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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2024-8

INTRODUCED BY:

Councilor Amanda Chavez

Councilor Carol Romero-Wirth

A BILL

AUTHORIZING THE CITY OF SANTA FE (“BORROWER”) TO ENTER INTO A LOAN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT (“NMED”) FOR THE PURPOSE OF OBTAINING PROJECT LOAN FUNDS IN THE PRINCIPAL AMOUNT OF \$151 MILLION, PLUS ACCRUED INTEREST; DESIGNATING THE USE OF THE FUNDS FOR THE PURPOSE DEFINED IN THE MOST CURRENT PROJECT DESCRIPTION FORM AS APPROVED BY NMED; DECLARING THE NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLEY FROM THE BORROWER’S PLEDGED REVENUES DEFINED BELOW; PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY FOR THAT PURPOSE.

Capitalized terms used in the following preambles are defined in Section 1 of this Ordinance, unless the context requires otherwise.

WHEREAS, the City of Santa Fe (“the Borrower”) is a legally and regularly created public body organized under the general laws of the State of New Mexico (“State”); and

1 **WHEREAS**, the Borrower now owns, operates, and maintains public utilities including
2 Water, Wastewater, and Environmental Services systems (“System”); and

3 **WHEREAS**, the present Systems are insufficient and inadequate to meet the needs of the
4 Borrower; and

5 **WHEREAS**, the New Mexico Environment Department (“NMED”) is offering the
6 Borrower a loan to assist in financing improvements to the Systems (the “Project”), pursuant to an
7 agreement (“Loan Agreement”) and promissory note (“Note”), payable solely from certain
8 revenues described herein (“the Pledged Revenues”); and

9 **WHEREAS**, NMED intends to fund the Loan Agreement with funds that include a one-
10 time federal grant to the NMED from the Environmental Protection Agency (EPA); and

11 **WHEREAS**, under the terms of the Loan Agreement, the Project is subject to specific
12 requirements of the federal grant; and

13 **WHEREAS**, the Borrower has the following obligations outstanding to which the Pledged
14 Revenues have already been pledged:

Funding Source (e.g., Revenue Bond, NMED, NMFA, etc.) and Series# or Loan/Project #	Principal Amount Outstanding at 06/30/2023
Water Utility System Refunding, Series 2016	\$30,145,000
Public Project Revolving Fund (“PPRF”)- Buckman Diversion Project, Series 2008	\$5,191,493
Drinking Water Revolving Fund (“DWRLF”) No. 2696, Series 2013	\$1,499,281

15
16 **WHEREAS**, the Governing Body of the Borrower has determined that it is in the best
17 interest of the Borrower to accept and enter into the Loan Agreement and to execute and to deliver
18 the Note to the NMED.

19 **NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
20 **BORROWER:**

1 **Section 1. DEFINITIONS.** As used in the Ordinance, the following terms shall have the
2 meanings specified below, unless the context clearly requires otherwise (*such meaning to be*
3 *equally applicable to both the singular and the plural forms of the terms defined unless the plural*
4 *form is separately defined*):

5 **ACT.** The general laws of the State, including the Wastewater Facility Construction Loan
6 Act at NMSA 1978, Sections 74-6A-1 to -15 , as amended; enactments of the Governing Body of
7 the Borrower relating to the Note and the Loan Agreement made by resolution or ordinance,
8 including this ordinance; and the powers of the Borrower as a public body under authority given
9 by the Constitution and Statutes of the State.

10 **ANNUAL AUDIT or SINGLE AUDIT.** Financial statements of the Borrower as of the
11 end of each Fiscal Year, audited by an Auditor, consistent with the federal Single Audit Act and
12 the State Auditor's rules.

13 **AUTHORIZED OFFICER.** City of Santa Fe Mayor Alan Webber or other officer or
14 agent of the Borrower is designated by the Borrower's Signature Resolution Number ____ adopted
15 by the Governing Body of the Borrower, as amended.

16 **BORROWER.** The entity requesting funds pursuant to the Act.

17 **FISCAL YEAR.** The twelve-month period commencing on the first day of July of each
18 year and ending on the last day of June of the succeeding year, or any other twelve-month period
19 which the Borrower hereafter may establish as the fiscal year of the System.

20 **GOVERNING BODY OF THE BORROWER.** City of Santa Fe governing body.

21 **LOAN.** A loan of funds from NMED made pursuant to the Loan Agreement.

22 **LOAN AGREEMENT.** The interim loan agreement between the Borrower and the
23 NMED, pursuant to which funds will be loaned to the Borrower to construct the Project and pay
24 eligible costs relating thereto; and the final (repayment) loan agreements which shall state the
25 amounts put into repayment the NMED loaned to the Borrower, which shall be executed annually

1 or biannually per an agreed upon disbursement amount or upon completion of the Project.

2 **NMSA.** New Mexico Statutes Annotated, 1987 Compilation, as amended and
3 supplemented.

4 **NOTE.** The interim and final promissory notes issued by the Borrower to the NMED
5 evidencing the obligation of the Borrower to the NMED incurred pursuant to the Ordinance and
6 Loan Agreements.

7 **OPERATION AND MAINTENANCE.** All reasonable and necessary expenses of the
8 Systems, paid or accrued, relating to operating, maintaining, and repairing the System.

9 **ORDINANCE.** This Ordinance includes amendments.

10 **PARITY BONDS or PARITY OBLIGATIONS.** Revenue Bonds and other bonds or
11 other obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues
12 on parity with the bonds or obligations as listed in this Ordinance.

13 **PLEDGED REVENUES.**

- 14 • Water System Revenue for Nichols Dam Project
- 15 • Wastewater System Revenue for
 - 16 ○ The Ultraviolet (UV) Disinfection Replacement Project,
 - 17 ○ The Collections Equipment and Administrative Building, and
 - 18 ○ The Sanitary Sewer Line Repair and Rehabilitation
 - 19 ○ The Wastewater Treatment Plant (WWTP) Rehabilitation.
- 20 • Environmental Services Division Net Revenue for the Environmental Services
21 Division Administrative Building, Maintenance Space, and Storage Area.

22 **PROJECT.** The most current NMED approved Project Description described on the
23 Project Description Form on file with NMED, including but not limited to:

- 24 • Nichols Dam Outlet Works Rehabilitation.
- 25 • UV Disinfection Replacement Project.

- 1 • Collections Equipment and Administrative Building.
- 2 • Sanitary Sewer Line Repair/Rehabilitation.
- 3 • Wastewater Treatment Plant Repair and Rehabilitation
- 4 • Environmental Services Division Administrative Building, Maintenance Space, and
- 5 Storage Area

6 **PROJECT COMPLETION DATE.** The date that operations of the completed works are
7 initiated or capable of being initiated, whichever is earlier. This also applies to individual phases
8 or segments.

9 **REGULATIONS.** Regulations promulgated by the Water Quality Control Commission at
10 20.7.5 NMAC and New Mexico Environment Department at 20.7.6 - 20.7.7 NMAC.

11 **SUBORDINATE OBLIGATIONS.** Other obligations payable from the Pledged
12 Revenues issued with a lien on the Pledged Revenues subordinate to the lien of the Loan Agreement
13 and Note as may be listed in this Ordinance.

14 **Section 2. RATIFICATION.** All action before now (not inconsistent with the provisions
15 of the Ordinance) by the Governing Body, the officers and employees of the Borrower, directed
16 toward the Loan Agreement and the Note, is ratified, approved and confirmed as a result of this
17 document.

18 **Section 3. FINDINGS.** The Governing Body of the Borrower declares that it has
19 considered all relevant information and data and makes the following findings:

20 (A) The execution and delivery of the Loan Agreement and the Notes pursuant to the Act
21 to provide funds to finance the Projects, is necessary and in the interest of the public health, safety,
22 and welfare of the residents of the Borrower.

23 (B) The money available for the Project from all sources other than the Loan Agreement
24 is not sufficient to pay when due the cost of the Project.

25 (C) The Pledged Revenues may lawfully be pledged to secure the payment of amounts

1 due under the Loan Agreement and Note

2 **Section 4. SYSTEM.** The Systems shall continue to constitute Water, Wastewater, and
3 Environmental Services systems and shall be operated and maintained as such.

4 **Section 5. AUTHORIZATION OF PROJECT.** The acquisition and construction of the
5 Project and payment of eligible items are set forth in the regulations from proceeds of the Loan
6 Agreement and Note is hereby authorized at a cost not to exceed the principal Loan amount of \$151
7 million, excluding any cost of the Project to be paid from any source other than the proceeds of the
8 Loan Agreement and Note.

9 **Section 6. AUTHORIZATION OF LOAN AGREEMENT.**

10 (A) For the purpose of protecting the public health, conserving the property, and
11 protecting the general welfare of the borrowing community it is hereby declared necessary that the
12 Borrower execute and deliver the Loan Agreement and Note to be payable and collectible solely
13 from the Pledged Revenues. The NMED has agreed to disburse the proceeds according to the terms
14 of the Loan Agreement to the Borrower over the construction period of the Project. The principal
15 Loan amount of the Note shall not exceed \$151 million without the adoption of another Ordinance
16 amending the Ordinance by the Governing Body of the Borrower, *and the annual interest rate on*
17 *that principal amount shall not exceed 0.01% percent per annum. Interest shall be computed as a*
18 *percentage per year on the outstanding principal amount on the Loan on the basis of a 365-day*
19 *year, actual number of days lapsed.* The final maturity date on the Note shall not extend beyond
20 the agreed upon useful life of the project. The Loan shall be repaid in substantially equal annual
21 installments in the amount and on the dates provided in the Loan Agreement with the first annual
22 installment due no later than one year after completion of the project. The Borrower must maintain
23 a debt service coverage ratio of no less than 1.2 and must obtain the written consent of the NMED
24 before issuing additional obligations secured by the Pledged Revenues.

25 (B) If the Borrower fails to satisfy any federal grant requirements or conditions, the

1 Borrower may be required to refund any federal grant funds disbursed to the Borrower from
2 NMED.

3 (C) The NMED has approved the form of the Loan Agreement and the Note. The
4 Authorized Officer is hereby directed to execute and deliver the Loan Agreement and the Note and
5 any amendments to the loan Agreement or Note to be executed after completion of the Project with
6 such changes consistent with the Ordinance. The approval by an Authorized Officer of these
7 documents in their final forms shall constitute conclusive evidence of their approval and
8 compliance with this section.

9 (D) From the date of the initial execution and delivery of the Loan Agreement and the
10 Note, Authorized Officers, agents and employees of the Borrower are authorized, empowered, and
11 directed to carry out such acts and to execute all such documents as may be necessary to comply
12 with the provisions of this Ordinance, the Loan Agreement, and the Note.

13 **Section 7. SPECTIAL LIMITED OBLIGATIONS.** All Funds disbursed pursuant to the
14 Loan Agreement and the Note shall be special limited obligations of the Borrower and shall be
15 payable and collectible solely from the Pledged Revenues which are irrevocably pledged as set
16 forth in this Ordinance. The NMED may not look to any general or other fund for the payment on
17 the Loan Agreement and the Note except the designated special funds pledged. The Loan
18 Agreement and the Note shall not constitute indebtedness or debts within the meaning of any
19 constitutional, charter, or statutory provision or limitation, nor shall they be considered or be held
20 to be general obligations of the Borrower and shall recite that they are payable and collectible solely
21 from the Pledged Revenues.

22 **Section 8. OPERATION OF PROJECT.** The Borrower shall operate and maintain the
23 Project so that it will function properly over its structural and material design life.

24 **Section 9. USE OF PROCEEDS.** The NMED shall disburse Funds pursuant to the Loan
25 Agreement for NMED approved costs incurred by the Borrower for the Project or to pay contractors

1 or suppliers of materials for work performed on the Project as set forth in the Loan Agreement.

2 **Section 10. APPLICATION OF REVENUES.**

3 (A) **OPERATION AND MAINTENANCE.** So long as the Loan Agreement and the
4 Note are outstanding, either as to principal or interest, or both, the Borrower shall pay for the
5 operation and maintenance expenses of the System, approved indirect charges and any amounts for
6 capital replacement and repair of the System as incurred.

7 (B) **PARITY OBLIGATIONS AND OTHER APPROVED DEBT(S).** The
8 Borrower shall pay the principal, interest and administrative fees (if applicable) of parity
9 obligations and other approved debts which are secured from the Pledged Revenues as scheduled.

10 (C) **EQUITABLE AND RATABLE DISTRIBUTION.** Obligations of the Borrower
11 secured by the Pledged Revenues on parity with the Loan Agreement and the Note, from time to
12 time outstanding, shall not be entitled to any priority one over the other in the application of the
13 Pledged Revenues, regardless of the time or times of their issuance or creation.

14 (D) **SUBORDINATE OBLIGATIONS.** The Pledged Revenues used for the payment
15 of Subordinate Obligations shall be applied first to the payment of the amounts due the Loan
16 Agreement and the Note, including payments to be made to other obligations payable from the
17 Pledged Revenues which have a lien on the Pledged Revenues on parity with the Loan Agreement
18 and the Note.

19 **Section 11. LIEN OF LOAN AGREEMENT AND NOTE.** The Loan Agreement and
20 the Note shall constitute irrevocable liens upon the Pledged Revenues with priorities on the Pledged
21 Revenues as set forth in this Ordinance. The Borrower hereby pledges and grants a security interest
22 in the Pledged Revenues for the payment of the Note and any other amounts owed by the Borrower
23 to the NMED pursuant to the Loan Agreement.

24 **Section 12. OTHER OBLIGATIONS.** Nothing in the Ordinance shall be construed to
25 prevent the Borrower from issuing bonds or other obligations payable from the Pledged Revenues

1 and having a lien thereon subordinate to the liens of the Loan Agreement and the Note. The
2 Borrower must obtain the written consent of the NMED before issuing additional obligations
3 secured by the Pledged Revenues.

4 **Section 13. DEFAULT.** The following shall constitute an event of default under the Loan
5 Agreement:

6 (A) The failure by the Borrower to pay the annual payment due on the repayment of the
7 Loan set forth in the Loan Agreement and Note when due and payable either at maturity or
8 otherwise; or

9 (B) Default by the Borrower in any of its covenants or conditions set forth under the Loan
10 Agreement (*other than a default described in the previous clause of this section*) for 60 days after
11 the NMED has given written notice to the Borrower specifying such default and requiring the same
12 to be remedied.

13 **UPON OCCURRENCE OF DEFAULT:**

14 (A) The entire unpaid principal amount of the Interim and Final Promissory Note plus
15 accrued interest and any fees thereon may be declared by the NMED to be immediately due and
16 payable and the Borrower shall pay the amounts due under Note from the Pledged Revenues, either
17 immediately or in the manner required by the NMED in its declaration, but only to the extent funds
18 are available for payment of the Note. However, if insufficient funds are available for payment of
19 the Note(s), the NMED may require the Borrower to identify sources for additional funds, which
20 may include adjusting the rates charged by the System to ensure repayment of the Note in
21 accordance with applicable laws.

22 (B) If default by the Borrower is of covenants or conditions required under the federal
23 grant, the Borrower may be required to refund the amount of the Loan disbursed to the Borrower
24 from NMED.

1 (C) The NMED shall have no further obligation to make payments to the Borrower under
2 the Loan Agreement.

3 **Section 14. ENFORCEMENT VENUE.** The NMED retains the right to seek
4 enforcement of the terms of the Loan Agreement. If the NMED and the Borrower cannot reach
5 agreement regarding disputes as to the terms and conditions of this Loan Agreement, such disputes
6 are to be resolved promptly and expeditiously in the district court of Santa Fe County. The
7 Borrower agrees that the district court for Santa Fe County shall have exclusive jurisdiction over
8 the Borrower and the subject matter of this Loan Agreement and waives the right to challenge such
9 jurisdiction.

10 **Section 15. REMEDIES UPON DEFAULT.** Upon the occurrence of any of the events
11 of default as provided in the Loan Agreement or in this Ordinance, the NMED may proceed against
12 the Borrower to protect and enforce its rights under the Ordinance by mandamus or other suit,
13 action or special proceedings in equity or at law, in any court of competent jurisdiction, either for
14 the appointment of a receiver or for the specific performance of any covenant or agreement
15 contained in the Ordinance for the enforcement of any proper legal or equitable remedy as the
16 NMED may deem most effective to protect and enforce the rights provided above, or to enjoin any
17 act or thing which may be unlawful or in violation of any right of the NMED, or to require the
18 Borrower to act as if it were the trustee of an express trust, or any combination of such remedies.
19 Each right or privilege of the NMED is in addition and cumulative to any other right or privilege
20 under the Ordinance or the Loan Agreement and Note and the exercise of any right or privilege by
21 the NMED shall not be deemed a waiver of any other right or privilege.

22 **Section 16. DUTIES UPON DEFAULT.** Upon the occurrence of any of the events of
23 default as provided in this Ordinance, the Borrower, in addition, will do and perform all proper acts
24 on behalf of and for the NMED to protect and preserve the security created for the payment of the
25 Note to ensure the payment on the Note promptly as the same become due. All proceeds derived

1 from the System, so long as the Note is outstanding, shall be treated as revenues. If the Borrower
2 fails or refuses to proceed as required by this Section, the NMED, after demand in writing, may
3 proceed to protect and enforce the rights of the NMED as provided in the Ordinance and the Loan
4 Agreement.

5 **Section 17. TERMINATION.** When all obligations under the Loan Agreement and Note
6 have been paid, the Loan Agreement and Note shall terminate and the pledge, lien, and all other
7 obligations of the Borrower under the Ordinance shall be discharged. The principal amount of the
8 Note, or any part thereof, may be prepaid at any time without penalty at the discretion of the
9 Borrower and the prepayments of principal shall be applied as set forth in the Loan Agreement.

10 **Section 18. AMENDMENT OF ORDINANCE.** This Ordinance may be amended with
11 the prior written consent of the NMED.

12 **Section 19. ORDINANCE IRREPEALABLE.** After the Loan Agreement and Note
13 have been executed and delivered, the Ordinance shall be and remain irrepealable until the Note
14 has been fully paid, terminated, and discharged, as provided in the Ordinance.

15 **Section 20. SEVERABILITY CLAUSE.** If any section, paragraph, clause, or provision
16 of the Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or
17 unenforceability of such section, paragraph, clause, or provision shall not affect any of the
18 remaining provisions of the Ordinance.

19 **Section 21. REPEALER CLAUSE.** All bylaws, orders, Ordinances, or parts thereof,
20 inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer
21 shall not be construed to revive any bylaw, order, Ordinance, or part thereof, heretofore repealed.

22
23 PASSED, APPROVED, and ADOPTED this _____ day of _____, 2024.
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1 APPROVED AS TO FORM:

2 Erin McSherry

3 Erin McSherry (Jun 21, 2024 15:23 MDT)

4 ERIN K. McSHERRY, CITY ATTORNEY

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25 *Legislation/2024/Bills/Authorizing a Loan Agreement with the NMED*