

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2021-__

INTRODUCED BY:

Mayor Alan Webber

AN ORDINANCE

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 UP TO THE AMOUNT OF \$4,000,000 PLUS ACCRUED INTEREST AND LOAN SUBSIDY GRANT FUNDS IN THE AMOUNT OF \$180,000 FOR A TOTAL FUNDED AMOUNT NOT TO EXCEED \$4,180,000; 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 SOLELY FROM THE BORROWER’S PLEDGED REVENUES DEFINED BELOW; AND PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFORE.

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

WHEREAS, the Borrower is a legally and regularly created public body organized under

the general laws of the State of New Mexico (“State”); and

WHEREAS, the Borrower now owns, operates, and maintains a public utility, which includes a system for disposing of wastes by surface and underground methods; and

WHEREAS, the present System is insufficient and inadequate to meet the needs of the Borrower; and

WHEREAS, the Loan Agreement and Note are required to be payable solely from the Pledged Revenues; and

WHEREAS, the loan and grant subsidy funds for this Project are proposed to include funds from a one-time federal grant to the NMED from the Environmental Protection Agency (“EPA”); and

WHEREAS, the Project is subject to specific requirements of the federal grant; and

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

Funding Source (e.g., Revenue Bond, NMED, NMFA, etc.) and Series# or Loan/Project #	Principal Amount Outstanding at 06/30/2021 (use the most current fiscal year end date)	Is the listed funding source superior, subordinate or on parity with this funding?
	None	

WHEREAS, in order to receive the loan funds the Governing Body of the Borrower must determine that it is in the best interest of the Borrower to accept and enter into the Loan Agreement and to execute and to deliver the Note to the NMED.

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

Section 1. DEFINITIONS. As used in the Ordinance, the following terms shall have the

meanings specified below, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined unless the plural form is separately defined):

Act means the general laws of the State, including the Wastewater Facility Construction Loan Act at sections 74-6A-1 to 74-6A-15 NMSA 1978, as amended; enactments of the governing body of the Borrower relating to the Note and the Loan Agreement made by resolution or ordinance, including this Ordinance; and the powers of the Borrower as a public body under authority given by the Constitution and Statutes of the State.

Annual Audit or Single Audit means the financial statements of the Borrower as of the end of each Fiscal Year, audited by an Independent Accountant, consistent with the federal Single Audit Act and the State Auditor's rules.

Authorized Officer means the Borrower's mayor, chief administrative officer, or other officer or employee of the Borrower as designated by the Borrower's Resolution No. 2021-__ adopted by the governing body of the Borrower, as amended.

Borrower means the entity requesting funds pursuant to the Act.

Fiscal Year means the twelve-month period commencing on the first day of July of each year and ending on the last day of June of the succeeding year, or any other twelve-month period which the Borrower hereafter may establish as the fiscal year or the System.

Funds means loan and Loan Subsidy Grant funds.

Governing Body of the Borrower means the city of Santa Fe governing body.

Loan means loan of funds from NMED made pursuant to the Loan Agreement.

Loan Agreement means the loan agreement between the Borrower and the NMED, pursuant to which funds will be loaned to the Borrower to construct the Project and pay eligible costs relating thereto; and the final loan agreement which shall state the final amount the NMED loaned to the Borrower, which shall be executed upon completion of the Project and dated on the date of

1 execution.

2 *Loan Subsidy Grant* means a sub-grant of funds to the Borrower from a one-time federal
3 grant of funds to the NMED by EPA, for the purpose of subsidizing the amount loaned to the
4 Borrower under the Loan Agreement and Note.

5 *NMSA* means New Mexico Statutes Annotated, 1978 Compilation, as amended and
6 supplemented.

7 *Note* means the interim and final promissory notes issued by the Borrower to the NMED
8 evidencing the obligation of the Borrower to the NMED incurred pursuant to the Ordinance and
9 Loan Agreement.

10 *Operation and Maintenance* means all reasonable and necessary current expenses of the
11 System, paid or accrued, relating to operating, maintaining and repairing the System.

12 *Ordinance* means this Ordinance as amended or supplemented from time to time.

13 *Parity Bonds or Parity Obligations* means revenue Bonds and other bonds or other
14 obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues on
15 parity with the bonds or obligations as listed in this Ordinance.

16 *Pledged Revenues* means stormwater fees imposed by the City of Santa Fe as provided in
17 Chapter 13-1-5 of the Santa Fe City Code 1987.

18 *Project* means the most current NMED approved Project Description listed on the Project
19 Description Form on file with NMED.

20 *Project Completion Date* means the date that operations of the completed works are
21 initiated or capable of being initiated, whichever is earlier. This also applies to individual phases
22 or segments.

23 *Regulations* means regulations promulgated by the Water Quality Control Commission at
24 20.7.5 NMAC and New Mexico Environment Department at 20.7.6 – 20.7.7 NMAC.

25 *Subordinate Obligations* means other obligations payable from the Pledged Revenues

1 issued with a lien on the Pledged Revenues subordinate to the lien of the Loan Agreement and Note
2 as may be listed in this Ordinance.

3 *System* means the stormwater drainage improvements owned and operated by the City of
4 Santa Fe.

5 **Section 2. RATIFICATION.** All action heretofore taken (not inconsistent with the
6 provisions of the Ordinance) by the Governing Body, the officers, and employees of the Borrower,
7 directed toward the Loan Agreement and the Note, is hereby ratified, approved and confirmed.

8 **Section 3. FINDINGS.** The Governing Body of the Borrower hereby declares that it has
9 considered all necessary and relevant information and data and hereby makes the following
10 findings:

11 A. The execution and delivery of the Loan Agreement and the Note pursuant to the
12 Act to provide funds to finance the Project, is necessary and in the interest of the public health,
13 safety, and welfare of the residents of the Borrower and will result in savings of finance costs to
14 the Borrower.

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

17 C. The Project is and will be part of the System.

18 D. The Pledged Revenues may lawfully be pledged to secure the payment of amounts
19 due under the Loan Agreement and Note.

20 **Section 4. SYSTEM.** The System shall continue to constitute a stormwater management
21 system and shall be operated and maintained as such.

22 **Section 5. AUTHORIZATION OF PROJECT.** The acquisition and construction of the
23 Project and payment of eligible items as set forth in the Regulations from proceeds of the Loan
24 Agreement and Note is hereby authorized at a cost not to exceed the principal Loan amount of Four
25 Million Dollars (\$4,000,000) and the Loan Subsidy Grant amount of One Hundred and Eighty

1 Thousand Dollars (\$180,000) excluding any cost of the Project to be paid from any source other
2 than the proceeds of the Loan Agreement and Note.

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

4 A. For the purpose of protecting the public health, conserving the property, and
5 protecting the general welfare of the residents of the Borrower and acquiring the Project, it is hereby
6 declared necessary that the Borrower, pursuant to the Act and the Regulations execute and deliver
7 the Loan Agreement and Note, and the Borrower is hereby authorized to execute and deliver the
8 Loan Agreement and the Note, to be payable and collectible solely from the Pledged Revenues.
9 The NMED has agreed to disburse the proceeds according to the terms of the Loan Agreement to
10 the Borrower over the construction period of the Project. The principal Loan amount of the Note
11 shall not exceed Four Million Dollars (\$4,000,000) plus accrued interest without the adoption of
12 another Ordinance amending the Ordinance by the Governing Body of the Borrower, and the annual
13 interest rate on that principal amount shall not exceed one percent (1%) per annum. Interest shall
14 be computed as a percentage per year on the outstanding principal amount on the Loan on the basis
15 of a 365-day year, actual number of days lapsed. The final maturity date on the Note shall not
16 extend beyond the agreed upon useful life of the project. The Loan shall be repaid in substantially
17 equal annual installments in the amount and on the dates provided in the Loan Agreement with the
18 first annual installment due no later than one year after completion of the project. The Borrower
19 must maintain a debt service coverage ratio of no less than 1.2 and must also obtain the written
20 consent of the NMED before issuing additional obligations secured by the Pledged Revenues.

21 B. The Borrower is hereby authorized to accept a Loan Subsidy Grant under the terms
22 of the Loan Agreement. The Loan Subsidy Grant amount shall not exceed One Hundred Eighty
23 Thousand Dollars (\$180,000) without the adoption of another Ordinance amending the Ordinance
24 by the Governing Body of the Borrower. By accepting a Loan Subsidy Grant, the Borrower is a
25 sub-recipient of a one-time federal grant of funds to NMED by EPA. As a sub-recipient, the

1 Borrower is responsible for complying with the specific requirements and the conditions of the
2 one-time federal grant. If the Borrower fails to satisfy any federal grant requirements or conditions,
3 the Borrower may be required to refund any federal grant funds disbursed to the Borrower from
4 NMED.

5 C. The form of the Loan Agreement and the Note are approved. The Mayor hereby
6 authorized and directed to execute and deliver the Loan Agreement and the Note and any extensions
7 of or amendments to any such document to be executed after completion of the Project, or any
8 substitution therefore, with such changes therein consistent with the Ordinance and as shall be
9 approved by an Authorized Officer whose execution thereof, or any extension thereof, or
10 substitution therefore, in their final forms shall constitute conclusive evidence of their approval and
11 compliance with this section.

12 D. From and after the date of the initial execution and delivery of the Loan Agreement
13 and the Note, Authorized Officers, agents and employees of the Borrower are authorized,
14 empowered and directed to do all such acts and things and to execute all such documents as may
15 be necessary to carry out and comply with the provisions of this Ordinance, the Loan Agreement
16 and the Note.

17 **Section 7. SPECIAL LIMITED OBLIGATIONS.** The Loan Agreement and the Note
18 and all payments thereon shall be special limited obligations of the Borrower and shall be payable
19 and collectible solely from the Pledged Revenues which are irrevocably pledged as set forth in this
20 Ordinance. The NMED may not look to any general or other fund for the payment on the Loan
21 Agreement and the Note except the Pledged Revenues. The Loan Agreement and the Note shall
22 not constitute indebtedness or debts within the meaning of any constitutional, charter or statutory
23 provision or limitation, nor shall they be considered or be held to be general obligations of the
24 Borrower and shall recite that they are payable and collectible solely from the Pledged Revenues
25 the income from which is so pledged.

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

3 **Section 9. USE OF PROCEEDS.** The NMED shall disburse Funds pursuant to the Loan
4 Agreement for NMED approved costs incurred by the Borrower for the Project or to pay contractors
5 or suppliers of materials for work performed on the Project as set forth in the Loan Agreement.

6 **Section 10. APPLICATION OF REVENUES.**

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

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

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

18 D. **SUBORDINATE OBLIGATIONS.** The Pledged Revenues used for the payment
19 of Subordinate Obligations shall be applied first to the payment of the amounts due the Loan
20 Agreement and the Note, including payments to be made to other obligations payable from the
21 Pledged Revenues which have a lien on the Pledged Revenues on parity with the Loan Agreement
22 and the Note. Thereafter, Pledged Revenues shall be applied to the payment of the amounts due on
23 subordinate obligations, if any.

24 **Section 11. LIEN OF LOAN AGREEMENT AND NOTE.** The Loan Agreement and
25 the Note shall constitute irrevocable liens upon the Pledged Revenues with priorities on the Pledged

1 Revenues as set forth in this Ordinance. The Borrower hereby pledges and grants a security interest
2 in the Pledged Revenues for the payment of the Note and any other amounts owed by the Borrower
3 to the NMED pursuant to the Loan Agreement.

4 **Section 12. OTHER OBLIGATIONS.** Nothing in the Ordinance shall be construed to
5 prevent the Borrower from issuing bonds or other obligations payable from the Pledged Revenues
6 and having a lien thereon subordinate to the liens of the Loan Agreement and the Note. The
7 Borrower must obtain the written consent of the NMED before issuing additional obligations
8 secured by the Pledged Revenues.

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

11 A. The failure by the Borrower to pay the annual payment due on the repayment of
12 the Loan set forth in the Loan Agreement and Note when due and payable either at maturity or
13 otherwise; or

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

18 **UPON OCCURRENCE OF DEFAULT:**

19 A. The entire unpaid principal amount of the Interim and Final Promissory Note plus
20 accrued interest and any fees thereon may be declared by the NMED to be immediately due and
21 payable and the Borrower shall pay the amounts due under Note from the Pledged Revenues, either
22 immediately or in the manner required by the NMED in its declaration, but only to the extent funds
23 are available for payment of the Note. However, if insufficient funds are available for payment of
24 the Note(s), the NMED may require the Borrower to adjust the rates charged by the System to
25 ensure repayment of the Note.

1 B. If default by the Borrower is of covenants or conditions required under the federal
2 grant, the Borrower may be required to refund the amount of the Loan and Loan Subsidy Grant
3 disbursed to the Borrower from NMED.

4 C. The NMED shall have no further obligation to make payments to the Borrower
5 under the Loan Agreement.

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

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

25 **Section 16. DUTIES UPON DEFAULT.** Upon the occurrence of any of the events of

1 default as provided in this Ordinance, the Borrower, in addition, will do and perform all proper acts
2 on behalf of and for the NMED to protect and preserve the security created for the payment of the
3 Note to ensure the payment on the Note promptly as the same become due. All proceeds derived
4 from the System, so long as the Note is outstanding, shall be treated as revenues. If the Borrower
5 fails or refuses to proceed as required by this Section, the NMED, after demand in writing, may
6 proceed to protect and enforce the rights of the NMED as provided in the Ordinance and the Loan
7 Agreement.

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

13 **Section 18. AMENDMENT OF ORDINANCE.** Following execution and delivery of
14 the Note and Loan Agreement, this Ordinance may be amended with the prior written consent of
15 the NMED.

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

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

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

1 APPROVED AS TO FORM:

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4 ERIN K. McSHERRY, CITY ATTORNEY

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25 *Legislation/2021/Bills/Clean Water State Revolving Loan Acceptance*