

1 STATE OF NEW MEXICO)
2 COUNTY OF SANTA FE) ss.
3 CITY OF SANTA FE)

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

9 PRESENT: Mayor: _____
10 Councilor: _____
11 Councilor: _____
12 Councilor: _____
13 Councilor: _____
14 Councilor: _____
15 Councilor: _____

16 ABSENT: _____
17 _____
18 _____

19 ALSO PRESENT: _____

20 Thereupon, there was officially filed with the Clerk a copy of a proposed ordinance in
21 final form.

22 **PUBLIC HEARINGS**

23 **CONSIDERATION OF BILL NO. 2019-__ ADOPTION OF ORDINANCE NO. 2019-__**

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

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

7 **WHEREAS**, pursuant to Municipal Local Option Gross Receipts Taxes Act, Section 7-
8 19D-11 NMSA 1978 and City Ordinance No. 1993-21, the City has imposed an infrastructure
9 gross receipts tax in the amount of one-sixteenth of one percent (.0625%) of the gross receipts of
10 persons engaging in business within the City, as determined and adjusted under the Municipal
11 Local Option Gross Receipts Taxes Act and the Tax Administration Act (the "Infrastructure
12 Gross Receipts Tax"); and

13 **WHEREAS**, pursuant to Ordinance No. 2009-35, passed and adopted by the Governing
14 Body on July 29, 2009, Resolution No. 2009-85 adopted on August 26, 2009 and Resolution
15 2009-94 adopted on September 30, 2009 (collectively, the "2009 College Acquisition Loan
16 Ordinance"), the City entered into a Loan Agreement dated September 14, 2009, with the New
17 Mexico Finance Authority in an aggregate principal amount of \$29,615,000 (herein the "2009
18 College Acquisition Finance Authority Loan") payable from and constituting a subordinate (but
19 not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-
20 Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax
21 Revenues; and

22 **WHEREAS**, pursuant to Ordinance No. 2010-26, passed and adopted by the Governing
23 Body on November 10, 2010 (the "2010B Ordinance"), the City issued its "City of Santa Fe, New
24 Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B" (herein
25 the "Series 2010B Bonds") in an aggregate principal amount of \$10,490,000 payable from and

1 constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross
2 Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the
3 Infrastructure Gross Receipts Tax Revenues; and

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

11 **WHEREAS**, pursuant to Ordinance No. 2012-6, passed and adopted by the Governing
12 Body on January 25, 2012 (the “2012B Ordinance”) the City issued its “City of Santa Fe, New
13 Mexico Gross Receipts Tax (Subordinate Lien)/Wastewater System Refunding Revenue Bonds,
14 Series 2012B” (herein the “Series 2012B Bonds”), in the aggregate principal amount of
15 \$14,280,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien
16 on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross
17 Receipts Tax Revenues, the Environmental Services Gross Receipts Tax Revenues and the
18 Infrastructure Gross Receipts Tax Revenues, and payable from and constituting a first (but not
19 exclusive first) lien on the Wastewater System Revenues; and

20 **WHEREAS**, pursuant to Ordinance No. 2013-18, passed and adopted by the Governing
21 Body on June 18, 2013 (the “2013A Ordinance”), the City issued its “City of Santa Fe, New
22 Mexico Gross Receipts Tax Refunding Revenue Bonds, Series 2013A” (herein the “Series 2013A
23 Bonds”) in an aggregate principal amount of \$10,880,000 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

1 Revenues; and

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

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

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

23 **WHEREAS**, pursuant to the 2016 Ordinance, the City issued its “City of Santa Fe, New
24 Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016B” (herein the
25 “Series 2016B Bonds”) in an aggregate principal amount of \$21,900,000 payable from and

1 constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax
2 Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure
3 Gross Receipts Tax Revenues; and

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

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

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

23 **WHEREAS**, pursuant to Ordinance No. 2017-23, passed and adopted by the Governing
24 Body on November 8, 2017 (the “2018 Ordinance”), the City issued its Gasoline Tax /
25 Subordinate Lien Gross Receipts Tax Improvement Revenue Bonds, Series, 2018 (herein the

1 “Series 2018 Bonds”) in an aggregate principal amount of \$10,290,000, payable from and
2 constituting (i) a first (but not an exclusive first) lien on the General Gasoline Tax Revenues and
3 the Municipal Road Gasoline Tax Revenues and (ii) a subordinate (but not exclusive subordinate)
4 lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross
5 Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues; and

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

13 **WHEREAS**, except for the outstanding 2009 College Acquisition Finance Authority
14 Loan, Series 2010B Bonds, Series 2012B Bonds, Series 2013B Bonds, Series 2016C Bonds,
15 Series 2016D Bonds, Series 2017 Taxable Bonds and Series 2018 Bonds (collectively, the
16 “Subordinate Tax Obligations”) and the outstanding Series 2012A Bonds, Series 2013A Bonds,
17 Series 2014 Bonds, Series 2016A Bonds, Series 2016B Bonds and the Series 2018A Bonds
18 (collectively, the “Parity Superior Tax Obligations”), there are no obligations presently
19 outstanding to which the Pledged Tax Revenues have been pledged by the City; and

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

24 **WHEREAS**, the Governing Body has determined that it may lawfully pledge the State-
25 Shared Gross Receipts Tax, the Local Option Gross Receipts Tax and the Infrastructure Gross

1 Receipts Tax (collectively, the "Pledged Tax Revenues," as further defined in Section 1 of this
2 Ordinance) for the payment of amounts due under the Loan Agreement; and

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

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

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

13 **WHEREAS**, the Loan Agreement shall be a special, limited obligation of the City,
14 payable from the Pledged Tax Revenues and other legally available special revenues and shall not
15 constitute a general obligation of the City, or a debt or pledge of the faith and credit of the City or
16 the State; and

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

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

23 **WHEREAS**, all required authorizations, consents and approvals in connection with (i)
24 the use and pledge of the Pledged Tax Revenues to the Finance Authority (or its assigns) for the
25 payment of the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance

1 the Project, and (iii) the authorization, execution and delivery of the Related Documents which
2 are required to have been obtained by the date of this Ordinance, have been obtained or are
3 reasonably expected to be obtained; and

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

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

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

14 "Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12,
15 Section 6-21-1 through 6-21-31, Section 7-1-6.4, and Sections 7-19D-1 through 7-19D-12,
16 NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan
17 Agreement, including this Ordinance.

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

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

24 "Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by
25 the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement

1 Payments.

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

4 "Capitalized Interest Account" means the account in the name of the City held by the
5 Finance Authority, funded by a portion of the proceeds of the Loan to pay interest on the Loan, as
6 described in Exhibit "A" to the Loan Agreement.

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

8 "Closing Date" means the date of execution, delivery and funding of the Loan
9 Agreement.

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

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

14 "Distributing State Agency" means the Taxation and Revenue Department of the State of
15 New Mexico.

16 "Expense Fund" means the Expense Fund created pursuant to the Indenture, to be held
17 and administered by the Trustee to pay costs of issuance of the Loan Agreement and the Bonds, if
18 any, and the periodic and regular fees and expenses incurred by the Finance Authority and the
19 Trustee in administering the Loan Agreement, including legal fees.

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

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

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

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

4 "Indenture" means the General Indenture of Trust and Pledge dated June 1, 1995, as
5 amended and supplemented by and between the Finance Authority and the Trustee, or the
6 Subordinated General Indenture of Trust dated as of March 1, 2005, as supplemented, by and
7 between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant
8 to a pledge notification or supplemental indenture.

9 "Independent Accountant" means (i) an accountant employed by the State and under the
10 supervision of the State Auditor, or (ii) any certified public accountant, registered accountant, or
11 firm of such accountants duly licensed to practice and practicing as such under the laws of the
12 State, appointed and paid by the City who (a) is, in fact, independent and not under the
13 domination of the City, (b) does not have any substantial interest, direct or indirect, with the City,
14 and (c) is not connected with the City as an officer or employee of the City, but who may be
15 regularly retained to make annual or similar audits of the books or records of the City.

16 "Intercept Agreement" means the Intercept Agreement between the City and Finance
17 Authority providing for the direct payment of Pledged Tax Revenues in amounts sufficient to pay
18 principal, and interest due on the Loan Agreement.

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

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

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

1 of the Loan Agreement.

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

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

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

8 "Ordinance" means this ordinance as supplemented or amended from time to time.

9 "Parity Subordinate Tax Obligations" means the Series 2010B Bonds, the Series 2012B
10 Bonds, the Series 2013B Bonds, the Series 2016C Bonds, the Series 2016D Bonds, the Series
11 2017 Taxable Bonds, and the Series 2018 Gas Tax/Sub. Lien GRT Bonds, and any other
12 obligations subsequently issued with a lien on the Pledged Tax Revenues on a parity with the
13 Parity Subordinate Tax Obligations and subordinate to the lien thereon of the Superior Tax
14 Obligations.

15 "Pledged Tax Revenues" or "Pledged Revenues" means:

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

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

1 (iii) the revenues of the Municipal Infrastructure Gross Receipts Tax imposed by
2 the City pursuant to Section 7-19D-11 NMSA 1978 and City Ordinance No. 1993-21, in the
3 amount of one-sixteenth of one percent (.0625%) of the gross receipts of persons engaging in
4 business within the City, as determined and adjusted under the Municipal Local Option Gross
5 Receipts Taxes Act and the Tax Administration Act;

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

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

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

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

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

1 "Project" means the refunding, refinancing and prepaying the Loan Agreement between
2 the City and the Finance Authority dated September 14, 2009 (College of Santa Fe Acquisition),
3 payment of the Processing Fee to the Finance Authority and payment of related professional fees.

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

7 "State" means the State of New Mexico.

8 "Superior Tax Obligations" means the Series 2012A Bonds, the Series 2013A Bonds, the
9 Series 2014 Bonds, the Series 2016A Bonds, the Series 2016B Bonds, the Series 2018A Bonds,
10 and any other Parity Superior Tax Obligations issued subsequent to the delivery of the Loan
11 Agreement.

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

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

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

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

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

25 B. The Pledged Tax Revenues may lawfully be pledged to secure the

1 payment of amounts due under the Loan Agreement.

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

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

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

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

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

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

22 B. Detail. The Related Documents shall be in substantially the forms
23 presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan
24 shall be payable in installments of principal due on the dates designated in the Loan Agreement
25 and bear interest payable on the dates designated in the Loan Agreement and at the rates

1 designated in the Pricing Certificate and Loan Agreement. The Loan Agreement shall be
2 delivered pursuant to a private placement with the Finance Authority upon the terms set forth in
3 the Pricing Certificate, and shall be within the parameters set forth below:

4 The Loan Agreement shall be executed and delivered for the Project and to pay
5 Expenses.

6 The maximum principal amount of the Loan Agreement shall not be more than
7 \$23,800,000.

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

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

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

12 The Loan Agreement shall be delivered pursuant to a private sale to the Finance
13 Authority.

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

16 The minimum net present value savings for the refunding of the Loan Agreement
17 between the City and the Finance Authority dated September 14, 2009 (College of Santa Fe
18 Acquisition) shall be 3.00%.

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

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

25 **Section 6.** Approval of Related Documents. The forms of the Related Documents

1 as presented at the meeting of the Governing Body at which this Ordinance was adopted are
2 hereby approved. Authorized Officers are hereby individually authorized to execute,
3 acknowledge and deliver the Related Documents with such changes, insertions and omissions that
4 are consistent with this Ordinance and the Supplemental Resolution as may be approved by such
5 individual Authorized Officers, and the Clerk is hereby authorized to affix the seal of the City on
6 the Related Documents and attest the same. The execution of the Related Documents by an
7 Authorized Officer shall be conclusive evidence of such approval.

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

1 required by the Loan Agreement, in its sole and absolute discretion.

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

3 A. Program Account and Debt Service Account.

4 (i) Loan Agreement Account. The City hereby consents to creation
5 of the Debt Service Account to be held and maintained by the Finance Authority and to the
6 Program Account by the Trustee pursuant to the Indenture, each in connection with the Loan.
7 The City hereby approves of the deposit of a portion of the proceeds of the Loan Agreement in
8 the Program Account.

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

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

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

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

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

25 **Section 9.** Deposit of Pledged Tax Revenues, Distributions of the Pledged Tax

1 Revenues and Flow of Funds.

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

6 B. Termination on Deposits to Maturity. No payment shall be made into
7 the Debt Service Account if the amount in the Debt Service Account totals a sum at least equal to
8 the entire aggregate amount to become due as to principal and interest, on, and any other amounts
9 due under, the Loan Agreement, in which case moneys in such account in an amount at least
10 equal to such principal and interest requirements shall be used solely to pay such obligations as
11 the same become due, and any moneys in excess thereof in such accounts shall be transferred to
12 the City and used as provided in Subsection C below.

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

19 **Section 10.** Lien on Pledged Tax Revenues. The Pledged Tax Revenues are hereby
20 authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein
21 for, the payment of the principal, interest and any other amounts due under the Loan Agreement.
22 The Loan Agreement constitutes an irrevocable lien subordinate to the lien of the Superior Tax
23 Obligations on the Pledged Tax Revenues, and a parity lien, but not necessarily an exclusive
24 parity lien with the lien of the Parity Tax Obligations, on the Pledged Tax Revenues as set forth
25 herein and therein.

1 **Section 11.** Authorized Officers. Authorized Officers are hereby individually
2 authorized and directed to execute and deliver any and all papers, instruments, opinions,
3 affidavits and other documents and to do and cause to be done any and all acts and things
4 necessary or proper for carrying out this Ordinance, the Loan Agreement, and all other
5 transactions contemplated hereby and thereby. Authorized Officers are hereby individually
6 authorized to do all acts and things required of them by this Ordinance and the Loan Agreement
7 for the full, punctual and complete performance of all the terms, covenants and agreements
8 contained in this Ordinance and the Loan Agreement, including but not limited to, the execution
9 and delivery of closing documents in connection with the execution and delivery of the Loan
10 Agreement and the publication of the summary of this Ordinance set out in Section 17 of this
11 Ordinance (with such changes, additions and deletions as they may determine).

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

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

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

25 **Section 15.** Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts

1 thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This
2 repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof,
3 heretofore repealed.

4 **Section 16.** Effective Date. Upon due adoption of this Ordinance, it shall be
5 recorded in the book of the City kept for that purpose, authenticated by the signatures of the
6 Mayor and Clerk of the City, and the title and general summary of the subject matter contained in
7 this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains
8 an office and is of general circulation in the City, or posted in accordance with law, and such
9 Ordinance shall be in full force and effect thereafter, in accordance with law.

10 **Section 17.** General Summary for Publication. Pursuant to the general laws of the
11 State, the title and a general summary of the subject matter contained in this Ordinance shall be
12 published in substantially the following form:

13 (Form of Summary of Ordinance for Publication)

14 City of Santa Fe, New Mexico

15 Notice of Adoption of Ordinance

16 Notice is hereby given of the title and of a general summary of the subject matter
17 contained in Ordinance No. 2019-__, duly adopted and approved by the Governing Body of the
18 City of Santa Fe, New Mexico (the "City"), on May 8, 2019. Complete copies of the Ordinance
19 are available for public inspection during the normal and regular business hours of the City Clerk,
20 200 Lincoln Avenue, Santa Fe, NM.

21 The title of the Ordinance is:

22 **CITY OF SANTA FE, NEW MEXICO**

23 **ORDINANCE NO. __**

24 **AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN**
25 **AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE AND THE NEW**

1 MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED
2 OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED
3 \$23,800,000, FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING,
4 PAYING, AND REFINANCING THE 2009 LOAN AGREEMENT DATED SEPTEMBER
5 14, 2009 WITH THE NEW MEXICO FINANCE AUTHORITY (COLLEGE OF SANTA
6 FE ACQUISITION); PROVIDING FOR THE PAYMENT OF THE LOAN AGREEMENT
7 FROM CERTAIN GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY;
8 PROVIDING THAT THE LOAN AGREEMENT WILL CONSTITUTE A
9 SUBORDINATE LIEN UPON THE PLEDGED GROSS RECEIPTS TAX REVENUES;
10 PROVIDING FOR THE DISTRIBUTIONS OF GROSS RECEIPTS TAX REVENUES
11 FROM THE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO
12 THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO AN
13 INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST
14 DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO THE MAYOR
15 OR, IN THE MAYOR'S ABSENCE, THE CITY MANAGER OR FINANCE DIRECTOR,
16 TO APPROVE THE FINAL PRINCIPAL AMOUNT, INTEREST RATES AND OTHER
17 DETAILS OF THE LOAN AGREEMENT WITHIN THE PARAMETERS SET FORTH
18 IN THIS AUTHORIZING ORDINANCE, AND TO EXECUTE AND DELIVER A
19 PRICING CERTIFICATE REFLECTING THE FINAL TERMS OF THE LOAN
20 AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL
21 ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE
22 TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND
23 DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

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

(End of Form of Summary for Publication)

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APPROVED AS TO FORM:

PETER FRANKLIN, AS BOND COUNSEL

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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

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[SEAL]

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

STATE OF NEW MEXICO)

COUNTY OF SANTA FE) ss.

CITY OF SANTA FE)

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

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City, had and taken at a duly called regular meeting held at the Santa Fe Municipal Offices, 200 Lincoln Avenue, Santa Fe, New Mexico, 87501, on May 8, 2019 at the hour of 7:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan 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. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

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

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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