



Thereupon, there were officially filed with the City Clerk copies of a proposed Ordinance, presented to the Governing Body as Bill No. 2009-14, and the form of the Water Project Fund Loan/Grant Agreement, the proposed Ordinance being as hereinafter set forth.

*[Remainder of page intentionally left blank.]*

**CITY OF SANTA FE, NEW MEXICO  
ORDINANCE NO. 2009-12**

AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS"), AND THE CITY OF SANTA FE, NEW MEXICO (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF TWO MILLION DOLLARS (\$2,000,000), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING PHASE III IMPROVEMENTS TO THE CANYON ROAD WATER TREATMENT PLANT TO CONTINUE UPGRADING AND IMPROVEMENT OF THE PLANT AND MANAGEMENT OF RESIDUAL STREAMS, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in this Ordinance unless the context requires otherwise.

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing home-rule municipality under the Constitution and laws of the State of New Mexico; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to the Loan/Grant Agreement, that the Loan/Grant Amount, together with other moneys available to the Borrower/Grantee, is sufficient to complete the Project, and that it is in the best interest of the Borrower/Grantee and the public it represents that the Loan/Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Loan/Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the Board or the NMFA or a debt or pledge of the faith and credit of the

Borrower/Grantee, the Board, the NMFA or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the form of the Loan/Grant Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that (i) the Additional Funding Amount is now available to the Borrower/Grantee to complete the Project; or (ii) that the Governing Body will take such steps as are necessary to obtain the Additional Funding Amount within six (6) months after the Closing Date; and

WHEREAS, the Borrower/Grantee acknowledges that, in the event that it is unable to provide the Additional Funding Amount within six (6) months after the Closing Date, the Loan/Grant Agreement shall, at the option of the Board and the NMFA, terminate and be of no further force or effect; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Loan/Grant Amount for the purposes described, and according to the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other moneys necessary and sufficient, together with the Loan/Grant Amount, to complete the Project; and (iii) the authorization, execution and delivery of the Loan/Grant Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO:

Section 1. Definitions. As used in this Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Act” means the Water Project Finance Act, Sections 72-4A-1 through 72-4A-10, NMSA 1978, as amended and supplemented.

"Additional Funding Amount" means the amounts to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount and other moneys reasonably expected to be available to the Grantee are sufficient to complete the Project. The Additional Funding Amount for the Project is zero (\$0).

“Administrative Fee” means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

"Authorized Officers" means the Mayor, City Manager, City Clerk and Finance Director of the Borrower/Grantee.

"Board" means the New Mexico Water Trust Board.

"Borrower/Grantee" means the City of Santa Fe.

"Closing Date" or "Effective Date" means the date of execution, delivery and funding of the Loan/Grant Agreement.

"Completion Date" means the date of final payment of the cost of the Project.

"Expense Account" means the account established pursuant to this Ordinance and held by the NMFA in connection with the Loan/Grant to pay the Expenses.

"Expenses" means the costs of originating and administering the Loan/Grant, including legal fees, in the amount shown in Exhibit "A" to the Loan/Grant Agreement.

"Generally Accepted Accounting Principles" means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Lenders/Grantors establishing accounting principles applicable to the Borrower/Grantee.

"Governing Body" means the City Council of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

"Grant" or "Grant Amount" means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is one million, six hundred thousand dollars (\$1,600,000).

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

"Lenders/Grantors" means the Water Trust Board and the NMFA.

"Loan" or "Loan Amount" means the amount provided to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is four hundred thousand dollars (\$400,000).

"Loan/Grant Agreement" means the Water Project Fund Loan/Grant Agreement entered into by and between the Borrower/Grantee, the Board and the NMFA as authorized by this Ordinance.

"NMFA" means the New Mexico Finance Authority.

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

"Ordinance" means this Ordinance as supplemented or amended from time to time.

"Pledged Revenues" means the designated revenue stream which is intended to be utilized in funding the repayment of the Loan Amount.

"Project" means the project described in Exhibit "A" to the Loan/Grant Agreement.

"Project Account" means the account in the name of the Borrower/Grantee established pursuant to this Ordinance and held by the NMFA for deposit of the Loan/Grant Amount for disbursement to the Borrower/Grantee for payment of the costs of the Project.

"Qualifying Water Project" means a water project for (i) storage, conveyance or delivery of water to end-users; (ii) implementation of the federal Endangered Species Act of 1973 collaborative programs; (iii) restoration and management of watersheds; (iv) flood prevention or (v) conservation, recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to Section 72-4A-9(B) NMSA.

"State" means the State of New Mexico.

"Useful Life" means the structural and material design life of the Project.

"Water Project Fund" means the fund of the same name created pursuant to Section 72-4A-9 NMSA and held and administered by the NMFA.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition of the Project and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition of the Project and the method of funding the Project through execution and delivery of the Loan/Grant Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee and the public whom it serves.

Section 4. Findings. The Borrower/Grantee hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Borrower/Grantee and the public whom it serves.

B. Moneys available and on hand, or reasonably expected to become available for the Project from all sources other than the Loan/Grant are not sufficient to defray the cost of acquiring the Project but, together with the Loan/Grant Amount, will be sufficient to complete the Project.

C. The Project and the execution and delivery of the Loan/Grant Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life, which is not less than twenty (20) years, as required by Section 72-4A-7(A)(1) NMSA.

E. Together with the Loan/Grant Amount, the Additional Funding Amount is now available to the Borrower/Grantee, or is expected to become available to the Borrower/Grantee within six (6) months after the Closing Date, and, in combination with the Loan/Grant Amount and other moneys reasonably expected to be available to the Grantee, will be sufficient to complete the Project and pay Expenses.

F. The Lenders/Grantors shall maintain on behalf of the Borrower/Grantee a separate Project account or Project accounts and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

G. The Borrower/Grantee has acquired or will acquire title to or easements or rights of way on the real property upon which the Project is being constructed or located.

#### Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the constituent public served by the Borrower/Grantee, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of one million, six hundred thousand dollars (\$1,600,000) and borrowing the Loan Amount of four hundred thousand dollars (\$400,000) to be utilized solely for the purpose of completing the Project and paying Expenses, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which are hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to pay Expenses and to finance the Project.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Grant shall be in the amount of one million, six hundred thousand dollars (\$1,600,000) and the Loan shall be in the amount of four hundred thousand dollars

(\$400,000). The Loan shall bear interest at a rate of zero percent (0%) per annum and the Administrative Fee shall be one-quarter of one percent (0.25%) per annum.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted, is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account and Expense Account. The Borrower/Grantee hereby consents to creation of the Project Account and the Expense Account by the NMFA and approves of the deposit of the Loan/Grant Amount in those accounts as shown in Exhibit "A" to the Loan/Grant Agreement. Until the Completion Date, the money in the Project Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement. The Borrower/Grantee is charged with the expeditious completion of the Project.

B. Completion of the Project. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Project Account shall be transferred and deposited into the Water Project Fund.

C. Board and NMFA Not Responsible. Neither the Board nor the NMFA shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay from the Pledged Revenues directly to the NMFA as provided in the Loan/Grant Agreement an amount sufficient to pay principal and other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, which lien shall be subordinate to any liens on the Pledged Revenues existing on the Closing Date or that may arise thereafter, including, but not limited to, all indebtedness described in City of Santa Fe Ordinance No. 2006-47, adopted August 9, 2006, including any amendments or supplements thereto, except only that such lien



shall be on a parity with any other lien upon the Pledged Revenues for repayment of a loan made by the Lenders/Grantors to the Borrower/Grantee pursuant to the Act.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan/Grant Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan/Grant Agreement to the NMFA, the provisions of this Ordinance may be supplemented or amended by ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. Thereafter, this Ordinance may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the Board and the NMFA.

Section 13. Ordinance Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as therein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Borrower/Grantee kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Borrower/Grantee, and this Ordinance shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Ordinance, this Ordinance shall be effective upon adoption of this Ordinance by the Governing Body.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

*[Form of Summary of Ordinance for Publication]*

**CITY OF SANTA FE, NEW MEXICO  
Notice of Adoption of Ordinance**

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 2009-12, duly adopted and approved by the City Council of the City of Santa Fe, New Mexico on April 29, 2009. A complete copy of the Ordinance is available for public inspection during normal and regular business hours in the office of the City Clerk at City Hall, 200 Lincoln Ave., Santa Fe, New Mexico 87501.

The title of the Ordinance is:

**CITY OF SANTA FE, NEW MEXICO  
ORDINANCE NO. 2009-12**

AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS"), AND THE CITY OF SANTA FE, NEW MEXICO (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF TWO MILLION DOLLARS (\$2,000,000), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING PHASE III IMPROVEMENTS TO THE CANYON ROAD WATER TREATMENT PLANT TO CONTINUE UPGRADING AND IMPROVEMENT OF THE PLANT AND MANAGEMENT OF RESIDUAL STREAMS, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

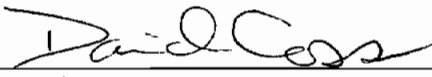
A general summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA.

*[End of Form of Summary for Publication]*

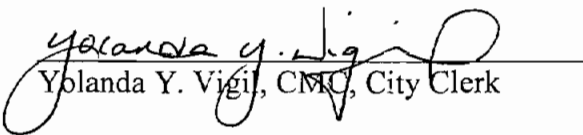
Section 18. Execution of Agreements. The Borrower/Grantee agrees to authorize and execute all such agreements with the New Mexico Water Trust Board and the New Mexico Finance Authority as are necessary to consummate the Loan/Grant contemplated herein and consistent with the terms and conditions attached thereto.

PASSED, APPROVED AND ADOPTED THIS 29TH DAY OF APRIL, 2009.

CITY OF SANTA FE

By   
David Coss, Mayor

ATTEST:

  
Yolanda Y. Vigil, CMC, City Clerk

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Governing Body Member Rebecca Wurzburger then moved adoption of the foregoing Ordinance, duly seconded by Governing Body Member Rosemary Romero.

The motion to adopt the Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

Patti Bushee  
Chris Calvert  
Carmichael Domingez  
Matthew E. Ortiz  
Rosemary Romero  
Ronald S. Trujillo  
Rebecca Wurzburger, Mayor Pro Tem

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Those Voting Nay:

(None.)

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Those Absent:

Miguel Chavez

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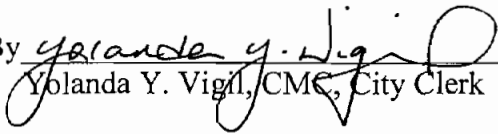
Seven (7) Members of the Governing Body having voted in favor of the motion, the Mayor declared the motion carried and the Ordinance adopted, whereupon the Mayor and the City Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Ordinance, the meeting upon motion duly made, seconded and carried, was adjourned.

CITY OF SANTA FE

By   
David Coss, Mayor

ATTEST:

By   
Yolanda Y. Vigil, CMC, City Clerk

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