

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) ss.
CITY OF SANTA FE)

The City Council (the "Governing Body") of the City of Santa Fe, New Mexico (the "City"), met in regular session in full conformity with the law and the rules and regulations of the Governing Body at the Santa Fe Municipal Offices, 200 Lincoln Avenue, Santa Fe, New Mexico on the 8th day of May, 2019, at the hour of 7:00 p.m. Upon roll call, the following members were found to be present:

PRESENT:	Mayor:	_____
	Councilor:	_____
	Councilor:	_____
	Councilor:	_____
	Councilor:	_____
	Councilor:	_____
	Councilor:	_____

ABSENT:	_____

ALSO PRESENT:	_____
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Thereupon, there was officially filed with the Clerk a copy of a proposed ordinance in final form.

PUBLIC HEARINGS

CONSIDERATION OF BILL NO. 2019-8 ADOPTION OF ORDINANCE NO. 2019-__

Authorizing Execution and Delivery of a Loan Agreement with the New Mexico Finance Authority in a principal amount not to exceed \$23,800,000.

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2019-8

INTRODUCED BY:

Mayor Alan M. Webber

Councilor Peter N. Ives

AN ORDINANCE

**AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY
AND BETWEEN THE CITY OF SANTA FE AND THE NEW MEXICO FINANCE
AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO
PAY A PRINCIPAL AMOUNT NOT TO EXCEED \$23,800,000, FOR THE PURPOSE OF
DEFRAYING THE COST OF REFUNDING, PAYING, AND REFINANCING THE 2009
LOAN AGREEMENT DATED SEPTEMBER 14, 2009 WITH THE NEW MEXICO
FINANCE AUTHORITY (COLLEGE OF SANTA FE ACQUISITION); PROVIDING
FOR THE PAYMENT OF THE LOAN AGREEMENT FROM CERTAIN GROSS
RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; PROVIDING THAT THE
LOAN AGREEMENT WILL CONSTITUTE A SUBORDINATE LIEN UPON THE
PLEDGED GROSS RECEIPTS TAX REVENUES; PROVIDING FOR THE
DISTRIBUTIONS OF GROSS RECEIPTS TAX REVENUES FROM THE TAXATION
AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE NEW MEXICO
FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO AN INTERCEPT
AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE**

1 **LOAN AGREEMENT; DELEGATING AUTHORITY TO THE MAYOR OR, IN THE**
2 **MAYOR'S ABSENCE, THE CITY MANAGER OR FINANCE DIRECTOR, TO**
3 **APPROVE THE FINAL PRINCIPAL AMOUNT, INTEREST RATES AND OTHER**
4 **DETAILS OF THE LOAN AGREEMENT WITHIN THE PARAMETERS SET FORTH**
5 **IN THIS AUTHORIZING ORDINANCE, AND TO EXECUTE AND DELIVER A**
6 **PRICING CERTIFICATE REFLECTING THE FINAL TERMS OF THE LOAN**
7 **AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL**
8 **ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE**
9 **TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND**
10 **DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.**

11
12 Capitalized terms used in the following preambles have the same meaning as defined in
13 Section 1 of the Ordinance unless the context requires otherwise.

14 **WHEREAS**, the City is a legally and regularly created, established, organized and
15 existing home-rule municipality under the constitution and general laws of the State of New
16 Mexico; and

17 **WHEREAS**, the Governing Body has determined and hereby determines that the Project
18 may be financed with amounts borrowed under the Loan Agreement and that it is in the best
19 interests of the City and its residents that the Loan Agreement be executed and delivered and that
20 the financing of the Project take place by executing and delivering the Loan Agreement; and

21 **WHEREAS**, pursuant to Section 7-1-6.4 NMSA 1978, the City receives monthly
22 distributions of State-Shared Gross Receipts Tax revenues from the New Mexico Department of
23 Taxation and Revenue equal to one and two hundred twenty-five thousandths percent (1.225%) of
24 the gross receipts of persons engaging in business within the City, as determined and adjusted
25 under the Gross Receipts and Compensating Tax Act, Chapter 7, Article 9 NMSA 1978 (the

1 "State-Shared Gross Receipts Tax"); and

2 **WHEREAS**, pursuant to the Municipal Local Option Gross Receipts Taxes Act, Sections
3 7-19D-9[1 through 7-19D-12], NMSA 1978, as amended, and City Ordinance No. 1981-45, the
4 City has imposed a municipal gross receipts tax in the amount of one-half of one percent (.50%)
5 of the gross receipts of persons engaging in business within the City, as determined and adjusted
6 under the Municipal Local Option Gross Receipts Taxes Act (the "Local Option Gross Receipts
7 Tax"); and

8 **WHEREAS**, House Bill 479, passed and adopted by the Legislature of the State
9 in the regular session of the 54th Legislature of the State of New Mexico, effective on
10 July 1, 2019, de-earmarks certain optional municipal and county gross receipts taxes,
11 including but not limited to the Municipal Infrastructure Gross Receipts Tax under
12 Section 7-19D-11 NMSA 1978, which statute will be repealed and replaced by Section 7-
13 19D-9 NMSA 1978, as amended, effective July 1, 2019, with the effect that the
14 increments of gross receipts tax originally authorized by Section 7-19D-11 NMSA 1978
15 shall continue to be used for the purposes stated therein; and

16 **WHEREAS**, pursuant to Municipal Local Option Gross Receipts Taxes Act, Section 7-
17 19D-11 NMSA 1978, as repealed and replaced by Section 7-19D-9 NMSA 1978 as of July 1,
18 2019, and City Ordinance No. 1993-21, the City has imposed an infrastructure gross receipts tax
19 in the amount of one-sixteenth of one percent (.0625%) of the gross receipts of persons engaging
20 in business within the City, as determined and adjusted under the Municipal Local Option Gross
21 Receipts Taxes Act and the Tax Administration Act (the "Infrastructure Gross Receipts Tax");
22 and

23 **WHEREAS**, pursuant to Ordinance No. 2009-35, passed and adopted by the Governing
24 Body on July 29, 2009, Resolution No. 2009-85 adopted on August 26, 2009 and Resolution

2009-94 adopted on September 30, 2009 (collectively, the “2009 College Acquisition Loan Ordinance”), the City entered into a Loan Agreement dated September 14, 2009, with the New Mexico Finance Authority in an aggregate principal amount of \$29,615,000 (herein the “2009 College Acquisition Finance Authority Loan”) payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues; and

WHEREAS, pursuant to Ordinance No. 2010-26, passed and adopted by the Governing Body on November 10, 2010 (the “2010B Ordinance”), the City issued its “City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B” (herein the “Series 2010B Bonds”) in an aggregate principal amount of \$10,490,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues; and

WHEREAS, pursuant to Ordinance No. 2012-7, passed and adopted by the Governing Body on January 25, 2012 (the “2012A Ordinance”) the City issued its “City of Santa Fe, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2012A” (the “Series 2012A Bonds”), in the total principal amount of \$32,725,000, payable from and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues; and

WHEREAS, pursuant to Ordinance No. 2012-6, passed and adopted by the Governing Body on January 25, 2012 (the “2012B Ordinance”) the City issued its “City of Santa Fe, New Mexico Gross Receipts Tax (Subordinate Lien)/Wastewater System Refunding Revenue Bonds, Series 2012B” (herein the “Series 2012B Bonds”), in the aggregate principal amount of

1 \$14,280,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien
2 on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross
3 Receipts Tax Revenues, the Environmental Services Gross Receipts Tax Revenues and the
4 Infrastructure Gross Receipts Tax Revenues, and payable from and constituting a first (but not
5 exclusive first) lien on the Wastewater System Revenues; and

6 **WHEREAS**, pursuant to Ordinance No. 2013-18, passed and adopted by the Governing
7 Body on June 18, 2013 (the “2013A Ordinance”), the City issued its “City of Santa Fe, New
8 Mexico Gross Receipts Tax Refunding Revenue Bonds, Series 2013A” (herein the “Series 2013A
9 Bonds”) in an aggregate principal amount of \$10,880,000 payable from and constituting a first
10 (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half
11 Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax
12 Revenues; and

13 **WHEREAS**, pursuant to Ordinance No. 2013-19, passed and adopted by the Governing
14 Body on May 18, 2013 (the “2013B Ordinance”), the City issued its “City of Santa Fe, New
15 Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2013B” (herein
16 the “Series 2013B Bonds”) in an aggregate principal amount of \$13,780,000 payable from and
17 constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross
18 Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the
19 Infrastructure Gross Receipts Tax Revenues; and

20 **WHEREAS**, pursuant to Ordinance No. 2014-27, passed and adopted by the Governing
21 Body on August 27, 2014 (the “2014 Ordinance”), the City issued its “City of Santa Fe, New
22 Mexico Gross Receipts Tax Improvement Revenue Bonds, Series 2014” (herein the “Series 2014
23 Bonds”) in an aggregate principal amount of \$15,460,000 payable from and constituting a first
24 (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half
25 Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax

Revenues; and

WHEREAS, pursuant to Ordinance No. 2016-21, passed and adopted by the Governing Body on May 25, 2016 (the “2016 Ordinance”), the City issued its “City of Santa Fe, New Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016A” (herein the “Series 2016A Bonds”) in an aggregate principal amount of \$6,700,000 payable from and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues; and

WHEREAS, pursuant to the 2016 Ordinance, the City issued its “City of Santa Fe, New Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016B” (herein the “Series 2016B Bonds”) in an aggregate principal amount of \$21,900,000 payable from and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues; and

WHEREAS, pursuant to the 2016 Ordinance, the City issued its “City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016C” (herein the “Series 2016C Bonds”) in an aggregate principal amount of \$9,480,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues; and

WHEREAS, pursuant to the 2016 Ordinance, the City issued its “City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016D” (herein the “Series 2016D Bonds”) in an aggregate principal amount of \$2,020,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the

1 Infrastructure Gross Receipts Tax Revenues; and

2 **WHEREAS**, pursuant to Ordinance No. 2017-8, passed and adopted by the Governing
3 Body on April 26, 2017 (the “2017 Ordinance”), the City issued its “City of Santa Fe, New
4 Mexico Taxable Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2017”
5 (herein the “Series 2017 Taxable Bonds”) in an aggregate principal amount of \$4,530,000
6 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-
7 Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax
8 Revenues and the Infrastructure Gross Receipts Tax Revenues; and

9 **WHEREAS**, pursuant to Ordinance No. 2017-23, passed and adopted by the Governing
10 Body on November 8, 2017 (the “2018 Ordinance”), the City issued its Gasoline Tax /
11 Subordinate Lien Gross Receipts Tax Improvement Revenue Bonds, Series, 2018 (herein the
12 “Series 2018 Bonds”) in an aggregate principal amount of \$10,290,000, payable from and
13 constituting (i) a first (but not an exclusive first) lien on the General Gasoline Tax Revenues and
14 the Municipal Road Gasoline Tax Revenues and (ii) a subordinate (but not exclusive subordinate)
15 lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross
16 Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues; and

17 **WHEREAS**, pursuant to Ordinance No. 2018-25, passed and adopted by the Governing
18 Body on October 31, 2018 (the “2018A Ordinance”) the City authorized the issuance, sale and
19 delivery of its Senior Lien Gross Receipts Tax Improvement Revenue Bonds, Series 2018A
20 (herein the “Series 2018A Bonds”) in aggregate principal amount of \$20,000,000 payable from
21 and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax
22 Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure
23 Gross Receipts Tax Revenues; and

24 **WHEREAS**, except for the outstanding 2009 College Acquisition Finance Authority
25 Loan, Series 2010B Bonds, Series 2012B Bonds, Series 2013B Bonds, Series 2016C Bonds,

1 Series 2016D Bonds, Series 2017 Taxable Bonds and Series 2018 Bonds (collectively, the
2 “Subordinate Tax Obligations”) and the outstanding Series 2012A Bonds, Series 2013A Bonds,
3 Series 2014 Bonds, Series 2016A Bonds, Series 2016B Bonds and the Series 2018A Bonds
4 (collectively, the “Parity Superior Tax Obligations”), there are no obligations presently
5 outstanding to which the Pledged Tax Revenues have been pledged by the City; and

6 **WHEREAS**, the Governing Body has determined that it is in the best interest of the City
7 to refund, refinance, and prepay the outstanding 2009 College Acquisition Finance Authority
8 Loan (the “Project”) with the proceeds of the Loan Agreement, the interest on which is not
9 expected to be excludable from gross income for federal income tax purposes; and

10 **WHEREAS**, the Governing Body has determined that it may lawfully pledge the State-
11 Shared Gross Receipts Tax, the Local Option Gross Receipts Tax and the Infrastructure Gross
12 Receipts Tax (collectively, the "Pledged Tax Revenues," as further defined in Section 1 of this
13 Ordinance) for the payment of amounts due under the Loan Agreement; and

14 **WHEREAS**, the Governing Body desires to provide that, under the circumstances
15 specified in the Loan Agreement, a portion of the distributions of the Pledged Tax Revenues will
16 be redirected to the Finance Authority or its assigns pursuant to an Intercept Agreement between
17 the City and the Finance Authority (the "Intercept Agreement") for the payment of amounts due
18 under the Loan Agreement; and

19 **WHEREAS**, the Loan Agreement shall be executed and delivered with a subordinate
20 lien (but not an exclusive subordinate lien) on the Pledged Tax Revenues; and

21 **WHEREAS**, other than as described in this Ordinance and in Exhibit "A" to the Loan
22 Agreement, the Pledged Tax Revenues have not heretofore been pledged to secure the payment of
23 any obligation; and

24 **WHEREAS**, the Loan Agreement shall be a special, limited obligation of the City,
25 payable from the Pledged Tax Revenues and other legally available special revenues and shall not

1 constitute a general obligation of the City, or a debt or pledge of the full faith and credit of the
2 City or the State; and

3 **WHEREAS**, there have been presented to the Governing Body and there presently are on
4 file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept
5 Agreement; and

6 **WHEREAS**, the Loan Agreement will be entered into only after receipt of the required
7 approval of the Project by the Department of Finance and Administration of the State of New
8 Mexico; and

9 **WHEREAS**, all required authorizations, consents and approvals in connection with (i)
10 the use and pledge of the Pledged Tax Revenues to the Finance Authority (or its assigns) for the
11 payment of the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance
12 the Project, and (iii) the authorization, execution and delivery of the Related Documents which
13 are required to have been obtained by the date of this Ordinance, have been obtained or are
14 reasonably expected to be obtained; and

15 **WHEREAS**, the Governing Body expects to privately place the Loan Agreement with
16 the New Mexico Finance Authority with the final terms of and additional details of the Loan
17 Agreement established in a Pricing Certificate to be executed by the Mayor or, the absence of the
18 Mayor, another Authorized Officer pursuant to Section 6-14-10.2 NMSA 1978, all within the
19 parameters set forth in this Ordinance; and

20 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
21 **CITY OF SANTA FE:**

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

25 "Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12,

1 Section 6-21-1 through 6-21-31, Section 7-1-6.4, and Sections 7-19D-2[1 through 7-19D-12,
2 NMSA 1978,] as amended by Chapter 274, Laws 2019 of the first session of the 54th Legislature,
3 which amendments are effective July 1, 2019, and enactments of the Governing Body relating to
4 the Loan Agreement, including this Ordinance.

5 "Aggregate Annual Debt Service Requirement" means the total principal and interest due
6 and payable pursuant to the Loan Agreement and on all Parity Tax Obligations secured by a
7 pledge of the Pledged Tax Revenues, for any one Fiscal Year.

8 "Authorized Officers" means, in the case of the City, the Mayor, Manager, Finance
9 Director & Treasurer, and Clerk, and in the case of the Finance Authority, the Chairman, Vice-
10 Chairman, Secretary and Chief Executive Officer.

11 "Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by
12 the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement
13 Payments.

14 [~~"Capitalized Interest" means the portion, if any, of the proceeds of the Loan to be used~~
15 ~~to pay interest on the Loan, as described in Exhibit "A" to the Loan Agreement.~~

16 [~~"Capitalized Interest Account" means the account in the name of the City held by the~~
17 ~~Finance Authority, funded by a portion of the proceeds of the Loan to pay interest on the Loan, as~~
18 ~~described in Exhibit "A" to the Loan Agreement.]~~

19 "City" or "Governmental Unit" means the City of Santa Fe, New Mexico.

20 "Closing Date" means the date of execution, delivery and funding of the Loan
21 Agreement.

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

23 "Debt Service Account" means the account in the name of the City within the Debt
24 Service Fund established under the Indenture and held by Finance Authority to pay principal and
25 interest on the Loan Agreement as the same become due.

1 "Distributing State Agency" means the Taxation and Revenue Department of the State of
2 New Mexico.

3 "Expense ~~[Fund]~~" means the ~~[Expense Fund created pursuant to the Indenture, to be held~~
4 ~~and administered by the Trustee to pay]~~ costs of issuance of the Loan Agreement and the Bonds,
5 if any, and the periodic and regular fees and expenses incurred by the Finance Authority ~~[and the~~
6 ~~Trustee]~~ in administering the Loan Agreement, including legal fees.

7 "Finance Authority" or "NMFA" means the New Mexico Finance Authority.

8 "Fiscal Year" means the period commencing on July 1 in each calendar year and ending
9 on the last day of June of the next succeeding calendar year, or any other twelve-month period
10 which any appropriate authority may hereafter establish for the City as its fiscal year.

11 "Governing Body" means the City Council of the City of Santa Fe, New Mexico, or any
12 future successor governing body of the City.

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

16 "Indenture" means the General Indenture of Trust and Pledge dated June 1, 1995, as
17 amended and supplemented by and between the Finance Authority and the Trustee, or the
18 Subordinated General Indenture of Trust dated as of March 1, 2005, as supplemented, by and
19 between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant
20 to a pledge notification or supplemental indenture.

21 "Independent Accountant" means (i) an accountant employed by the State and under the
22 supervision of the State Auditor, or (ii) any certified public accountant, registered accountant, or
23 firm of such accountants duly licensed to practice and practicing as such under the laws of the
24 State, appointed and paid by the City who (a) is, in fact, independent and not under the
25 domination of the City, (b) does not have any substantial interest, direct or indirect, with the City,

and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

"Intercept Agreement" means the Intercept Agreement between the City and Finance Authority providing for the direct payment by the City or the Distributing State Agency of Pledged Tax Revenues in amounts sufficient to pay principal, and interest due on the Loan Agreement.

"Loan" means the funds to be loaned to the City by the Finance Authority pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the City which provides for the financing of the Project and requires payments by or on behalf of the City to the Finance Authority and/or the Trustee.

"Loan Agreement Balance" means, as of the date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of the Loan Agreement.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component to be paid by the City as the payment of the Loan Agreement, as shown on Exhibit "B" to the Loan Agreement.

"Loan Agreement Principal Amount" means an amount not to exceed \$23,800,000.

"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.

"Parity Subordinate Tax Obligations" means the Series 2010B Bonds, the Series 2012B Bonds, the Series 2013B Bonds, the Series 2016C Bonds, the Series 2016D Bonds, the Series 2017 Taxable Bonds, and the Series 2018 [~~Gas Tax/Sub. Lien GRT~~] Bonds, and any other obligations subsequently issued with a lien on the Pledged Tax Revenues on a parity with the

1 Parity Subordinate Tax Obligations and subordinate to the lien thereon of the Superior Tax
2 Obligations.

3 "Pledged Tax Revenues" or "Pledged Revenues" means:

4 (i) the revenues of the State-Shared Gross Receipts Tax distributed monthly to
5 the City pursuant to Section 7-1-6.4 NMSA 1978 from the New Mexico Department of Taxation
6 and Revenue equal to one and two hundred twenty-five thousandths percent (1.225%) of the
7 gross receipts of persons engaging in business within the City, as determined and adjusted under
8 the Gross Receipts and Compensating Tax Act, Chapter 7, Article 9 NMSA 1978;

9 (ii) the revenues of the Municipal Gross Receipts Tax imposed by the City
10 pursuant to Sections 7-19D-9~~[1 through 7-19D-12]~~, NMSA 1978, as amended, and City
11 Ordinance No. 1981-45, in the amount of one-half of one percent (.50%) of the gross receipts of
12 persons engaging in business within the City, as determined and adjusted under the Municipal
13 Local Option Gross Receipts Taxes Act;

14 (iii) the revenues of the Municipal Infrastructure Gross Receipts Tax originally
15 imposed by the City pursuant to Section 7-19D-11 NMSA 1978, which, effective July 1, 2019, is
16 repealed and replaced by Section 7-19D-9, NMSA 1978, and City Ordinance No. 1993-21, in the
17 amount of one-sixteenth of one percent (.0625%) of the gross receipts of persons engaging in
18 business within the City, as determined and adjusted under the Municipal Local Option Gross
19 Receipts Taxes Act and the Tax Administration Act;

20 (iv) the portion of the gross receipts tax distribution to the City made pursuant to
21 Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax
22 Revenues, one-half percent Municipal Gross Receipts Tax revenues, and one-sixteenth percent
23 Municipal Infrastructure Gross Receipts Tax revenues that would have been remitted to the City
24 but for the deductions provided by Section 7-9-92 and 7-9-93 NMSA 1978 and any similar
25 distributions made to the City in lieu of State-Shared Gross Receipts Tax Revenues, one-half

1 percent Municipal Gross Receipts Tax revenues and one-sixteenth percent Municipal
2 Infrastructure Gross Receipts Tax Revenues pursuant to law; and

3 (v) any other gross receipts tax revenues received by the City, whether from
4 distribution by the State or pursuant to gross receipts taxes imposed by the City, and hereafter
5 (i.e. after the adoption of this ordinance) pledged to the payment of the Loan Agreement by
6 affirmative act of the Council.

7 "Pricing Certificate" means the certificate setting forth the maturity dates, principal
8 amounts, prices, redemption features and other final terms of the Loan Agreement.

9 "Processing Fee" means the processing fee, if any, to be paid on the Closing Date by the
10 City to the Finance Authority for the costs of originating and servicing the Loan, as shown on
11 Exhibit "A" to the Loan Agreement.

12 "Program Account" means the account in the name of the City established under the
13 Indenture and held by the Trustee for deposit of a portion of the proceeds of the Loan Agreement
14 for disbursement to the City for payment of the costs of the Project.

15 "Project" means the refunding, refinancing and prepaying the Refunded Loan [~~Agreement~~
16 ~~between the City and the Finance Authority dated September 14, 2009 (College of Santa Fe~~
17 ~~Acquisition);~~] payment of the Processing Fee to the Finance Authority and payment of related
18 professional fees.

19 "Refunded Loan" means the Loan Agreement between the City and the Finance
20 Authority dated September 14, 2009 (College of Santa Fe Acquisition).

21 "Related Documents" means the Loan Agreement, the Intercept Agreement, the Pricing
22 Certificate and any other document or agreement containing an obligation of the City as may be
23 required in connection with the execution and delivery of the Loan Agreement.

24 "State" means the State of New Mexico.

25 "Superior Tax Obligations" means the Series 2012A Bonds, the Series 2013A Bonds, the

1 Series 2014 Bonds, the Series 2016A Bonds, the Series 2016B Bonds, the Series 2018A Bonds,
2 and any other Parity Superior Tax Obligations issued subsequent to the delivery of the Loan
3 Agreement.

4 "Trustee" means the trust company or national or state banking association or financial
5 institution at the time appointed Trustee by the Finance Authority.

6 **Section 2.** Ratification. All action heretofore taken (not inconsistent with the
7 provisions of this Ordinance) by the Governing Body and officers of the City directed toward the
8 Project and the execution and delivery of the Loan Agreement, be, and the same hereby is,
9 ratified, approved and confirmed.

10 **Section 3.** Authorization of the Project and Related Documents. The Project and
11 the method of financing the Project through execution and delivery of the Related Documents are
12 hereby authorized and ordered. The Project is for the benefit and use of the City.

13 **Section 4.** Findings. The City hereby declares that it has considered all relevant
14 information and data and hereby makes the following findings:

15 A. Moneys available and on hand for the Project from all sources other than
16 the Loan are not sufficient to defray the cost of the Project.

17 B. The Pledged Tax Revenues may lawfully be pledged to secure the
18 payment of amounts due under the Loan Agreement.

19 C. It is economically feasible to defray, in whole or in part, the costs of the
20 Project by the execution and delivery of the Loan Agreement.

21 D. The Project and the execution and delivery of the Related Documents
22 pursuant to the Act to provide funds for the financing of the Project are necessary and in the
23 interest of the residents of the City.

24 F. The City will finance the Project, in whole or in part, with the net
25 proceeds of the Loan.

1 G. Other than as described in this Ordinance, the City does not have any
2 outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior
3 to the initial execution and delivery of the Loan Agreement.

4 **Section 5. Related Documents - Authorization and Detail.**

5 A. Authorization. This Ordinance has been adopted by the affirmative vote
6 of at least a majority of all of the members of the Governing Body. For the purpose of conserving
7 the property, protecting the general welfare and prosperity of the citizens of the City and
8 financing the Project, it is hereby declared necessary that the City, pursuant to the Act, execute
9 and deliver the Loan Agreement evidencing a special, limited obligation of the City to pay a
10 principal amount not to exceed \$23,800,000, and the execution and delivery of the Related
11 Documents are hereby authorized. The City shall use the proceeds of the Loan to (i) finance the
12 Project, and (ii) [~~fund the Capitalized Interest Account and (iii)~~] to pay the Processing Fee to the
13 Finance Authority and costs of related professional fees. [~~The Project will be owned by the City.~~]

14 B. Detail. The Related Documents shall be in substantially the forms
15 presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan
16 shall be payable in installments of principal due on the dates designated in the Loan Agreement
17 and bear interest payable on the dates designated in the Loan Agreement and at the rates
18 designated in the Pricing Certificate and Loan Agreement. The Loan Agreement shall be
19 delivered pursuant to a private placement with the Finance Authority upon the terms set forth in
20 the Pricing Certificate, and shall be within the parameters set forth below:

21 The Loan Agreement shall be executed and delivered for the Project and to pay
22 Expenses.

23 The maximum principal amount of the Loan Agreement shall not be more than
24 \$23,800,000.

25 The final maturity of the Loan Agreement shall be no later than June 1, 2039.

1 The maximum interest rate on the Loan Agreement shall be no greater than 6% per
2 annum.

3 The Loan Agreement shall be payable solely from the Pledged Tax Revenues.

4 The Loan Agreement shall be delivered pursuant to a private sale to the Finance
5 Authority.

6 The Finance Authority's Processing Fee shall not exceed 1% of the aggregate principal
7 amount of the Loan Agreement.

8 The minimum net present value savings for the refunding of the Refunded Loan
9 [~~Agreement between the City and the Finance Authority dated September 14, 2009 (College of~~
10 ~~Santa Fe Acquisition)~~] shall be 3.00%.

11 The Loan Agreement shall include a provision stating that interest payable thereon is not
12 expected to be excludable from gross income for federal income tax purposes.

13 The Mayor or, in the Mayor's absence, the City Manager or City Finance Director, is
14 hereby authorized pursuant to this Ordinance to approve the final terms of the Loan Agreement
15 within the parameters set forth in this Ordinance as permitted by Section 6-14-10.2 NMSA 1978,
16 and to execute and deliver the Pricing Certificate.

17 **Section 6. Approval of Related Documents.** The forms of the Related Documents
18 as presented at the meeting of the Governing Body at which this Ordinance was adopted are
19 hereby approved. Authorized Officers are hereby individually authorized to execute,
20 acknowledge and deliver the Related Documents with such changes, insertions and omissions that
21 are consistent with this Ordinance and the Pricing Certificate [~~Supplemental Resolution~~] as may
22 be approved by such individual Authorized Officers, and the Clerk is hereby authorized to affix
23 the seal of the City on the Related Documents and attest the same. The execution of the Related
24 Documents by an Authorized Officer shall be conclusive evidence of such approval.

25 **Section 7. Special Limited Obligations.** The Loan Agreement shall be secured by

1 the pledge of the Pledged Tax Revenues as set forth in this Ordinance and the Loan Agreement
2 and shall be payable solely from the Pledged Tax Revenues. The Loan Agreement, together with
3 interest thereon and other obligations of the City thereunder, shall be special, limited obligations
4 of the City, payable from the Pledged Tax Revenues as provided in this Ordinance, the Loan
5 Agreement and the Related Documents and shall not constitute a general obligation of the City or
6 the State, and the holders of the Loan Agreement may not look to any general fund of the City for
7 payment of the obligations thereunder. Nothing contained in this Ordinance nor in the Loan
8 Agreement, nor any other Related Documents or instruments, shall be construed as obligating the
9 City (except with respect to the application of the Pledged Tax Revenues), as incurring a
10 pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor
11 shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other
12 Related Document or instrument impose any pecuniary liability upon the City or any charge upon
13 its general credit or against its taxing power. The Loan Agreement and Related Documents shall
14 never constitute an indebtedness of the City within the meaning of any State constitutional
15 provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of
16 the City or a charge against its general credit or taxing power. Nothing herein shall prevent the
17 City from applying other special revenues of the City legally available therefor to payments
18 required by the Loan Agreement, in its sole and absolute discretion.

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

20 A. Program Account and Debt Service Account.

21 (i) Loan Agreement Account. The City hereby consents to creation
22 of the Debt Service Account to be held and maintained by the Finance Authority and to the
23 Program Account to be held by the Trustee pursuant to the Indenture, each in connection with the
24 Loan. The City hereby approves of the deposit of a portion of the proceeds of the Loan
25 Agreement in the Program Account.

1 The proceeds derived from the execution and delivery of the Loan Agreement shall be
2 deposited promptly upon the receipt thereof in the Program Account and the Debt Service
3 Account, as provided in the Loan Agreement and the Indenture.

4 Until the Completion Date, the money in the Program Account shall be used and paid out
5 solely for the purpose of acquiring the Project in compliance with applicable law and the
6 provisions of the Loan Agreement and the Indenture.

7 The City will complete the Project with all due diligence.

8 B. Completion of the Project. Upon the Completion Date, the City shall
9 execute a certificate stating that the Project has been completed. As soon as practicable, and, in
10 any event, not more than 60 days from the Completion Date, any balance remaining in the
11 Program Account shall be transferred and deposited into the Debt Service Account, as provided
12 in the Loan Agreement and the Indenture.

13 D. Finance Authority and Trustee Not Responsible. The Finance Authority
14 and the Trustee shall in no manner be responsible for the application or disposal by the City or by
15 its officers of the funds derived from the Loan Agreement or of any other funds herein
16 designated.

17 **Section 9. Deposit of Pledged Tax Revenues, Distributions of the Pledged Tax**
18 **Revenues and Flow of Funds.**

19 A. Deposit of Pledged Tax Revenues. Except as otherwise provided in the
20 Loan Agreement and the Intercept Agreement, Pledged Tax Revenues shall be paid to the
21 Finance Authority for deposit in the Debt Service Account in an amount sufficient to pay
22 principal, interest and other amounts due under the Loan Agreement.

23 B. Termination on Deposits to Maturity. No payment shall be made into
24 the Debt Service Account if the amount in the Debt Service Account totals a sum at least equal to
25 the entire aggregate amount to become due as to principal and interest, on, and any other amounts

1 due under, the Loan Agreement, in which case moneys in such account in an amount at least
2 equal to such principal and interest requirements shall be used solely to pay such obligations as
3 the same become due, and any moneys in excess thereof in such accounts shall be transferred to
4 the City and used as provided in Subsection C below.

5 C. Use of Surplus Revenues. After making all the payments hereinabove
6 required to be made by this Section and any payments required by outstanding Superior Tax
7 Obligations and Parity Tax Obligations, any moneys remaining in the Debt Service Account shall
8 be transferred to the City on a timely basis and shall be applied to any other lawful purpose
9 authorized by the City, the Constitution and laws of the State, as the City may from time to time
10 determine.

11 **Section 10.** Lien on Pledged Tax Revenues. The Pledged Tax Revenues are hereby
12 authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein
13 for, the payment of the principal, interest and any other amounts due under the Loan Agreement.
14 The Loan Agreement constitutes an irrevocable lien subordinate to the lien of the Superior Tax
15 Obligations on the Pledged Tax Revenues, and a parity lien, but not necessarily an exclusive
16 parity lien with the lien of the Parity Tax Obligations, on the Pledged Tax Revenues as set forth
17 herein [~~and therein~~].

18 **Section 11.** Authorized Officers. Authorized Officers are hereby individually
19 authorized and directed to execute and deliver any and all papers, instruments, opinions,
20 affidavits and other documents and to do and cause to be done any and all acts and things
21 necessary or proper for carrying out this Ordinance, the [~~Loan Agreement~~] Related Documents,
22 and all other transactions contemplated hereby and thereby. Authorized Officers are hereby
23 individually authorized to do all acts and things required of them by this Ordinance and the [~~Loan~~
24 ~~Agreement~~] Related Documents for the full, punctual and complete performance of all the terms,
25 covenants and agreements contained in this Ordinance and the Loan Agreement, including but not

1 limited to, the execution and delivery of closing documents in connection with the execution and
2 delivery of the Loan Agreement and the publication of the summary of this Ordinance set out in
3 Section 17 of this Ordinance (with such changes, additions and deletions as they may determine).

4 **Section 12.** Supplement and Amendment of Ordinance. Prior to the date of the
5 initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance
6 may be supplemented by resolution of the Governing Body with respect to any changes which are
7 not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be
8 amended by ordinance of the Governing Body without receipt by the City of any additional
9 consideration, but only with the prior written consent of the Finance Authority.

10 **Section 13.** Ordinance Irrepealable. After the Related Documents have been
11 executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due
12 under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

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

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

21 **Section 16.** Effective Date. Upon due adoption of this Ordinance, it shall be
22 recorded in the book of the City kept for that purpose, authenticated by the signatures of the
23 Mayor and Clerk of the City, and the title and general summary of the subject matter contained in
24 this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains
25 an office and is of general circulation in the City, or posted in accordance with law, and such

Ordinance shall be in full force and effect thereafter, in accordance with law.

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. 2019-__, duly adopted and approved by the Governing Body of the City of Santa Fe, New Mexico (the "City"), on May 8, 2019. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 200 Lincoln Avenue, Santa Fe, NM.

The title of the Ordinance is:

CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. __

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED \$23,800,000, FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING, AND REFINANCING THE 2009 LOAN AGREEMENT DATED SEPTEMBER 14, 2009 WITH THE NEW MEXICO FINANCE AUTHORITY (COLLEGE OF SANTA FE ACQUISITION); PROVIDING FOR THE PAYMENT OF THE LOAN AGREEMENT FROM CERTAIN GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; PROVIDING THAT THE LOAN AGREEMENT WILL CONSTITUTE A

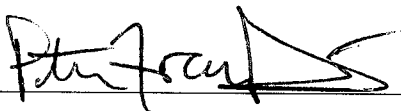
1 SUBORDINATE LIEN UPON THE PLEDGED GROSS RECEIPTS TAX REVENUES;
2 PROVIDING FOR THE DISTRIBUTIONS OF GROSS RECEIPTS TAX REVENUES
3 FROM THE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO
4 THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO AN
5 INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST
6 DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO THE MAYOR
7 OR, IN THE MAYOR'S ABSENCE, THE CITY MANAGER OR FINANCE DIRECTOR,
8 TO APPROVE THE FINAL PRINCIPAL AMOUNT, INTEREST RATES AND OTHER
9 DETAILS OF THE LOAN AGREEMENT WITHIN THE PARAMETERS SET FORTH
10 IN THIS AUTHORIZING ORDINANCE, AND TO EXECUTE AND DELIVER A
11 PRICING CERTIFICATE REFLECTING THE FINAL TERMS OF THE LOAN
12 AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL
13 ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE
14 TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND
15 DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

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

18 (End of Form of Summary for Publication)

19 APPROVED AS TO FORM:

20 
21 _____

22 PETER FRANKLIN, AS BOND COUNSEL
23
24
25

Councilor _____ then moved adoption of the foregoing Ordinance,
duly seconded by Councilor _____.

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

Those Voting Aye:

Those Voting Nay:

Those Absent:

_____ () members of the Governing Body having voted in favor of said motion, the
Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the
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 on the motion
duly made, seconded and unanimously carried, was adjourned.

CITY OF SANTA FE, NEW MEXICO

ALAN M. WEBBER, MAYOR

1 [SEAL]

2
3
4 ATTEST:

5
6 _____
7 YOLANDA Y. VIGIL, CITY CLERK

8 STATE OF NEW MEXICO)

9 COUNTY OF SANTA FE) ss.

10 CITY OF SANTA FE)

11 I, Yolanda Y. Vigil, the duly acting and qualified Clerk of the City of Santa Fe, New
12 Mexico (the "City"), do hereby certify:

13 1. The foregoing pages are a true, perfect, and complete copy of the record of the
14 proceedings of the City Council (the "Governing Body"), constituting the governing body of the
15 City, had and taken at a duly called regular meeting held at the Santa Fe Municipal Offices, 200
16 Lincoln Avenue, Santa Fe, New Mexico, 87501, on May 8, 2019 at the hour of 7:00 p.m., insofar
17 as the same relate to the execution and delivery of the proposed Loan Agreement, a copy of
18 which is set forth in the official records of the proceedings of the Governing Body kept in my
19 office. None of the action taken has been rescinded, repealed, or modified.

20 2. Such proceedings were duly had and taken as therein shown, the meeting therein
21 was duly held, and the persons therein named were present at such meeting, as therein shown.

22 3. Notice of the _____, 2019, meeting of the Governing Body was duly given as
23 required by the Open Meetings Act, Sections 10-15-1 through 4, NMSA 1978 and Resolution No.
24 2019-01 which is the current Resolution of the City which establishes the reasonable notice
25 policy of the City as required by the Open Meetings Act.

IN WITNESS WHEREOF, I have hereunto set my hand this __ day of _____, 2019.

CITY OF SANTA FE, NEW MEXICO

(SEAL)

YOLANDA Y. VIGIL, CITY CLERK