

**CITY OF SANTA FE
ORDINANCE NO. 2010-4**

AN ORDINANCE 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 (THE "BORROWER/GRANTEE"), IN THE AGGREGATE AMOUNT OF FOUR MILLION DOLLARS (\$4,000,000), BEING A LOAN IN THE AMOUNT OF EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) AND A GRANT IN THE AMOUNT OF THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000); EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF CONSTRUCTION OF THE BUCKMAN SURFACE WATER DIRECT DIVERSION PROJECT, 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 Authorizing Ordinance or, if not defined in Section 1 of this Authorizing Ordinance, the same meaning as defined in Article I of Ordinance No. 2006-47 (the "Master Ordinance") adopted by the Governing Body on August 9, 2006 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 general laws of the State; 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 Master Ordinance provides for the adoption of subsequent ordinances and resolutions to authorize the issuance of additional debt payable from the Pledged Revenues,

as well as for the approval of specific terms and documents relating to the issuance of the additional debt; and

WHEREAS, this Authorizing Ordinance is adopted pursuant to the Master Ordinance in order to authorize the Borrower/Grantee to enter into the Loan/Grant Agreement with the Water Trust Board and the NMFA and pledge the Pledged Revenues to repay the Loan Amount as a subordinate obligation payable from the Pledged Revenues as provided in 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 Authorizing 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 Closing Date 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 Authorizing 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). Capitalized terms not defined in this Section 1 shall have the same meanings as defined in the Master Ordinance.

“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 Borrower/Grantee, are sufficient to complete the Project. The Additional Funding Amount for the Project is eight hundred thousand dollars (\$800,000).

“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, Finance Director and City Clerk of the Borrower/Grantee.

“Authorizing Ordinance” means this Ordinance No. 2010-4 as supplemented or amended from time to time.

“BDD Board” means the Buckman Direct Diversion Board created by the Joint Powers Agreement.

“Board” or “Water Trust Board” means the New Mexico Water Trust Board created pursuant to Section 72-4A-4, NMSA 1978.

“Borrower/Grantee” or “City” means the City of Santa Fe in Santa Fe County, New Mexico.

“Closing 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.

“County” means Santa Fe County, New Mexico.

“Expense Account” means the account established pursuant to this Authorizing Ordinance and held by the NMFA to pay the Expenses incurred by the Lenders/Grantors in connection with the Loan/Grant Agreement.

“Expenses” means the costs of originating and administering the Loan/Grant, including legal fees.

“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 three million two hundred thousand dollars (\$3,200,000).

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

“Joint Powers Agreement” means the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project, entered into by the Borrower/Grantee and the County on or about January 18, 2005 and approved by the New Mexico Department of Finance and Administration on March 7, 2005, including any amendments and supplements thereto.

“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 eight hundred thousand dollars (\$800,000).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement.

“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 Authorizing Ordinance.

“Master Ordinance” means the Borrower/Grantee’s Ordinance No. 2006-47, adopted August 9, 2006, as supplemented and amended from time to time.

“NMFA” means the New Mexico Finance Authority.

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

“Pledged Revenues” means the designated revenue stream which is intended to be utilized in funding the repayment of the Loan Amount and to pay Administrative Fees, as more fully described in the Term Sheet.

“Project” means the project described in the Term Sheet.

“Project Account” means the account in the name of the Borrower/Grantee established pursuant to this Authorizing 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 1978.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” attached to the Loan/Grant Agreement.

“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 1978 and held and administered by the NMFA.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Authorizing Ordinance) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition, construction and completion 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, construction and completion of the Project and the method of funding the Project through the 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 County, and the public whom they serve.

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 County, and the public whom they serve.

B. Moneys available and on hand, or reasonably expected to become available for the Project from all sources other than the Loan/Grant Amount (including the Additional Funding Amount) are not sufficient to defray the cost of 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 and the County.

D. The Borrower/Grantee will acquire, construct and complete the Project with the proceeds of the Loan/Grant Agreement, 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 1978.

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 Borrower/Grantee, the County and the BDD Board, will be sufficient to complete the Project and pay Expenses.

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

G. The Borrower/Grantee, in conjunction with the County and the BDD Board, has or will acquire title to, easements on or rights of way on the real property upon which the Project is being constructed.

H. The Project is a joint project of the Borrower/Grantee and the County, will be acquired jointly by the Borrower/Grantee and the County pursuant to the Joint Powers Agreement, and will be funded jointly by the Borrower/Grantee and the County.

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

A. Authorization. This Authorizing 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 and the County and acquiring the Project, 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 three million two hundred thousand dollars (\$3,200,000) and borrowing the Loan Amount of eight hundred thousand dollars (\$800,000) 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 of the Project. The Project will be jointly owned by the Governmental Unit and the County, in accordance with the Joint Powers Agreement.

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 Authorizing Ordinance was adopted. The Grant shall be in the amount of three million two hundred thousand dollars (\$3,200,000) and the Loan shall be in the amount of eight hundred thousand dollars (\$800,000). 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 Authorizing 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. Payment of the Loan Amount and Administrative Fees 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 the Term Sheet. Until the Completion Date, the money in the Project Account shall be used and paid out solely for the purpose of acquiring, constructing and completing the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement and the Joint Powers Agreement.

B. Completion of the Project. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that the Project and payment therefor have 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 the Loan Amount and Administrative Fees directly to the NMFA as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and Administrative Fees and to cure any deficiencies in the payment of the Loan Amount or Administrative Fees.

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 lien on the Pledged Revenues existing on the Closing Date or that may arise thereafter (except the lien thereon of other loans made by the Lenders/Grantors pursuant to the Act), including, but not limited to, all indebtedness described in the Master Ordinance, including any amendments or supplements thereto.

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 Authorizing 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 Authorizing Ordinance, the Master Ordinance and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Authorizing Ordinance, the Master 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. This Authorizing 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 Authorizing Ordinance shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Authorizing 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 Authorizing 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 Authorizing 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 Authorizing 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 Authorizing Ordinance, this Authorizing Ordinance shall be effective upon adoption hereof by the Governing Body.

Section 17. Master Ordinance. The Governing Body finds that the terms of the Loan/Grant Agreement and of this Authorizing Ordinance are consistent with the terms and parameters established for the issuance of subordinate debt by the Master Ordinance. This Authorizing Ordinance, duly adopted as an ordinance of the Borrower/Grantee, supplements the Master Ordinance in accordance with the provisions hereof and thereof. In the event of any inconsistency between the Loan/Grant Agreement and the Master Ordinance, as supplemented and amended by this Authorizing Ordinance, the provisions of the Master Ordinance shall control.

Section 18. 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 Authorizing Ordinance shall be published in substantially the following form:

[Remainder of page intentionally left blank.]

[Form of Summary of Ordinance for Publication]

**City of Santa Fe
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. 2010-4, duly adopted and approved by the City Council of the City of Santa Fe on March 31, 2010. 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 200 Lincoln Avenue, Santa Fe, New Mexico 87501.

The title of the Ordinance is:

**CITY OF SANTA FE
ORDINANCE NO. 2010-4**

AN ORDINANCE 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 (THE "BORROWER/GRANTEE"), IN THE AGGREGATE AMOUNT OF FOUR MILLION DOLLARS (\$4,000,000), BEING A LOAN IN THE AMOUNT OF EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) AND A GRANT IN THE AMOUNT OF THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000); EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF CONSTRUCTION OF THE BUCKMAN SURFACE WATER DIRECT DIVERSION PROJECT, 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.

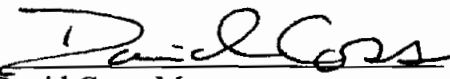
A general summary of the subject matter of the Ordinance is contained in its title.

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

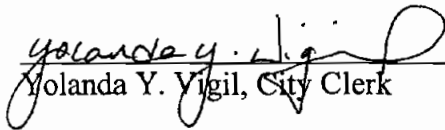
[End of Form of Summary for Publication]

PASSED, APPROVED AND ADOPTED THIS 31ST DAY OF MARCH, 2010.

CITY OF SANTA FE

By 
David Coss, Mayor

ATTEST:


Yolanda Y. Vigil, City Clerk

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Governing Body Member Wurzburger then moved adoption of the foregoing Authorizing Ordinance, duly seconded by Governing Body Member Calvert.

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

Those Voting Aye: Patti Bushee

Chris Calvert

Rebecca Wurzburger

Miguel Chavez

Carmichael Dominguez

Matthew E. Ortiz

Ronald S. Trujillo

Those Voting Nay: None

Those Absent: Rosemary Romero

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

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

CITY OF SANTA FE

By David Coss
David Coss, Mayor

ATTEST:

By Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk

