project" means the acquisition, construction and equipping of upgrades to the System described in Appendix A hereto.

"Project Fund" means the fund established by the Authority with the Authority Trustee into which moneys received hereunder will be deposited and from which the Authority Trustee will make Disbursements to or on behalf of the Loan Recipient.

"Project Funds" means the amount deposited into the Project Fund created in the Authority Indenture for Disbursement.

"State Revolving Fund" means the State of Alabama Drinking Water Revolving Loan Fund created in the State Revolving Fund Act.

"State Revolving Fund Act" means Title 22, Chapter 23B of the Code of Alabama 1975, as amended.

"System" means the drinking water plant and distribution system of the Loan Recipient, including all additional improvements thereto and replacements thereof hereafter made.

Section 1.2 Use of Words and Phrases. The following words and phrases, where used in this Agreement, shall be given the following and respective interpretations:

"Herein", "hereby", "hereunder", "hereof", and other equivalent words refer to this Agreement as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in Section 1.1 hereof shall be deemed applicable whether the words defined are herein used in the singular or the plural.

Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

ARTICLE II LOAN AND USE OF PROCEEDS

Section 2.1 Making of Loan; Use of Project Fund Moneys. (a) The execution and delivery of this Agreement by the Authority shall constitute the making of the loan to the Loan Recipient, and the execution and delivery of this Agreement and the Loan Documents by the Loan Recipient shall constitute the incurring of indebtedness, subject to the terms and conditions hereof and the terms and conditions of the Loan Documents and Authority Indenture. The Authority represents that it has deposited the Loan Amount (other than the Loan Recipient Share of Finance Expenses) into the Project Fund, which such amount was made available to the Loan Recipient by the Authority for the purpose of constructing the Project. The Loan Recipient Share of Finance Expenses shall be retained by the Authority and used to pay the Authority's legal costs in the making of the Loan to the Loan Recipient. Investment earnings received as a result of the investment of all funds held under the Authority Indenture (including, without limitation, all amounts held in the Project Fund) shall be retained by the Authority and shall not be available to the Loan Recipient, nor shall any such interest earnings form a part of the funds in the account or subaccount from which such investment earnings were earned. The Loan Recipient understands

that it shall be responsible for payment of any expenses incurred by it in obtaining the Authority Loan, including, without limitation, any expenses incurred by the Loan Recipient in obtaining legal representation in connection with the transactions herein contemplated (e.g., counsel to deliver the opinion set forth in Appendix D hereto).

(b) The Loan Recipient shall use the Project Funds only to pay Allowable Costs of the Project. The Loan Recipient understands that the Project is generally described in Appendix A and more specifically in the Project files of ADEM. Except to the extent otherwise approved in writing by ADEM, only the Allowable Costs of the Project in Appendix A shall be funded with proceeds on deposit in the Project Fund created in the Authority Indenture. Disbursement of moneys on deposit in the Project Fund shall be made only for payment of costs of construction called for in plans and specifications examined and concurred with by ADEM and for certain expenses incurred by the Authority in connection with the Project, all as set forth in Appendix A.

(c) The Loan Recipient understands and agrees the Estimated Final Completion Date of the Project is set forth in Appendix A. The Loan Recipient further understands and agrees that repayment of the Authority Loan has been determined based upon the Estimated Final Completion Date, and that an amortization schedule shown on Appendix C hereto showing payments of (i) maturing installments of principal and interest and (ii) maturing installments of the Administrative Fee, based upon the Estimated Final Completion Date and the representations of the Loan Recipient regarding its use of the Loan Amount, has been furnished to the Loan Recipient. The Loan Recipient understands and agrees that any delay in the completion of the Project beyond the date set forth in Appendix A shall not result in any extension of the dates on which the payments are to be made with respect to the Authority Loan as set forth in the amortization schedule, and that the obligation of the Loan Recipient to repay the amounts withdrawn from the Project Fund for the Project, together with interest thereon at the Loan Recipient Interest Rate and the Administrative Fee related thereto at the Loan Recipient Administrative Fee Rate, as provided in the Loan Documents, shall be absolute and unconditional.

(d) The Loan Recipient understands that the amount of the Authority Loan made by the Authority and accepted by the Loan Recipient is based upon the estimated cost of the Project. In the event the actual cost of the Project exceeds the amount of the Authority Loan, the Authority shall be under no obligation to provide any additional funds to the Loan Recipient, it being the sole responsibility of the Loan Recipient to provide funds sufficient to complete construction of the Project.

(e) Each installment of principal, interest and Administrative Fee of the Authority Loan shall bear interest from its due date until paid at the per annum rate of interest equal to 2% above the Authority Trustee Bank Prime Rate, such interest to be computed daily. As used in the preceding sentence, "Authority Trustee Bank Prime Rate" means the rate of interest established (whether or not charged) from time to time by the Authority Trustee as its general reference rate of interest, after taking into account such factors as the Authority Trustee may from time to time deem appropriate in its sole discretion (it being understood, however, that the Authority Trustee may from time to time make various loans at rates of interest having no relationship to such general reference rate of interest).

Section 2.2 Disbursements. (a) The Authority Trustee shall make Disbursements to or on behalf of the Loan Recipient only against incurred Allowable Costs to the extent of the Project Funds as provided in this Agreement and in the Authority Indenture.

(b) For purposes of making requests for Disbursements and representing the Loan Recipient in all administrative matters pertaining to administration of this Agreement, the Loan Recipient shall designate at least one officer or employee as the Loan Recipient Representative. Any Loan Recipient Representative shall be designated in writing by the Loan Recipient before it may request Disbursements and shall be subject to approval by the Authority.

(c) Requests for Disbursements may be made only after the costs for which the draw is requested have been incurred. The Loan Recipient shall not request Disbursements against retainage until retainage is paid. Unless the Authority otherwise approves, when the Project budget indicates that the Authority Loan shall bear only a portion of certain itemized costs, any draw shall not exceed the same proportion of such costs requested for Disbursement.

(d) Requests for Disbursements shall be made on forms of or approved by the Authority and ADEM unless the Authority otherwise directs, and shall be accompanied by such invoices and other proofs as the Authority and ADEM may reasonably require.

(e) Disbursement requests shall be limited to one per month.

Section 2.3 Conditions Precedent to Disbursement of Loan Proceeds. In addition to any other conditions herein provided, the Authority's obligation hereunder to disburse the Project Funds to or on behalf of the Loan Recipient shall be subject to satisfaction of the following conditions:

(a) The Loan Recipient's representations and warranties contained herein, in the Application and in the Loan Documents shall remain true and correct;

(b) No Event of Default shall have occurred under this Agreement or the Loan Documents;

(c) The requirements of Article III hereof have been complied with;

(d) ADEM shall have examined and concurred with the Loan Recipient's plans and specifications for the submitted construction as being within the approved scope of the Project;

(e) For the initial Disbursement request, the Loan Recipient shall have submitted, to the satisfaction of ADEM, proof of compliance with all applicable construction bid procedures and requirements imposed by EPA or ADEM; and

(f) At the time of the execution and delivery by the Loan Recipient of this Agreement, the Loan Recipient shall furnish to the Authority an opinion of counsel in substantially the form attached hereto as Appendix D. The initial Disbursement request shall also be accompanied by an opinion addressed to the Authority from counsel for the Loan Recipient. The opinion shall state that the opinions expressed in the opinion of counsel submitted to the Authority by the Loan Recipient with this Agreement remain valid, including without limitation the advice that this Agreement is a legal, valid and binding obligation of the Loan Recipient, enforceable in accordance with its terms. Such opinion shall also address such other matters as may be requested by the Authority.

Section 2.4 Administrative Fee. ADEM has been designated as the agent of the Authority to service the Authority Loan. The Loan Recipient hereby covenants and agrees to pay the Authority the Administrative Fee, which shall be due on the then unpaid principal balance of the Evidence of Indebtedness from its dated date at the Loan Recipient Administrative Fee Rate, computed on the basis of a 360 day year consisting of 12 consecutive 30 day months, all as reflected in the column entitled "Admin Fee" on the amortization schedule set forth in Appendix C hereto. The Administrative Fee, when paid to the Authority, shall be deposited by the Authority into a separate fund known as the "Administrative Fee Fund Account", unless otherwise determined by the Authority.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.1 Status of Loan Recipient. The Loan Recipient is a municipal corporation existing under the laws of the State of Alabama, authorized to acquire and construct the Project and to operate the Project and to provide drinking water services. The Loan Recipient warrants and represents that the representations contained in the application submitted to ADEM (the "Application") were, on the date of filing said Application and are, on the date hereof, true and correct. The Loan Recipient is not in default in any of the Statement of Assurances contained in the Application.

Section 3.2 Pending Litigation. There are no actions, suits or proceedings, at law or in equity, in court or before any governmental or administrative agency, either pending or to the knowledge of the Loan Recipient threatened, which may impair the validity or enforceability of the Loan Documents or this Agreement or the Loan Recipient's ability to repay the Authority Loan or to construct and operate the Project.

Section 3.3 No Conflicting Transactions. Consummation of the transactions hereby contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, any mortgage, deed of trust, indenture, security agreement, lease, bank loan or credit agreement, charter, resolutions, articles of incorporation, ordinances, contracts or other instruments to which the Loan Recipient is a party by which it may be bound or affected.

Section 3.4 Ownership of Premises. The Loan Recipient owns in fee simple the real property on which the main operating facilities of the Project have been or will be controlled or located. The Loan Recipient further owns in fee simple or by sufficient easement, or prior to construction of the Project will acquire by negotiated purchase or by exercise of its power of eminent domain, the real property upon, across or under which the Loan Recipient has or will have its System and related facilities, including those to be a part of the Project and otherwise.

Section 3.5 Other Project Arrangements. The Loan Recipient has secured, or can and shall secure, the utility, access, governmental approvals and other arrangements reasonably to be considered necessary for the undertaking of the Project.

Section 3.6 No Construction Default. Neither the Loan Recipient nor its contractor, architect or engineer for the Project or any related project is in default under any agreement respecting the Project.

Section 3.7 No Default. There is no default on the part of the Loan Recipient under this Agreement or the Loan Documents, and no event has occurred and is continuing, which, with notice or the passage of time or either, would constitute a default under any part of this Agreement or the Loan Documents.

Section 3.8 Effect of Draw Request. Each request for and acceptance of Disbursement shall be an affirmation by the Loan Recipient that the representations and warranties of this Agreement remain true and correct as of the date of the request and acceptance and that no breach of other provisions hereof has occurred. Unless the Authority is notified to the contrary, such affirmations shall continue thereafter.

ARTICLE IV COVENANTS

Section 4.1 Commencement and Completion of Construction; Davis-Bacon Act; American Iron and Steel; Bipartisan Infrastructure Investment and Jobs Act; Buy America Build America Act.

(a) The Loan Recipient shall use its best efforts to commence and complete the Project or Projects and each activity or event forming a part thereof by the date or dates stated in Appendix A.

(b) The Loan Recipient understands and acknowledges that federal regulations require the payment of not less than the prevailing wages under the Davis-Bacon Act to all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part and through funds through the State Revolving Fund, including the Project. The Loan Recipient hereby covenants and agrees to comply with, and to cause all contractors and subcontractors to comply with (through the inclusion of appropriate terms and conditions in all contracts, subcontracts and lower tiered transactions), all applicable wage requirements of the Davis-Bacon Act in connection with the development and construction of the Project. General information respecting Davis-Bacon Act requirements and applicability may be

obtained at <http://www.dol.gov/compliance/laws/comp-dbra.htm>, and are attached as Appendix E hereto is a copy of the "Requirements Under Section 1450 of the Safe Drinking Water Act (SDWA) For Sub recipients That Are Governmental Entities", although the Loan Recipient hereby acknowledges and agrees that the Loan Recipient shall be fully responsible for ensuring its compliance, and compliance by all contractors, with applicable provisions of the Davis-Bacon Act in connection with development and construction of the Project. Without limiting the generality of the foregoing, the Loan Recipient shall cause the contract clauses set forth in Appendix E hereto applicable to governmental entities to be included in all contracts and subcontracts in excess of \$2,000 respecting construction of all or a portion of the Project (whether paid in whole or in part from the Authority Loan).

(c) The loan Recipient shall comply with American Iron and Steel (AIS) requirements that all of the iron and steel products used in the Project are to be produced in the United States (the "American Iron and Steel Requirement") unless (i) the Loan Recipient has requested and obtained a waiver from the U.S. Environmental Protection Agency pertaining to the Project or (ii) the Authority has otherwise advised the Loan Recipient in writing that the American Iron and Steel Requirement is not applicable to the Project. The Loan Recipient agrees to cause all contractors and subcontractors to comply with (through the inclusion of appropriate terms and conditions in all contracts, subcontracts and lower tiered transactions, such terms and conditions to be in substantially the form set forth in Appendix F hereto) the American Iron and Steel Requirement in connection with the development and construction of the Project.

(d) The Loan Recipient shall comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act ("IIJA"), Public Law No. 117-58) which the Loan Recipient understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States ("Build America, Buy America Requirements"), unless (i) the Loan Recipient has requested and obtained a waiver from ADEM pertaining to the Project or the Project is otherwise covered by a general applicability waiver, or (ii) ADEM has advised the Loan Recipient in writing that the Build America, Buy America Requirements are not applicable to the Project.

(e) The Loan Recipient shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or a state), such as performance indicators of program deliverables, information on costs and project progress. The Loan Recipient understands and agrees 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 applicable legal requirements and this Agreement may result in a default hereunder and enforcement of all lawful rights and remedies of the Authority.

(f) The loan Recipient shall comply with all SRF Signage requirements as stated in sections XVII and XVIII, as applicable, in the ADEM Supplemental General Conditions. ADEM will provide a copy of the Supplemental General Conditions to the Loan Recipient and the Supplemental General Conditions must be included in bid documents for the Project.

(g) The Loan Recipient shall comply with all applicable "BIL" signage requirements as stated in Sections XVII and XVIII, as applicable, in the ADEM Bipartisan Infrastructure Legislation (BIL) Supplemental General Conditions. ADEM will provide a copy of the Supplemental General Conditions to the Loan Recipient and the BIL Supplemental General Conditions must be included in the bid documents for the Project.

Section 4.2 Disbursements. The Loan Recipient shall cause the Project Funds to be disbursed for the purpose of paying the Allowable Costs of the Project and for no other purpose.

Section 4.3 Release of Responsibility. The Loan Recipient shall undertake the Project on its own responsibility and shall release and, to the maximum extent permitted under Alabama law, hold harmless the Authority, ADEM, the State and their officers, members and employees from any claim arising in connection with the design, construction or operation of the Project or any other aspect of the System including any matter due solely to their own negligence.

Section 4.4 Other Agreements. The Loan Recipient shall comply with all terms and conditions of any construction contracts, architectural or engineering agreements, trust indentures, security deeds, promissory notes, loan agreements, or the like affecting the Project, the System and its operation. The Loan Recipient shall require its construction contractor to furnish both a performance bond and payment bond in the full amount of the construction contract to the extent permitted by State law. The requirement of such bonds shall be for the convenience of the Authority only and shall not be an undertaking by the Authority to the Loan Recipient or any third party.

Section 4.5 Accounting and Auditing. (a) **Accounting.** The Loan Recipient shall account for the Project and the System according to Generally Accepted Governmental Accounting Principles as defined by Statement 1, Government Accounting and Financial Reporting Principles, National Council on Governmental Accounting, 1979, as adopted by Governmental Accounting Standards Board, and revisions, updates or successors thereto.

(b) **Auditing.** Audit requirements must be conducted according to Generally Accepted Accounting Principles as defined by the Governmental Accounting Standards Board and revisions, updates or successors.

Section 4.6 Compliance with Governmental Authority. The Loan Recipient shall comply with all environmental laws, rules and other provisions of legal force and effect and all such other provisions which govern the construction or operation of the Project.

Section 4.7 Procurement Requirements. The Loan Recipient shall comply with all procurement requirements of Alabama law.

Section 4.8 Inspection. Each of the Authority and ADEM shall have for its own convenience and benefit, and without obligation to the Loan Recipient or any third party, the right to audit the books and records of the Loan Recipient as they may pertain to or affect the Project and this Agreement and to enter upon the premises to inspect the Project. The Loan Recipient

shall cause its architects, engineers and contractors to cooperate during such inspections including making available working copies of plans and specifications and other materials.

Section 4.9 Consent to Changes. Without consent of the Authority and ADEM, the Loan Recipient shall make no modifications or changes to the Project, or allow to continue any defect, which would damage or reduce the value of the Project. The Loan Recipient shall not divide the Project into component projects in order to defeat the provisions of this Agreement. The Loan Recipient covenants that it shall remain the owner of the Project and agrees that it will not convey, transfer, or otherwise encumber the Project, during the term of this Agreement without the express prior written approval of the Authority and ADEM.

Section 4.10 Furnishing of Audited Financial Statements. The Loan Recipient will, not later than two hundred seventy (270) days following the close of each of its fiscal years, furnish to the Authority a copy of its most recent financial information prepared by the Loan Recipient and the most recent audit available prepared by the Independent Auditor of the Loan Recipient.

Section 4.11 The Evidence of Indebtedness. The Loan Recipient agrees that the Evidence of Indebtedness shall not be subject to optional redemption or prepayment by the Loan Recipient until such time as is specified in the Evidence of Indebtedness.

Section 4.12 Suspension and Debarment. Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters." For purposes of this Section 4.12, the term "Recipient" means the Loan Recipient.

Section 4.13 Compliance with Federal Acts and Federal Laws. (a) The Loan Recipient agrees to comply with all federal requirements applicable to the Authority Loan (including those imposed by the Water Resources Reform and Development Act of 2014 (WRRDA) and related SRF Policy Guidelines).

(b) The Loan Recipient further agrees to comply with all Title VI requirements of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Equal Employment Opportunity requirements (Executive Order 11246 as amended) which prohibit activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex.

(c) The loan recipient shall make good faith efforts by following the six affirmative steps outlined in Appendix B to ensure that Disadvantaged Business Enterprises (DBE) are used whenever possible as a source of supplies and construction.

(d) The Loan Recipient also agrees to comply with all recordkeeping and reporting requirements under the Safe Drinking Water Act (codified generally as 42 U.S.C. 300f-300j) (the "Safe Drinking Water Act"), including any reports required by a federal agency or the Authority such as performance indicators of program deliverables, information on costs and Project progress. The Loan Recipient understands that each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities, and failure to comply with the Safe Drinking Water Act and this Agreement shall be an Event of Default hereunder.

(e) The Loan Recipient shall comply with all other laws, record keeping and reporting requirements under all applicable legal authorities, including without limitation those described in Section 4.1 hereof.

ARTICLE V EVENTS OF DEFAULT

Section 5.1 Events of Default. The following occurrences shall constitute Events of Default hereunder:

(a) the Loan Recipient fails to comply with any of the covenants, terms and conditions made in this Agreement or in the Application;

(b) the Loan Recipient fails to pay any amount due on the Authority Loan at the time and in the manner provided in the Loan Documents;

(c) the Loan Recipient defaults under any other Loan Document or Special Conditions Agreement entered into in connection with loans previously made to the Loan Recipient by the Authority;

(d) any representation or statement made by the Loan Recipient in this Agreement or in connection with the Application or the Authority Loan shall be or become untrue, incorrect or misleading in any respect; or

(e) commencement of any legal or equitable action against the Loan Recipient which, if adversely determined, could reasonably be expected to impair substantially the ability of the Loan Recipient to perform each and every obligation under this Agreement.

ARTICLE VI REMEDIES

Section 6.1 Additional Remedies and Enforcement of Remedies. Upon the occurrence and continuance of any Event of Default, the Authority may, in addition to all remedies provided in the Loan Documents, proceed forthwith to protect and enforce its rights by such suits, actions or proceedings as the Authority shall deem expedient, including but not limited to:

- (a) requiring the Loan Recipient to carry out its duties and obligations under the terms of this Agreement,
- (b) prosecution of a civil action to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority, and
- (c) enforcement of any other lawful rights of the Authority and other remedial actions.

Section 6.2 Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Authority is intended to be exclusive of any other remedy (including the Loan Documents), but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity or by statute (including the State Revolving Fund Loan Act) on or after the date hereof.

Section 6.3 Termination of Proceedings. In case any proceeding taken by the Authority on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Authority, the Authority and the Loan Recipient shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Authority shall continue as if no such proceeding had been taken.

ARTICLE VII SPECIAL REVOLVING FUND PROVISIONS

Section 7.1 Cumulative Provisions. The provisions of this Article are cumulative of the other provisions of this Agreement, and they are not to be construed to ameliorate or weaken the other provisions of this Agreement in any way.

Section 7.2 Separate Accounts; Information; Audit. The Loan Recipient shall establish and maintain separate accounts on the Project financed hereunder and shall comply with the reasonable requests of the Authority, ADEM or the EPA, made upon reasonable notice, for information pertaining to the Loan Recipient's compliance with this Agreement, the provisions of Safe Drinking Water Act, and regulations and guidance promulgated thereunder.

Section 7.3 Compliance. The Loan Recipient agrees:

(a) to comply with all applicable State and federal statutes and the rules, regulations and procedural guidelines established by the State and EPA for the administration of the fund, including, without limitation, those set forth in Appendix B, and

(b) that no date reflected in this Agreement shall modify any compliance date established in an NPDES permit. It is the Loan Recipient's obligation to request any required modification of applicable permit terms or other enforceable requirements.

Section 7.4 Construction Inspection. The Loan Recipient agrees to provide and maintain competent and adequate engineering supervision and one hundred percent (100%) inspection of the Project to insure that the construction conforms with the approved plans and specifications.

Section 7.5 Standard Conditions. The Loan Recipient acknowledges and agrees to comply with the following Federal or State requirements:

(a) The Loan Recipient shall provide access to the Project whenever it is in preparation or progress. The Loan Recipient shall allow the EPA, the Comptroller General of the United States, ADEM and the Authority, or any authorized representative, to have access to any books, documents, plans, reports, papers, and other records of the contractor which are pertinent to the Project for the purpose of making audit, examination, excerpts, copies, and transcriptions.

(b) The Loan Recipient shall notify ADEM when construction of the Project is complete.

(c) The Loan Recipient shall comply with all of the provisions of the applicable regulations of ADEM, copies of which have been provided to the Loan Recipient.

**ARTICLE VIII
GENERAL CONDITIONS**

Section 8.1 No Waiver. No Disbursement shall waive any provision of this Agreement or the Authority Loan or preclude the Authority from declaring a default if the Loan Recipient is unable to satisfy or perform the provisions hereof.

Section 8.2 Satisfactory Proceedings. All proceedings taken in connection with transactions provided for in this Agreement shall be satisfactory to the Authority and ADEM.

Section 8.3 No Beneficiaries. All conditions to the obligation of the Authority to make Disbursements are imposed solely and exclusively for the benefit of the Authority, its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or to assume that the Authority will refuse to make disbursements in the absence of strict compliance. No person shall be deemed the beneficiary of any such conditions or any other provisions of this Agreement.

Section 8.4 Review and Inspection of Work. Any audit or review of plans and specifications and any inspection of the work shall be for the Authority's convenience only in order to determine that they are within the approved scope of the Project. No such review and inspection, approvals and disapprovals shall be an undertaking by the Authority of responsibility for design or construction.

Section 8.5 Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail to the other parties hereto, with instruction to show to whom delivered and return receipt requested addressed as follows:

If to Alabama Department of Environmental Management:

General Services Branch
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, Alabama 36130-1463
Attention: Chief, General Services Branch

If to the Authority:

Alabama Drinking Water Finance Authority
c/o Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, Alabama 36130-1463
Attention: Vice-President

If to the Loan Recipient:

City of Huntsville
PO Box 12048
Huntsville, Alabama 35804
Attention: Utilities Board Manager

Each party may notify the others by the same process of any change of such address. Loan requests and disbursements and other routine loan administration matters may be conducted by regular mail.

Section 8.6 No Joint Venture, Etc. Neither the Authority, ADEM or any other state agency or official is a partner, joint venturer, or in any other way a party to the Project or the operation of the System of the Loan Recipient. Neither the Authority, ADEM or any other state agency or official shall be in any way liable or responsible by reason of the provisions hereof, to the Loan Recipient or any third party, for the payment of any claims in connection therewith.

Section 8.7 Assignment. This Agreement may not be assigned by the Loan Recipient without the written consent of the Authority. The Authority may assign the Loan Documents and this Agreement, and any such holder and assignee of same shall succeed to and be possessed of the same rights as the Authority under both to the extent so transferred or assigned.

Section 8.8 Entire Agreement. This Agreement and the Loan Documents contain the entire terms of this Agreement and transaction and may not be changed, waived or discharged in whole or in part, except by written instrument executed by the party sought to be charged therewith.

Section 8.9 Continuity. This Agreement shall be binding upon the successors and assigns of each party and shall inure to their benefit.

Section 8.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

Section 8.11 Appendices. The appendices attached to this Agreement, shall be a part hereof as if set forth in full herein.

Section 8.12 Time of Essence. Time is of the essence of this Agreement.

Section 8.13 Severability. If any provision of this Agreement, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, any remaining provisions of this Agreement shall survive and be applied, and together with the void or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

Section 8.14 Payment of Authority Loan Directly to Authority Trustee. The Loan Recipient shall make all payments due on the Authority Loan directly to the Authority Trustee.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in several counterparts, each of which shall be deemed an original but all of which shall be construed as one instrument, and have caused this Agreement to be dated as of October 1, 2023.

CITY OF HUNTSVILLE

By _____
Mayor

[SEAL]

ATTEST:

By _____
City Clerk Treasurer

**ALABAMA DRINKING WATER FINANCE
AUTHORITY**

By _____

Its _____

[SEAL]

ATTEST:

By _____

Its _____

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

By _____

Its _____

[SEAL]

ATTEST:

By _____

Its _____

APPENDIX A

Loan Recipient: **City of Huntsville, Huntsville Utilities**
P.O Box 2048
Huntsville, AL 35804

Name and telephone # of contact: **Ms. Melissa Marty, CFO**
256-535-1296

SRF Project #: **FS010153-04**

SRF Trustee#: **800-0358-0**

Date of Commencement of Loan Payment: **February 15, 2024**
(THIS DATE WILL NOT BE EXTENDED OR CHANGED FOR ANY REASON)

Project: **Huntsville Utilities Water System Improvements (SUPP)**

Estimated Date of Completion: **September 1, 2023**

I.	a. Project Fund:	\$5,624,000.00
	b. Capitalized Interest:	\$0.00
	c. Capitalized Admin Fee:	\$0.00
	d. Loan Recipient Share of Finance Expenses:	\$11,000.00
	e. Local Loan Expense:	\$0.00
	Total Loan Amount:	\$5,635,000.00

II. Repayment Amount

a. Total Loan Amount	\$5,635,000.00
b. Principal Forgiveness:	\$0.00

Total Loan Repayment Amount **\$5,635,000.00**

*Note: The Loan Recipient's share of finance expenses have been adjusted to deduct any applicable loan commitment fees paid by the borrower.

DWSRF

APPENDIX B

MBE/WBE Requirements

- I. The project objectives for utilization of Minority Business Enterprises/Women's Business Enterprises are as follows:
- | | | |
|-------------------------------|---------------|----------------|
| Commodities (Supplies) | 4% MBE | 11% WBE |
| Contractual (Services) | 8% MBE | 30% WBE |
| Equipment | 5% MBE | 20% WBE |
| Construction | 5% MBE | 17% WBE |
- II. The Loan Recipient shall take the following six affirmative steps to assure that Minority Business/Women's Business Enterprises are used, when possible, as sources of supplies, construction, and:
1. Including qualified MBE/WBE's on solicitation lists,
 2. Assuring that MBE/WBE's are solicited whenever they are potential sources,
 3. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of MBE/WBE's,
 4. Using the services and assistance of:
 - a. the Office of Small and Minority Business Assistance in the Alabama
 - b. the Minority Business Development Centers, and
 - c. the Department of Transportation (State level) for WBE's.
 5. Establishing delivery schedules, where the requirements of the work permit, which will encourage participation of MBE/WBE's, and
 6. Requiring each contractor to take the affirmative steps of items 1 through 5 in procuring subcontractors.
- Documentation of efforts made to utilize MBE/WBE firms should be maintained by all applicants, consulting firms, and construction contractors.
- III. The Loan Recipient agrees to require all successful construction contract bidder(s) to submit to ADEM, with a copy to the Loan Recipient, within 10 days after bid opening, evidence of the preceding positive steps taken to utilize small, minority and women's business in the procurement of subcontractors.
- IV. The Loan Recipient shall not award contracts to any firm that has been debarred for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964, as amended or Executive Order 11246 as amended (Equal Employment Opportunity), or Executive Order 11625 and 12138 (Minority and Women's Business Enterprises).
- V. The Loan Recipient shall require all prime construction contractors to certify that subcontracts have not and will not be awarded to any firm that has been debarred for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964, as amended or Executive Order 11246 as amended (Equal Employment Opportunity), or Executive Order 11625 and 12138 Minority and Women's Business Enterprises).
- VI. The Loan Recipient agrees to comply with all the requirements the 41 CFR Part 60-4, which implements Executive Order 11246, as amended (Equal Employment Opportunity).
- VII. The Loan Recipient agrees to require all construction contractors and their subcontractors to comply with the Affirmative Action Equal Opportunity Clause, Goals and Timetables and the other requirements, if the amount of the contract-subcontract is in excess of \$10,000.
- VIII. The Loan Recipient shall require all contractors on the Project to comply with the Department of Labor's Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL91-956) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54).
- IX. The Loan Recipient shall comply with all applicable provisions of the Uniform Relocation and Real Property Acquisition Act of 1970 (PL 91-646) in regard to acquisition of real property (including easements) for the Project covered by the Authority Loan and any resulting relocation of persons, business and farm operations.
- X. Submission to Federal Requirements: The Loan Recipient acknowledges and agrees that execution of this loan agreement will subject the Loan Recipient to provisions of federal law set out in part in Title VI of the Federal Water Pollution Control Act ("Title VI") and Federal regulations governing State Revolving Funds contained in 40 CFR Part 35, Subpart K. Loan Recipient agrees to comply with such federally imposed requirements, regardless whether expressly set out herein, and further agrees that they may be enforced against Loan Recipient by the Authority, ADEM or the EPA Administrator.

APPENDIX C

Huntsville Utilities Water System Improvements (SUPP) Borrowers Total Loan Cash Flow

Date	Principal	Interest	Total PandI (1)	Admin Fee (2)	Grand Total
2-15-2024	\$0.00	\$2,567.06	\$2,567.06	\$48,517.35	\$51,084.41
8-15-2024	\$235,000.00	\$2,817.50	\$237,817.50	\$53,250.75	\$291,068.25
2-15-2025	\$0.00	\$2,700.00	\$2,700.00	\$51,030.00	\$53,730.00
8-15-2025	\$235,000.00	\$2,700.00	\$237,700.00	\$51,030.00	\$288,730.00
2-15-2026	\$0.00	\$2,582.50	\$2,582.50	\$48,809.25	\$51,391.75
8-15-2026	\$240,000.00	\$2,582.50	\$242,582.50	\$48,809.25	\$291,391.75
2-15-2027	\$0.00	\$2,462.50	\$2,462.50	\$46,541.25	\$49,003.75
8-15-2027	\$245,000.00	\$2,462.50	\$247,462.50	\$46,541.25	\$294,003.75
2-15-2028	\$0.00	\$2,340.00	\$2,340.00	\$44,226.00	\$46,566.00
8-15-2028	\$250,000.00	\$2,340.00	\$252,340.00	\$44,226.00	\$296,566.00
2-15-2029	\$0.00	\$2,215.00	\$2,215.00	\$41,863.50	\$44,078.50
8-15-2029	\$255,000.00	\$2,215.00	\$257,215.00	\$41,863.50	\$299,078.50
2-15-2030	\$0.00	\$2,087.50	\$2,087.50	\$39,453.75	\$41,541.25
8-15-2030	\$260,000.00	\$2,087.50	\$262,087.50	\$39,453.75	\$301,541.25
2-15-2031	\$0.00	\$1,957.50	\$1,957.50	\$36,996.75	\$38,954.25
8-15-2031	\$265,000.00	\$1,957.50	\$266,957.50	\$36,996.75	\$303,954.25
2-15-2032	\$0.00	\$1,825.00	\$1,825.00	\$34,492.50	\$36,317.50
8-15-2032	\$270,000.00	\$1,825.00	\$271,825.00	\$34,492.50	\$306,317.50
2-15-2033	\$0.00	\$1,690.00	\$1,690.00	\$31,941.00	\$33,631.00
8-15-2033	\$280,000.00	\$1,690.00	\$281,690.00	\$31,941.00	\$313,631.00
2-15-2034	\$0.00	\$1,550.00	\$1,550.00	\$29,295.00	\$30,845.00
8-15-2034	\$285,000.00	\$1,550.00	\$286,550.00	\$29,295.00	\$315,845.00
2-15-2035	\$0.00	\$1,407.50	\$1,407.50	\$26,601.75	\$28,009.25
8-15-2035	\$290,000.00	\$1,407.50	\$291,407.50	\$26,601.75	\$318,009.25
2-15-2036	\$0.00	\$1,262.50	\$1,262.50	\$23,861.25	\$25,123.75
8-15-2036	\$295,000.00	\$1,262.50	\$296,262.50	\$23,861.25	\$320,123.75
2-15-2037	\$0.00	\$1,115.00	\$1,115.00	\$21,073.50	\$22,188.50
8-15-2037	\$300,000.00	\$1,115.00	\$301,115.00	\$21,073.50	\$322,188.50
2-15-2038	\$0.00	\$965.00	\$965.00	\$18,238.50	\$19,203.50
8-15-2038	\$305,000.00	\$965.00	\$305,965.00	\$18,238.50	\$324,203.50
2-15-2039	\$0.00	\$812.50	\$812.50	\$15,356.25	\$16,168.75
8-15-2039	\$310,000.00	\$812.50	\$310,812.50	\$15,356.25	\$326,168.75
2-15-2040	\$0.00	\$657.50	\$657.50	\$12,426.75	\$13,084.25
8-15-2040	\$320,000.00	\$657.50	\$320,657.50	\$12,426.75	\$333,084.25
2-15-2041	\$0.00	\$497.50	\$497.50	\$9,402.75	\$9,900.25
8-15-2041	\$325,000.00	\$497.50	\$325,497.50	\$9,402.75	\$334,900.25
2-15-2042	\$0.00	\$335.00	\$335.00	\$6,331.50	\$6,666.50
8-15-2042	\$330,000.00	\$335.00	\$330,335.00	\$6,331.50	\$336,666.50
2-15-2043	\$0.00	\$170.00	\$170.00	\$3,213.00	\$3,383.00
8-15-2043	\$340,000.00	\$170.00	\$340,170.00	\$3,213.00	\$343,383.00
Totals:	\$5,635,000.00	\$62,649.56	\$5,697,649.56	\$1,184,076.60	\$6,881,726.16

(1) Shows the amount due on each payment date by the Borrower for principal and interest on the Authority loan. (2) Shows the amount due on each payment due by the Borrower for the Administrative Fee due to ADEM in connection with the Authority loan. DWSRF

APPENDIX D

October __, 2023

Alabama Drinking Water Finance Authority
Montgomery, Alabama

Re: Loan from Alabama Drinking Water Finance Authority

Dear Sir:

The legal department of Huntsville Utilities, and I as General Counsel for Huntsville Utilities, have acted as counsel for the City of Huntsville (the "Loan Recipient") in connection with a loan made to the Loan Recipient by Alabama Drinking Water Finance Authority (the "Authority") pursuant to the Special Authority Loan Conditions Agreement (the "Agreement") among the Authority, Alabama Department of Environmental Management ("ADEM") and the Loan Recipient, dated October 1, 2023, and the other documents and proceedings referred to in the Agreement. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Agreement.

We have examined (a) executed counterparts of the Agreement, (b) certified copies of certain authorizing proceedings of the Loan Recipient, (c) the Loan Documents, and (d) such other certificates, proceedings, proofs and documents as we have deemed necessary in connection with the opinions hereinafter set forth.

Based upon the foregoing and upon such investigation as we have deemed necessary we are of the opinion that:

(1) The Loan Recipient has corporate power and authority to enter into and perform the Agreement and to execute and deliver the Loan Documents and to issue the Evidence of Indebtedness. The execution, delivery and performance of the Agreement and the Loan Documents have been duly authorized by all requisite action, and the Agreement and the Loan Documents have been duly executed and delivered by the Loan Recipient.

(2) The Agreement, the Loan Documents and the Evidence of Indebtedness constitute legal, valid and binding obligations of the Loan Recipient and are enforceable against the Loan Recipient in accordance with their respective terms, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at equity or at law).

(3) No approval, authorization or other action by or filing with any governmental authority is required in connection with the execution and delivery of the Agreement or the Loan Documents by the Loan Recipient.

(4) Neither the execution or delivery of the Agreement or the Loan Documents by the Loan Recipient nor the performance and observance by it of the agreements and covenants on its part therein contained results or will result in a breach of, or constitute a violation of default under, any contract, agreement or other instrument to which the Loan Recipient is a party or by which it is bound, or constitutes or will constitute a breach or violation of any governmental order applicable to the Loan Recipient or any judgment, decree or court order by which the Loan Recipient is bound.

(5) The Loan Recipient has obtained all necessary licenses, franchises and other governmental permits and approvals necessary for the construction and operation of the Project.

(6) The best of our knowledge, information and belief, after reasonable inquiry, there is no litigation pending or threatened involving any matter referred to in the Agreement or in the Loan Documents.

Very truly yours,

Warne S. Heath
General Counsel
Huntsville Utilities

APPENDIX E

I. Requirements Under Section 1450 of the Safe Drinking Water Act (SDWA) For Sub recipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the SDWA - with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient or sub recipient may obtain additional guidance from the U.S. Department of Labor's (DOL) website at <http://www.dol.gov/whd/>

1. Applicability of the DB prevailing wage requirements.

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

2. Obtaining Wage Determinations.

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

- (i) While the solicitation remains open, the sub recipient shall monitor <https://sam.gov/> weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.
- (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

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

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

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

3. Contract and Subcontract provisions.

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

(1) Minimum wages.

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DB Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination

for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the DB poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from DOL's website, <https://sam.gov/>.

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) which indicates the State award official's disagreement and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov, and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

(3) Payrolls and basic records.

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

programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency

recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the DOL, shall withhold or

cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

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

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

5. Compliance Verification

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

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the

risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

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

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

APPENDIX F

The Contractor acknowledges to and for the benefit of the City of Huntsville ("Purchaser"), and the Alabama Drinking Water Finance Authority (the "State Authority") that it understands the goods and services under this Agreement are being funded with monies made available by the Safe Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel"; that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State Authority that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State Authority or any damages owed to the State Authority by the Purchaser). While the Contractor has no direct contractual privity with the State Authority, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State Authority.