

**VILLAGE OF TOAS SKI VALLEY
ORDINANCE NO. 2013-50**

AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE VILLAGE OF TAOS SKI VALLEY AS BORROWER/GRANTEE AND THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY AS LENDERS/GRANTORS; AMENDING THE LOAN/ GRANT AGREEMENT TO EXTEND THE FUNDING PERIOD FOR AN ADDITIONAL TWENTY-TWO (22) MONTHS TO NOVEMBER 15, 2014; APPROVING THE FORM AND TERMS OF AND OTHER DETAILS CONCERNING THE FIRST AMENDMENT TO WATER PROJECT FUND LOAN/GRANT AGREEMENT; AMENDING ORDINANCE NO. 10-48 TO CONFORM TO THE PROVISIONS OF THIS ORDINANCE; 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 AMENDMENT TO THE WATER PROJECT FUND LOAN/GRANT AGREEMENT.

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing municipality under the general laws of the State of New Mexico (the "State") and more specifically the Municipal Code, NMSA 1978 §§ 3-1-1 through 3-66-11, as amended and supplemented; and

WHEREAS, the Governing Body adopted Ordinance No. 10-48 on December 1, 2009 (the "Original Ordinance") authorizing the Borrower/Grantee to execute a Loan/Grant Agreement to accept a grant in the amount of two million forty-five thousand six hundred five dollars (\$2,045,605) and enter into a loan in the amount of five hundred eleven thousand four hundred one dollars (\$511,401) from the New Mexico Water Trust Board ("WTB") and the New Mexico Finance Authority (the "Finance Authority") (collectively, the "Lenders/Grantors") and for the Project defined in the Original Ordinance; and

WHEREAS, the Borrower/Grantee and the Lenders/Grantors entered into the Loan/Grant Agreement on January 15, 2010 pursuant to NMSA 1978, §§ 72-4A-1 through 72-4A-10, (2001, as amended through 2011) and NMSA 1978, §§ 6-21-1 through 6-21-31 (1992, as amended through 2012). The payment of principal and interest on the Loan proceeds is payable from the Pledged Revenues described in the Original Ordinance (the "Loan/Grant"); and

WHEREAS, under the terms of the Loan/Grant Agreement, the Loan Amount and the Grant Amount were to be expended no later than January 15, 2013, that date being the date that was three (3) years after the date of the Loan/Grant Agreement; and

WHEREAS, due to circumstances beyond the control of the Borrower/Grantee the Project could not be completed and the Loan Amount and Grant Amount could not be expended within three (3) years of the date of the Loan/Grant Agreement; and

WHEREAS, the Borrower/Grantee now anticipates that the Project can be completed and the Loan Amount and Grant Amount can be expended by November 15, 2014; and

WHEREAS, on January 9, 2013, and on January 25, 2013, the WTB and the Finance Authority, respectively, approved and consented to the request of the Borrower/Grantee to amend the Loan/Grant Agreement to extend the funding period of the Loan/Grant Agreement by an additional twenty-two (22) months to November 15, 2014; and

WHEREAS, the Governing Body has determined and hereby determines that the Amendment to Loan/Grant Agreement is in the best interest of the Borrower/Grantee and the constituent public it serves and that the Loan/Grant Agreement be amended and that the financing of the acquisition and completion of the Project take place by executing and delivering an amendment to the Loan/Grant Agreement (the "Amendment"); and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the Village Clerk this Ordinance and the form of the Amendment; and

WHEREAS, the Governing Body has determined that the Project is to be used for governmental purposes of the Borrower/Grantee; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Amendment for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with: (i) the use of the proceeds of the Amendment and the Loan/Grant Agreement to finance the Project; and (ii) the authorization, execution and delivery of the Amendment 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 VILLAGE OF TAOS SKI VALLEY:

Section 1. Definitions. Capitalized terms used in this Ordinance shall, for all purposes, have the same meanings specified or defined in the Original Ordinance, unless the context clearly requires otherwise or otherwise defined herein.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of the Ordinance) by the Governing Body and officers of the Borrower/Grantee directed toward the execution and delivery of the Amendment be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Amendment; Amendment of Original Ordinance. The Borrower/Grantee through its Governing Body authorizes and instructs its Authorized Officers to execute the Amendment and all other agreements, certifications, and documents as are necessary to complete the Amendment to the Loan/Grant Agreement, in accordance with the terms of this Ordinance.

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 Amendment to extend the time to expend the Loan Amount and Grant Amount is needed to meet the needs of the Borrower/Grantee and the constituent public 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.

C. The Pledged Revenues may lawfully be pledged pursuant to the Act to secure the payment of amounts due under the Original Ordinance and this Ordinance and the Amendment does not change the terms of the payment of the amounts due under the Original Ordinance.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Amendment.

E. The Project and the execution and delivery of the Amendment 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 constituent public served by the Borrower/Grantee.

F. The Borrower/Grantee will acquire and complete the Project, in whole or in part, with the net proceeds of the Loan/Grant Agreement on or before November 15, 2014.

Section 5. Amendment - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all 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 acquiring the Project, it is hereby declared necessary that the Borrower/Grantee, pursuant to the Act, execute and deliver the Amendment. The Borrower/Grantee shall use the proceeds of the Loan/Grant to finance the Project and to pay the costs of issuance of the Amendment. The Project will be owned by the Borrower/Grantee.

B. The Amendment shall be in substantially the form of the Amendment presented at the meeting of the Governing Body at which this Ordinance was adopted.

C. Except as expressly amended by the Amendment, the Loan/Grant Agreement shall remain effective in its entirety.

D. Except as expressly amended by this Ordinance, the Original Ordinance shall remain effective in its entirety.

Section 6. Approval of Amendment. The form of the Amendment 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 Amendment with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the Village Clerk is hereby authorized to affix the seal of the Borrower/Grantee on the Amendment and attest the same. The execution of the Amendment by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. 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 Amendment 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 Amendment for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Amendment, including but not limited to, the publication of the summary of this Ordinance set out in Section 13 below (with such changes, additions and deletions as they may determine).

Section 8. Amendment of Ordinance. Prior to the date of the initial delivery of the Amendment to the Lenders/Grantors, the provisions of this Ordinance may be supplemented or amended by Ordinance of the Governing Body with respect to any changes that 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 Lenders/Grantors.

Section 9. Ordinance Irrepealable. After the Amendment has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Amendment and the Loan/Grant Agreement shall be fully paid, canceled and discharged, as provided in the Original Ordinance.

Section 10. 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 11. Repealer Clause. All other 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 12. 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 Village 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.

Section 13. 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)

Village of Taos Ski Valley
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. 2013-50 duly adopted and approved by the Village Council of the Village of Taos Ski Valley on April 9, 2013. A complete copy of the Ordinance is available for public inspection and may be obtained by contacting the Village Clerk of the Village of Taos Ski Valley at 7 Firehouse Road, Taos Ski Valley, New Mexico 87525.

The title of the Ordinance is:

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

This Notice constitutes compliance with NMSA 1978, § 6-14-6.

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS 9TH DAY OF APRIL, 2013.



VILLAGE OF TAOS SKI VALLEY

By Neal King
Neal King, Mayor

ATTEST:

By Vanessa Chisholm
Vanessa Chisholm, Village Clerk