

THE VILLAGE OF TAOS SKI VALLEY

ORDINANCE NO. 2016-54

AN ORDINANCE AUTHORIZING THE VILLAGE OF TAOS SKI VALLEY (“BORROWER”) TO ENTER INTO A LOAN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT (“NMED”) FOR THE PURPOSE OF OBTAINING WASTEWATER CONSTRUCTION LOAN FUNDS IN THE PRINCIPAL AMOUNT OF \$350,000.00 PLUS ACCRUED INTEREST; DESIGNATING THE USE OF THE LOAN FUNDS FOR THE PURPOSE OF FUNDING THE PLANNING AND PRELIMINARY DESIGNING OF THE VILLAGE’S WASTEWATER TREATMENT PLANT IMPROVEMENTS/EXPANSION PROJECT; DECLARING THE NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES OF THE SYSTEM AND THE MUNICIPAL GROSS RECEIPTS TAXES (“MGRT”) ENACTED BY ORDINANCE #97-1 & 97-17; PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFOR;

Capitalized terms used in the following preambles are defined in Section 1 of this Ordinance, unless the context requires otherwise.

WHEREAS, the Borrower is a legally and regularly created public body organized under the general laws of the State; and

WHEREAS, the Borrower now owns, operates and maintains a joint public utility constituting a joint water and wastewater conveyance and treatment (i.e., sanitary wastewater) system (“System”), which includes a system for disposing of wastes by surface and underground methods; and

WHEREAS, the present System is insufficient and inadequate to meet the future needs of the Borrower and its residents for the treatment and disposal of wastewater or for groundwater protection; and

WHEREAS, the Loan Agreement and Note will be payable from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17; and

WHEREAS, the funds for this Project will include funds from a one-time federal grant to the NMED from the Environmental Protection Agency; and

WHEREAS, the Project is subject to specific requirements of the federal grant; and

WHEREAS, the Borrower has the following obligations outstanding to which the Net Revenues of the System have already been pledged.

| Name of Funding Source (i.e., Revenue Bond, NMED, NMFA, etc.) and Series #/Loan # | Principal Amount Outstanding at 06/30/2014 | Priority in relation to this loan i.e., Subordinate, Parity or Superior |
|---|--|---|
| NMED CWSRF Loan #1438049 | \$1,434,574.35 | Parity |
| Water Project Fund | \$419,946.00 | Parity |

WHEREAS, the Council has determined that it is in the best interest of the Borrower to accept and enter into the Loan Agreement and to execute and to deliver the Note to the NMED.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE BORROWER:

Section 1. DEFINITIONS. As used in the Ordinance, the following terms shall have the meanings specified below, unless the context clearly requires otherwise (*such meanings to be*

equally applicable to both the singular and the plural forms of the terms defined unless the plural form is separately defined):

ACT. The general laws of the State, including the Wastewater Facility Construction Loan Act at sections 74-6A-1 to 74-6A-15 NMSA 1978, as amended; enactments of the Council relating to the Note and the Loan Agreement made by resolution or ordinance, including this Ordinance; and the powers of the Borrower as a public body under authority given by the Constitution and Statutes of the State.

ADMINISTRATIVE FEE. A fee assessed and collected by the NMED from the Borrower on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the Borrower on the same date that principal and interest on the loan are due, for deposit in the Clean Water State Revolving Loan Administrative Fund;

ANNUAL AUDIT or SINGLE AUDIT. Financial statements of the Borrower as of the end of each Fiscal Year, audited by an Independent Accountant, consistent with the federal Single Audit Act and the State Auditor's rules.

ANNUAL LOAN REPAYMENT ACCOUNT. An account established under this Ordinance and held by the Borrower, funded from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 in the amount necessary for payment of the principal, interest and administrative fees due annually under the Loan Agreement and Note.

AUTHORIZED OFFICER. The Borrower's mayor, chief administrative officer, or other officer or employee of the Borrower as designated by Borrower's Resolution Number 2016-296 adopted by the governing body of the Borrower, as amended.

BORROWER. The Village of Taos Ski Valley, Taos County, New Mexico. The entity requesting funds pursuant to the Act.

CLEAN WATER STATE REVOLVING LOAN ADMINISTRATIVE FUND. The fund of the same name created in the State Treasury and administered by NMED pursuant to the Wastewater Facility Construction Loan Act, NMSA 1978, Sections 74-6A-1 to 15 as amended.

COUNCIL. The governing body of the Borrower.

DEBT SERVICE RESERVE ACCOUNT. The account established under this Ordinance and held by the Borrower funded from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 in the amount of the Debt Service Reserve Requirement.

DEBT SERVICE RESERVE REQUIREMENT. An amount equal to one annual repayment of principal, interest and administrative fees due as set forth in Section 11 (A) of this Ordinance.

FISCAL YEAR. The twelve-month period commencing on the first day of July of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period which the Borrower hereafter may establish as the fiscal year for the System.

GROSS REVENUES. All income and revenues directly or indirectly derived by the Borrower from the operation and use of the System.

HEREIN, HEREBY, HEREUNDER, HEREOF, HEREINBEFORE or HEREAFTER. Refer to this Ordinance and not solely to the particular portion of this Ordinance in which such word is used.

JOINT WATER AND WASTEWATER CONVEYANCE AND TREATMENT SYSTEM, or SYSTEM. The Borrower's utility designated as the Borrower's water system and wastewater conveyance and treatment system.

LOAN. A loan of funds from NMED made pursuant to the Loan Agreement.

LOAN AGREEMENT. One or more loan agreements substantially in the form of Exhibit A attached hereto between the Borrower and the NMED, pursuant to which funds will be loaned to the Borrower to plan and design the Project and pay eligible costs relating thereto; and the amended loan agreement which shall state the final amount the NMED loaned to the Borrower, and which shall be executed upon completion of the Project and dated on the date of execution thereof.

LOAN SUBSIDY GRANT. A sub-grant of funds to the Borrower from a one-time federal grant of funds to the NMED by EPA, for the purpose of subsidizing the amount loaned to the Borrower under the Loan Agreement and Note.

MUNICIPAL GROSS RECEIPTS TAX. As defined in Ordinance Number 97-17 as an excise tax equal to one-quarter percent (0.25%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended and as defined in Ordinance Number 97-1 as an excise tax equal to one-half percent of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

NET REVENUES. Gross Revenues LESS the following expenses: (1) Operation and Maintenance expenses, (2) Parity Bonds or Parity Obligations, (3) approved indirect charges, (4) any amounts expended for capital replacements of the System, and (5) the required set asides for Debt Service Reserve Requirement and Replacement Reserve Requirement.

NMED. The New Mexico Environment Department, successor to the Environmental Improvement Division of the New Mexico Health and Environment Department and any assignee of the NMED pursuant to the Loan Agreement and Note, or its successor agency as provided by law.

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

NOTE. The interim and final promissory notes substantially in the form of Exhibit B attached hereto issued by the Borrower to the NMED evidencing the obligation of the Borrower to the NMED incurred pursuant to the Ordinance and Loan Agreement.

OPERATION AND MAINTENANCE. All reasonable and necessary current expenses of the System, paid or accrued, relating to operating, maintaining and repairing the System.

ORDINANCE. This Ordinance as amended or supplemented from time to time.

PARITY BONDS or PARITY OBLIGATIONS. Revenue Bonds and other bonds or other obligations payable from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 issued with a lien on the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 on parity with the bonds or obligations as listed in this ordinance.

PROJECT. Planning and designing of the Village of Taos Ski Valley Waste Water Treatment Plant Improvements/Expansion Project.

PROJECT COMPLETION DATE. Means the date that operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

REGULATIONS. Regulations promulgated by the Water Quality Control Commission at 20.7.5 NMAC and New Mexico Environment Department at 20.7.6 – 20.7.7 NMAC.

STATE. The State of New Mexico.

SUBORDINATE OBLIGATIONS. Revenue Bonds and other bonds or other obligations payable from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 issued with a lien on the Net Revenues of the System and the MGRT enacted by

Ordinance #97-1 & 97-17 subordinate to the lien of the Loan Agreement and Note as may be listed in this ordinance.

SYSTEM FUND. The fund established under this Ordinance for deposit of the Gross Revenues of the System.

Section 2. RATIFICATION. All action heretofore taken (not inconsistent with the provisions of the Ordinance) by the Council, the officers and employees of the Borrower, directed toward the Loan Agreement and the Note, is hereby ratified, approved and confirmed.

Section 3. FINDINGS. The Council hereby declares that it has considered all necessary and relevant information and data and hereby makes the following findings:

(A) The execution and delivery of the Loan Agreement and the Note pursuant to the Act to provide funds to finance the Project, is necessary and in the interest of the public health, safety, morals and welfare of the residents of the Borrower and will result in savings of finance costs to the Borrower.

(B) The Borrower will acquire, improve and finance the Project.

(C) The money available for the Project from all sources other than the Loan Agreement is not sufficient to pay when due the cost of the Project.

(D) The Project is and will be part of the System, which is a publicly owned water and sanitary wastewater conveyance and treatment system the purposes of which include the disposal and treatment of wastewater, either by surface or underground methods.

(E) The Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 may lawfully be pledged to secure the payment of amounts due under the Loan Agreement and Note.

Section 4. JOINT UTILITY. The municipal water facilities and the municipal sanitary wastewater conveyance and treatment facilities shall continue to constitute a joint utility (i.e., the Joint Water and Wastewater System) and shall be operated and maintained as such.

Section 5. AUTHORIZATION OF PROJECT. The planning and designing of the Project and payment of eligible items as set forth in the Regulations from proceeds of the Loan Agreement and Note is hereby authorized at a cost not to exceed the principal Loan amount of \$350,000 and the Loan Subsidy Grant amount of \$150,000 excluding any cost of the Project to be paid from any source other than the proceeds of the Loan Agreement and Note.

Section 6. AUTHORIZATION OF LOAN AGREEMENT.

(A) For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the Borrower and acquiring the Project, it is hereby declared necessary that the Borrower, pursuant to the Act and the Regulations execute and deliver the Loan Agreement and Note, and the Borrower is hereby authorized to execute and deliver the Loan Agreement and the Note, to be payable and collectible solely from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17. The NMED has agreed to disburse the proceeds according to the terms of the Loan Agreement to the Borrower over the planning and design period of the Project. The aggregate principal amount of the Note shall not exceed \$350,000 plus accrued interest without the adoption of another Ordinance amending the Ordinance by the Council, and the annual interest rate and Administrative Fee on that principal amount shall not exceed three percent (3%) per annum collectively. Interest and the Administrative Fee shall be computed as a percentage per year on the outstanding principal amount on the Loan on the basis of a 365 day year, actual number of days lapsed. The final maturity date on the Note shall not extend beyond 5 years from the Project Completion Date. The Loan shall be repaid in substantially equal annual installments

of principal, interest and administrative fees on the dates provided in the Loan Agreement with the first annual installment due within one year of the Project Completion Date, but no later than one year after the date of the warrant of final payment from the NMED. The Borrower must obtain the written consent of the NMED before issuing additional obligations secured by the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17.

(B) The Borrower is hereby authorized to accept a Loan Subsidy Grant under the terms of the Loan Agreement. The aggregate Loan Subsidy Grant amount shall not exceed \$150,000 without the adoption of another Ordinance amending the Ordinance by the Council. By accepting a Loan Subsidy Grant, the Borrower is a sub-recipient of a one-time federal grant of funds to NMED by EPA. As a sub-recipient, the Borrower is responsible for complying with the specific requirements and the conditions of the one-time federal grant. If the Borrower fails to satisfy any federal grant requirements or conditions, the Borrower may be required to refund any federal grant funds disbursed to the Borrower from NMED. Specific federal grant requirements include but are not limited to:

- (1) Federal Grant Reporting Requirements; and
- (2) Wage Rate Requirements

(C) The form of the Loan Agreement and the Note are approved. An Authorized Officer is hereby authorized and directed to execute and deliver the Loan Agreement and the Note and any extensions of or amendments to any such document to be executed after completion of the Project, or any substitution therefore, substantially in the forms attached hereto as Exhibits A and B, with such changes therein as are not inconsistent with the Ordinance and as shall be approved by an Authorized Officer whose execution thereof, or any extension thereof, or substitution therefore, in their final forms shall constitute conclusive evidence of their approval and compliance with this Section.

(D) From and after the date of the initial execution and delivery of the Loan Agreement and the Note, Authorized Officers, agents and employees of the Borrower are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Ordinance, the Loan Agreement and the Note.

Section 7. SPECIAL LIMITED OBLIGATIONS. The Loan Agreement and the Note and all payments of principal, interest and administrative fees thereon shall be special limited obligations of the Borrower and shall be payable and collectible solely from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 which are irrevocably pledged as set forth in Section 5 and 6 of the Ordinance. The NMED may not look to any general or other fund for the payment of the principal, interest or administrative fees on the Loan Agreement and the Note except the designated special funds pledged therefore. The Loan Agreement and the Note shall not constitute indebtedness or debts within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or be held to be general obligations of the Borrower and shall recite that they are payable and collectible solely from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 the income from which is so pledged, and that the NMED may not look to any general or other fund for the payment of the principal, interest or the administrative fee on the Loan Agreement or the Note.

Section 9. USE OF PROCEEDS. The NMED shall disburse Funds pursuant to the Loan Agreement for NMED approved costs incurred by the Borrower for the Project.

Section 10. SYSTEM FUND. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee all Gross Revenues shall continue to be set aside and credited to the System Fund.

Section 11. DEBT SERVICE AND ANNUAL LOAN REPAYMENT ACCOUNTS.

(A) DEBT SERVICE RESERVE ACCOUNT. A Debt Service Reserve Account is established under this Ordinance, held by the Borrower and funded from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 in the amount of the Debt Service Reserve Requirement. The Borrower shall deposit no less than one-fifth of the amount of one annual repayment of principal, interest and the administrative fees from the System Fund into this account in each 12-month period beginning at final loan closing and continuing until the full amount of the Debt Service Reserve Requirement is on deposit in the Debt Service Reserve Account. In the event that funds from the Debt Service Reserve Account are used to service the Loan Agreement and the Note, the Borrower shall replenish the Debt Service Reserve Account as soon as possible by depositing funds in the manner described above until the full amount of the Debt Service Reserve Requirement is on deposit in the Debt Service Reserve Account. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee the Borrower shall fund the Debt Service Reserve Account and identify this in the Annual Audit.

(B) ANNUAL LOAN REPAYMENT ACCOUNT. An Annual Loan Repayment Account is established under this Ordinance, held by the Borrower and funded from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 in the amount necessary for payment of the principal, interest and the administrative fee due annually under the Loan Agreement and Note. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee, the Borrower shall fund the Annual Loan Repayment Account and identify this in the Annual Audit.

Section 12. APPLICATION OF GROSS REVENUES.

(A) **OPERATION AND MAINTENANCE.** The Borrower shall pay for the operation and maintenance expenses of the System, approved indirect charges, and any amounts for capital replacement and repair of the System from the System Fund as incurred.

(B) **PARITY OBLIGATIONS AND OTHER APPROVED DEBT(S).** The Borrower shall pay the principal, interest and administrative fees of parity obligations and other approved debts which are secured from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 as scheduled.

(C) **EQUITABLE AND RATABLE DISTRIBUTION.** Obligations of the Borrower secured by the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 on parity with the Loan Agreement and the Note, from time to time outstanding, shall not be entitled to any priority one over the other in the application of the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 regardless of the time or times of their issuance or creation.

(D) **DEBT SERVICE RESERVES.** The Borrower shall deduct the required amounts for the debt service reserve account from the System Fund as required.

(E) **SUBORDINATE OBLIGATIONS.** The Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 used for the payment of Subordinate Obligations shall be applied first to the payment of the amounts due the Loan Agreement and the Note, including payments to be made to other obligations payable from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 which have a lien on the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 on a parity with the Loan Agreement and the Note.

Section 13. LIEN OF LOAN AGREEMENT AND NOTE. The Loan Agreement and the Note shall constitute irrevocable liens upon the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 with priorities on the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 as set forth in Section 12 of the Ordinance. The Borrower hereby pledges and grants a security interest in the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 for the payment of the Note and any other amounts owed by the Borrower to the NMED pursuant to the Loan Agreement.

Section 14. OTHER OBLIGATIONS. Nothing in the Ordinance shall be construed to prevent the Borrower from issuing bonds or other obligations payable from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17 and having a lien thereon subordinate to the liens of the Loan Agreement and the Note. The Borrower shall first obtain the written consent of the NMED prior to issuing all obligations.

Section 15. DEFAULT. The following shall constitute an event of default under the Loan Agreement:

(A) The failure by the Borrower to pay the principal, interest and administrative fees on the repayment of the Loan set forth in the Loan Agreement and Note when due and payable either at maturity or otherwise; or

(B) Default by the Borrower in any of its covenants or conditions set forth under the Loan Agreement (*other than a default described in the previous clause of this section*) for 60 days after the NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.

UPON OCCURRENCE OF DEFAULT:

(A) The entire unpaid principal amount of the Interim and Final Promissory Note plus accrued interest and the administrative fees thereon may be declared by the NMED to be immediately due and payable and the Borrower shall pay the amounts due under Note from the Net Revenues of the System and the MGRT enacted by Ordinance #97-1 & 97-17, either immediately or in the manner required by the NMED in its declaration, but only to the extent funds are available for payment of the Note. However, if insufficient funds are available for payment of the Note(s), the NMED may require the Borrower to adjust the rates charged by the System to ensure repayment of the Note.

(B) If default by the Borrower is of covenants or conditions required under the federal grant, the Borrower may be required to refund the amount of the Loan and Loan Subsidy Grant disbursed to the Borrower from NMED.

(C) The NMED shall have no further obligation to make payments to the Borrower under the Loan Agreement.

Section 16. **ENFORCEMENT; VENUE.** The NMED retains the right to seek enforcement of the terms of the Loan Agreement. If the NMED and the Borrower cannot reach agreement regarding disputes as to the terms and conditions of this Loan Agreement, such disputes are to be resolved promptly and expeditiously in the district court of Santa Fe County. The Borrower agrees that the district court for Santa Fe County shall have exclusive jurisdiction over the Borrower and the subject matter of this Loan Agreement and waives the right to challenge such jurisdiction.

Section 17. **REMEDIES UPON DEFAULT.** Upon the occurrence of any of the events of default as provided in the Loan Agreement or in Section 15 of the Ordinance, the NMED may proceed against the Borrower to protect and enforce its rights under the Ordinance by mandamus

or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained in the Ordinance for the enforcement of any proper legal or equitable remedy as the NMED may deem most effective to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of the NMED, or to require the Borrower to act as if it were the trustee of an express trust, or any combination of such remedies. Each right or privilege of the NMED is in addition and cumulative to any other right or privilege under the Ordinance or the Loan Agreement and Note and the exercise of any right or privilege by the NMED shall not be deemed a waiver of any other right or privilege.

Section 18. **DUTIES UPON DEFAULT.** Upon the occurrence of any of the events of default as provided in Section 15 of the Ordinance, the Borrower, in addition, will do and perform all proper acts on behalf of and for the NMED to protect and preserve the security created for the payment of the Note to ensure the payment of the principal, interest, and the administrative fee on the Note promptly as the same become due. All proceeds derived from the System, so long as the Note is outstanding, shall be treated as revenues. If the Borrower fails or refuses to proceed as required by this Section, the NMED, after demand in writing, may proceed to protect and enforce the rights of the NMED as provided in the Ordinance and the Loan Agreement.

Section 19. **TERMINATION.** When all obligations under the Loan Agreement and Note have been paid, the Loan Agreement and Note shall terminate and the pledge, lien, and all other obligations of the Borrower under the Ordinance shall be discharged. The principal amount of the Note, or any part thereof, may be prepaid at any time without penalty at the

discretion of the Borrower and the prepayments of principal shall be applied as set forth in the Loan Agreement.

Section 20. AMENDMENT OF ORDINANCE. This Ordinance may be amended with the prior written consent of the NMED.

Section 21. ORDINANCE IRREPEALABLE. After the Loan Agreement and Note have been executed and delivered, the Ordinance shall be and remain irrevocable until the Note has been fully paid, terminated and discharged, as provided in the Ordinance.

Section 22. SEVERABILITY CLAUSE. If any section, paragraph, clause or provision of the 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 the Ordinance.

Section 23. 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.

PASSED, APPROVED AND ADOPTED this 12th day of January 2016
The Village of Taos Ski Valley, New Mexico

By: Neal King
Neal King, Mayor

ATTEST:

Ann M. Wooldridge
Ann Marie Wooldridge, Village Clerk

Vote: For 4 Against 0

