

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2010-28

A RESOLUTION AMENDING RESOLUTION NO. 2009-124, ADOPTED DECEMBER 9, 2009; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED LOAN AND SUBSIDY AGREEMENT (“LOAN AGREEMENT”) BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO (THE “GOVERNMENTAL UNIT”) AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF TWO HUNDRED TEN THOUSAND SEVEN HUNDRED SEVENTY-SEVEN DOLLARS (\$210,777), TOGETHER WITH INTEREST AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A SUBSIDY OF FOUR HUNDRED NINETY-ONE THOUSAND EIGHT HUNDRED THIRTEEN DOLLARS (\$491,813), FOR THE PURPOSE OF FINANCING THE COSTS OF A PROJECT CONSISTING OF UPGRADES TO THE CITY’S WATER UTILITY SYSTEM, INCLUDING A MICRO-HYDROELECTRIC GENERATION PROJECT; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, INTEREST AND ADMINISTRATIVE FEES DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE PLEDGED REVENUES; SETTING A MAXIMUM INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined herein or in Section 1 of Resolution No. 2009-124 (the “Loan Approval Resolution”) as amended pursuant to this Amending Resolution, or, if not defined herein or in Section 1 of the Loan Approval Resolution as so amended, the same meaning as defined in Article I of Ordinance No. 2006-47 (the “Master Ordinance”) adopted by the Governing Body on August 9, 2006, unless the context requires otherwise.

WHEREAS, on December 9, 2009, the Governing Body on behalf of the Governmental Unit adopted the Loan Approval Resolution, authorizing the execution of a Loan and Subsidy Agreement (the “Original Loan Agreement”) with the New Mexico Finance Authority (“NMFA”) to provide financing pursuant to the ARRA for a portion of the costs of the Project; and

WHEREAS, on January 15, 2010, the Governmental Unit entered into the Original Loan Agreement with the NMFA to provide funding in the amount of five hundred fifty five thousand dollars (\$555,500) for the Project; and

WHEREAS, on April 2, 2010, the Governmental Unit entered into a separate loan agreement with the NMFA to provide additional funding in the amount of one hundred sixty-one thousand eight hundred seven dollars (\$161,807) for the Project; and

WHEREAS, it has been determined that additional funds will be necessary to complete the Project; and

WHEREAS, additional moneys have become available for the Project from the Drinking Water State Revolving Loan Fund pursuant to the ARRA, and an increase in the amount previously provided for the Project pursuant to the Loan Approval Resolution and the Original Loan Agreement has been approved by the NMFA's Board of Directors; and

WHEREAS, it is in the best interests of the Governmental Unit and the constituent public it serves that the increased funding be provided for the Project pursuant to the Drinking Water State Revolving Loan Fund and the ARRA, and that the Loan Approval Resolution and the Original Loan Agreement be amended to provide for such funding; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Approval Resolution, as amended by this Amending Resolution, and the Amended and Restated Loan Agreement, and that it is in the best interest of the Governmental Unit and its residents that the Amended and Restated Loan and Subsidy Agreement (the "Loan Agreement") be executed and delivered and that the financing of the Project take place by executing and delivering the Loan Agreement.

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

Section 1. Definitions. As used in this Resolution No. 2010-28, the following terms shall have the meaning herein specified, unless the context clearly requires otherwise:

"Amending Resolution" means this Resolution No. 2010-28 adopted by the Governing Body of the Governmental Unit on April 28, 2010.

Section 2. Amendment of Resolution No. 2009-124:

A. The definitions of the following terms defined in Section 1 of Resolution No. 2009-124, adopted December 9, 2009, are hereby amended as follows:

"Aggregate Forgiven Disbursements" means the amount of Loan subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date equal to seventy percent (70%) of the Aggregate Disbursements, up to a maximum of four hundred ninety-one thousand eight hundred thirteen dollars (\$491,813).

"Loan Agreement" means the Amended and Restated Loan and Subsidy Agreement dated the Closing Date between the NMFA and the Governmental Unit which provides for

the financing of the Project and requires payments by or on behalf of the Governmental Unit to the NMFA, and any supplements or amendments thereto, including the exhibits attached to the Loan Agreement.

“Loan Approval Resolution” means this Resolution No. 2009-124 adopted by the Governing Body of the Governmental Unit on December 9, 2009, as amended by Resolution No. 2010-28, adopted April 28, 2010, approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet, as supplemented or amended from time to time in accordance with the provisions hereof.

“Maximum Aggregate Forgiven Amount” means the maximum amount of loan subsidy available in the form of principal forgiveness, which is equal to seventy percent (70%) of the Maximum Principal Amount. The Maximum Aggregate Forgiven Amount, assuming disbursement of all funds available to the Governmental Unit under the Loan Agreement, is four hundred ninety-one thousand eight hundred thirteen dollars (\$491,813).

“Maximum Aggregate Repayable Principal” means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to this Loan Agreement, and is equal to the Maximum Principal Amount less the Maximum Aggregate Forgiven Amount. The Maximum Aggregate Repayable Principal, assuming disbursement of all funds available to the Governmental Unit under the Loan Agreement, is two hundred ten thousand seven hundred seventy-seven dollars (\$210,777).

“Maximum Principal Amount” means seven hundred two thousand five hundred ninety dollars (\$702,590).

B. Section 5 of Resolution No. 2009-124, adopted December 9, 2009, is hereby amended to read, in its entirety, as follows:

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Loan Approval Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring and constructing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special limited obligation of the Governmental Unit to pay a Loan Agreement Principal Amount of two hundred ten thousand seven hundred seventy-seven dollars (\$210,777) and interest and Administrative Fees thereon, and to accept a Subsidy in the amount of four hundred ninety-one thousand eight hundred thirteen dollars (\$491,813) and the execution and delivery of the Loan Agreement is hereby authorized. The Governmental Unit shall use the proceeds of the Loan and Subsidy (i) to finance the acquisition and construction of the

Project and (ii) to pay Expenses and related professional fees. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement shall be in substantially the form of the Loan Agreement presented at the meeting of the Governing Body at which the Amending Resolution was adopted. The Loan shall be in an amount not to exceed the Maximum Principal Amount of seven hundred two thousand five hundred ninety dollars (\$702,590). The Loan Agreement Principal Amount shall be payable in installments of principal due on June 1 of the years designated in the Final Loan Agreement Payment Schedule and bear interest payable on June 1 and December 1 of each year, commencing on June 1, 2010, at the rate designated in the Loan Agreement, including the Term Sheet, which rate includes the Administrative Fee.

C. Subsection 8(A) of Resolution No. 2009-124, adopted December 9, 2009, is hereby amended to read, in its entirety, as follows:

A. Program Account. The Governmental Unit hereby consents to creation of the Program Account and Debt Service Account to be held and maintained by the NMFA as provided in the Loan Agreement. The Governmental Unit hereby approves of the deposit of the proceeds of the Loan Agreement in the Program Account.

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

Until the Completion Date or the date of the Final Disbursement, the money in the Program Account shall be used and paid out solely for the purpose of acquiring and constructing the Project in compliance with applicable law and the provisions of the Loan Agreement.

Section 3. Ratification. All action heretofore taken (not inconsistent with the provisions of this Amending Resolution) by the Governing Body and officers of the Governmental Unit directed toward the acquisition and construction of the Project, and the execution and delivery of the Loan Agreement shall be, and the same hereby is, ratified, approved and confirmed, except to the extent that such action is expressly amended or modified by the Loan Approval Resolution, this Amending Resolution or the Loan Agreement. Except only as and to the extent specifically amended by this Amending Resolution, the Loan Approval Resolution is hereby ratified, approved and confirmed.

Section 4. Approval of Loan Agreement. The Loan Agreement shall be in substantially the form of the Loan Agreement presented at the meeting of the Governing Body at which this Amending Resolution was adopted. The form of the Loan Agreement as presented at the meeting of the Governing Body at which this Amending Resolution was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement with such changes, insertions and omissions as may be approved by

such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and attest the same. The execution of the Loan Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 5. Amendment of Loan Approval Resolution. As required under Section 12 of the Loan Approval Resolution, the NMFA has provided its prior written consent to amend the Loan Approval Resolution as provided herein. The Loan Approval Resolution, as amended by this Amending Resolution, may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the NMFA.

Section 6. Severability Clause. If any section, paragraph, clause or provision of this Amending Resolution or of the Loan Approval Resolution as amended hereby 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 Amending Resolution or of the Loan Approval Resolution as so amended.

Section 7. Repealer Clause. All bylaws, orders, resolutions and ordinances, 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 8. Effective Date. Upon due adoption of this Amending Resolution, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk, and the title and general summary of the subject matter contained in this Amending Resolution (set out in Section 10 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, and this Amending Resolution shall be in full force and effect thereafter, in accordance with law.

Section 9. Master Ordinance. The Governing Body finds that the terms of the Loan Agreement and of the Loan Approval Resolution, as amended by this Amending Resolution, are consistent with the terms and parameters established for the issuance of such debt by the Master Ordinance. This Loan Approval Resolution, as amended by this Amending Resolution and duly adopted as a resolution of the Governmental Unit, supplements the Master Ordinance in accordance with the provisions hereof and thereof. In the event of any inconsistency between the Loan Agreement and the Master Ordinance, as supplemented and amended by the Loan Approval Resolution as amended by this Amending Resolution, the provisions of the Master Ordinance shall control.

Section 10. 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 Amending Resolution shall be published in substantially the following form:

[Remainder of page intentionally left blank.]

[Form of Summary of Resolution for Publication.]

**City of Santa Fe, New Mexico
Notice of Adoption of Resolution**

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. 2010-28, duly adopted and approved by the Governing Body of the City of Santa Fe, New Mexico (the "Governmental Unit"), on April 28, 2010. Complete copies of the Resolution are available for public inspection during normal and regular business hours in the office of the City Clerk, 200 Lincoln Avenue, Santa Fe, New Mexico 87501.

The title of the Resolution is:

**CITY OF SANTA FE, NEW MEXICO
RESOLUTION NO. 2010-28**

A RESOLUTION AMENDING RESOLUTION NO. 2009-124, ADOPTED DECEMBER 9, 2009; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED LOAN AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF TWO HUNDRED TEN THOUSAND SEVEN HUNDRED SEVENTY-SEVEN DOLLARS (\$210,777), TOGETHER WITH INTEREST AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A SUBSIDY OF FOUR HUNDRED NINETY-ONE THOUSAND EIGHT HUNDRED THIRTEEN DOLLARS (\$491,813), FOR THE PURPOSE OF FINANCING THE COSTS OF A PROJECT CONSISTING OF UPGRADES TO THE CITY'S WATER UTILITY SYSTEM, INCLUDING A MICRO-HYDROELECTRIC GENERATION PROJECT; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, INTEREST AND ADMINISTRATIVE FEES DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE PLEDGED REVENUES; SETTING A MAXIMUM INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

The title sets forth a general summary of the subject matter contained in the Resolution.

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

[End of Form of Summary for Publication.]

PASSED, APPROVED AND ADOPTED THIS 28TH DAY OF APRIL, 2010.

CITY OF SANTA FE, NEW MEXICO

By David Coss
David Coss, Mayor

[SEAL]

ATTEST:

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

APPROVED AS TO FORM:

Geno Zamora
Geno Zamora, City Attorney

[Remainder of page intentionally left blank.]

Councilor Wurzburger then moved adoption of the foregoing Resolution, duly seconded by Councilor Romero.

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

Those Voting Aye: Patti Bushee

Chris Calvert

Rosemary Romero

Rebecca Wurzburger

Carmichael Dominguez

Matthew E. Ortiz

Ronald S. Trujillo

Those Voting Nay: None

Those Absent: Miguel Chavez

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

After consideration of other matters not relating to the Resolution, the meeting on motion duly made, seconded and carried, was adjourned.

CITY OF SANTA FE, NEW MEXICO

By David Coss
David Coss, Mayor

[SEAL]

ATTEST:

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

[Remainder of page intentionally left blank.]

