

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

The City Council (the "Governing Body") of the City of Santa Fe, New Mexico (the "Borrower/Grantee") met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at the City Council Chambers, 200 Lincoln Ave., Santa Fe, New Mexico 87501, being the meeting place of the Governing Body for the meeting held on the 11th day of September, 2007 at the hour of 7:00 P.M. Upon roll call, the following members were found to be present:

Present:

David Coss, Mayor

Miguel M. Chavez, Mayor Pro Tem

Patti J. Bushee, Councilor

Chris Calvert, Councilor

Karen Heldmeyer, Councilor

Rebecca Wurzbarger, Councilor

Carmichael Dominguez, Councilor

Ronald S. Trujillo, Councilor

Matthew E. Ortiz, Councilor

Absent:

None

Also Present:

Galen Buller, City Manager

Yolanda Y. Vigil, CMC, City Clerk

Kathryn Raveling, City Finance Director

Thereupon, there were officially filed with the City Clerk copies of a proposed Ordinance and Water Project Fund Loan/Grant Agreement in final form, the proposed Ordinance being as hereinafter set forth.

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THE CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2007-35

AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS"), AND THE CITY OF SANTA FE, NEW MEXICO (THE "BORROWER/GRANTEE") IN THE AMOUNT OF \$2,000,000.00 EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF DESIGN AND ENGINEERING OF THE BUCKMAN DIRECT DIVERSION PROJECT INVOLVING RELEASE OF STORED SAN JUAN-CHAMA WATER FROM UPSTREAM RESERVOIRS AND SUBSEQUENT DIVERSION OF THE SAN JUAN-CHAMA WATER AND NATIVE RIO GRANDE WATER SUPPLIES FOR TREATMENT AND CONVEYANCE TO THE REGIONAL STORAGE AND DISTRIBUTION SYSTEM; 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, WILL BE SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

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

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

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

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

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

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

WHEREAS, the Governing Body hereby determines that (i) the Additional Funding Amount is now available to the Borrower/Grantee to complete the Project; or (ii) that the Governing Body will take such steps as are necessary to obtain the Additional Funding Amount promptly so as to avoid delay of the Project; 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; and (ii) the authorization, execution and delivery of the Loan/Grant Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

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

The City of Santa Fe, New Mexico through its Governing Body agrees to authorize and execute all such agreements with the New Mexico Water Trust Board and the New Mexico Finance Authority as are necessary to consummate the Loan/Grant contemplated herein and consistent with the terms and conditions attached hereto.

PASSED, APPROVED AND ADOPTED THIS 11TH DAY OF SEPTEMBER, 2007.

THE CITY OF SANTA FE, NEW MEXICO

By David Coss
David Coss, Mayor

ATTEST:

APPROVED AS TO FORM:

Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk

Frank D. Katz
Frank D. Katz, City Attorney

TERMS AND CONDITIONS OF ORDINANCE 2007-35

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

"Act" means the general laws of the State, including Sections 72-4A-1 through 72-4A-10 NMSA 1978, as amended.

"Additional Funding Amount" means the amounts to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount, are sufficient to complete the Project. The Additional Funding Amount for the Project is Nine Million Four Hundred Eighty-Eight Thousand Dollars (\$9,488,000).

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

"BDD Board" means the Buckman Direct Diversion Board created by the JPA.

"Board" means the New Mexico Water Trust Board.

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

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

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

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

"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 \$1,800,000.00.

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

"Joint Powers Agreement" or "JPA" 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 City and the County on or about January 11, 2005 and effective on or about March 7, 2005, including any subsequent amendments 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 \$200,000.00.

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

"NMFA" means the New Mexico Finance Authority.

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

"Ordinance" means this Ordinance No. 2007-35 as supplemented or amended from time to time.

"Pledged Revenues" means revenue of the Borrower/Grantee pledged to the payment of the Loan pursuant to this Ordinance and the Loan/Grant Agreement.

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

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

"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.

"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 Ordinance) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition of the Project and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

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

B. Moneys available and on hand for the Project from all sources other than the Loan/Grant are not sufficient to defray the cost of acquiring the Project but, together with the Loan/Grant Amount and other funding sources identified by the Borrower/Grantee 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, morals and welfare of the public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant and proceeds from other funding sources identified by the Borrower/Grantee, 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 20 years, as required by Section 72-4A-7(A)(1) NMSA.

E. Together with the Loan/Grant Amount, the Additional Funding Amount is now available to the Borrower/Grantee, or is expected to become available to the Borrower/Grantee within such time as to avoid any delay in the completion of the Project, and, in combination with the Loan/Grant Amount, will be sufficient to complete the Project and pay the Expenses.

F. The Lenders/Grantors shall maintain on behalf of the Borrower/Grantee a separate project account or project accounts and financial records in accordance with generally accepted accounting principles during the construction or implementation of the Project.

G. The Borrower/Grantee, the County of Santa Fe or the BDD Board cooperating with the Borrower/Grantee pursuant to the JPA, has or will obtain title to or easements or rights of way on the real property upon which the Project is being constructed or located.

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the constituent public served by the Borrower/Grantee and by the other qualifying entities involved in the Project 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 \$1,800,000.00 and borrowing the Loan Amount of \$200,000 to be utilized solely for the Project and for paying Expenses, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which are hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to pay Expenses and to finance the Project. The Project will be owned as provided by the Loan/Grant Agreement and the JPA.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Grant shall be in the amount of \$1,800,000.00 and the Loan shall be in the amount of \$200,000.00.

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

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

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

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

B. Completion of the Project. Upon the Completion Date, the Borrower/Grantee, or the BDD Board on behalf of the Borrower/Grantee, shall execute a certificate stating that completion of and payment for the Project has been completed. As soon as practicable, and, in any event, not more than 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 directly to the NMFA as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, which lien shall be subordinate to any lien on the Pledged Revenues existing on the Closing Date and, further, shall be subordinate to all other indebtedness secured or that may in the future be secured by the Pledged Revenues, including but not limited to all indebtedness described in City of Santa Fe Ordinance No. 2006-47.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan/Grant Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by

this Ordinance and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

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

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

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

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

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

[Remainder of page intentionally left blank.]

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

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

Those Voting Aye:

Miguel M. Chavez

Patti J. Bushee

Chris Calvert

Karen Heldmeyer

Rebecca Wurzburger

Ronald S. Trujillo

Matthew E. Ortiz

Those Voting Nay:

None

Those Absent:

Carmichael Dominguez

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

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

THE CITY OF SANTA FE, NEW MEXICO

By David Coss
David Coss, Mayor

ATTEST:

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

[Remainder of page intentionally left blank.]

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

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

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council of the Borrower/Grantee (the "Governing Body"), had and taken at a duly called meeting held at the City Council Chambers, 200 Lincoln Ave., Santa Fe, New Mexico 87501, on September 11, 2007 at the hour of 7:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan/Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the Borrower/Grantee's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of September, 2007.

THE CITY OF SANTA FE, NEW MEXICO

By Yolanda Y. Vigil
Yolanda Y. Vigil
City Clerk

EXHIBIT "A"

Notice of Meeting

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 an Ordinance duly adopted and approved by the Governing Body of the City of Santa Fe, New Mexico (the "City"), on September 11, 2007. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the Clerk, 200 Lincoln Avenue, Santa Fe, New Mexico.

The title of the Ordinance is:

CITY OF SANTA FE, NEW MEXICO
ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS"), AND THE CITY OF SANTA FE, NEW MEXICO (THE "BORROWER/GRANTEE") IN THE AMOUNT OF \$2,000,000.00 EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF DESIGN AND ENGINEERING OF THE BUCKMAN DIRECT DIVERSION PROJECT INVOLVING RELEASE OF STORED SAN JUAN-CHAMA WATER FROM UPSTREAM RESERVOIRS AND SUBSEQUENT DIVERSION OF THE SAN JUAN-CHAMA WATER AND NATIVE RIO GRANDE WATER SUPPLIES FOR TREATMENT AND CONVEYANCE TO THE REGIONAL STORAGE AND DISTRIBUTION SYSTEM; 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, WILL BE 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.