

**THE VILLAGE OF TAOS SKI VALLEY  
ORDINANCE NO. 05-41**

AN ORDINANCE AUTHORIZING THE VILLAGE OF TAOS SKI VALLEY, NEW MEXICO TO ENTER INTO A LOAN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT FOR THE PURPOSE OF OBTAINING WASTEWATER CONSTRUCTION LOAN FUNDS IN A PRINCIPAL AMOUNT NOT TO EXCEED TWO MILLION DOLLARS (\$2,000,000.00); DESIGNATING THE USE OF THE LOAN FUNDS FOR THE PURPOSE OF FINANCING A PROJECT TO ACQUIRE, CONSTRUCT, MODIFY AND OTHERWISE IMPROVE THE WASTEWATER FACILITIES OF THE VILLAGE'S JOINT WATER AND SEWER SYSTEM; DECLARING THE NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE JOINT WATER AND SEWER SYSTEM; AND FROM A .25% INCREASE IN THE MUNICIPAL CAPITAL OUTLAY GROSS RECEIPTS TAX; PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFORE;

WHEREAS, the Village is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State; and

WHEREAS, the Village now owns, operates and maintains a joint public utility constituting a joint water and sewer (i.e., sanitary sewer) system which includes a system for disposing of wastes by surface and underground methods; and

WHEREAS, the present Joint Water and Sewer System is insufficient and inadequate to meet the needs of the Village and its residents with respect to the disposal of wastes; and

WHEREAS, the Loan Agreement and Note will be payable solely or primarily from Net Revenues; and

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

**BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE VILLAGE OF TAOS SKI VALLEY:**

**Section 1. DEFINITIONS.** As used in the Ordinance, the following terms shall, for all purposes, 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.** Sections 74-6A-1 to 74-6A-15 NMSA 1978, as amended and as hereafter amended (the Wastewater Facility Construction Loan Act), and enactments of the Council relating to the Note and the Loan Agreement made by resolution or ordinance, including the Ordinance.

**AUTHORIZED OFFICER.** The Village's Mayor, Chief Administrative Officer, Director of Finance and Management, Treasurer, or other officer or employee of the Village when designated by a certificate signed by the Mayor of the Village from time to time. The certificate may designate one or more alternates.

**COUNCIL.** The Council (the governing body) of the Village.

**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 Village or other appropriate authority hereafter may establish as the fiscal year for the System.

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

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

**JOINT WATER AND SEWER SYSTEM, JOINT SYSTEM, SYSTEM OR system.** The Village's municipally owned public utility designated as the Village's water system and sewer system.

**LENDER.** The New Mexico Environment Department, successor to the Environmental Improvement Division of the New Mexico Health and Environment Department and any assignee of the Lender pursuant to the Loan Agreement and Note.

**LOAN.** The loan made pursuant to the Loan Agreement.

**LOAN AGREEMENT.** One or more loan agreements in the form of the loan agreement attached to the Ordinance as Exhibit 1, to state the exact amount the Lender loaned to the Village, and which shall be executed upon completion of the Project to be dated the date of

execution thereof between the Village and the Lender pursuant to which funds will be loaned to the Village to construct the Project and pay eligible costs relating thereto, as amended from time to time.

**MUNICIPAL CAPITAL GROSS RECEIPTS TAX.** The tax passed and adopted by the Village on March 2, 2004.

**NET REVENUES.** All income and revenues directly or indirectly derived by the Village from the operation of the System LESS the operation and maintenance expenses of the System, parity obligations and other approved debt(s) herein indicated, approved indirect charges, any amounts expended for capital replacements and repair of System, and the required set asides for debt and replacement reserves and revenues derived from the .25% increase in Municipal Capital Outlay Gross Receipts Tax.

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

**NOTE.** The interim and final promissory notes in the forms attached to the Loan Agreement as Exhibit A, evidencing the indebtedness of the Village to the Lender incurred pursuant to the 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.

**PROJECT.** (Submitted in advance and agreed to by NMED.)

**PROJECT COMPLETION DATE.** The date of completion of the Project as evidenced by a Certificate of Completion signed by an authorized representative of the Lender and an Authorized Officer.

**REGULATIONS.** Water Quality Control Commission Regulations, 20.7.5 NMAC - 20.7.7 NMAC Wastewater Facility Construction Loan Act Regulations (2000) and any future amendments.

**SPECIAL ASSESSMENT DISTRICT BONDS.** All water and sewer special assessment district bonds whether now outstanding or issued after the adoption of the Ordinance.

**STATE.** The State of New Mexico.

**SUBORDINATE BONDS.** The Special Assessment District Bonds and all other special assessment district bonds and other obligations, including, without limitation, the Loan Agreement and Note, now or hereafter issued with a lien on the net revenues of the System subordinate to the lien on the net revenues of the System for the payment of the Parity Bonds and subordinate to the lien on the net revenues derived from the Municipal Capital Outlay Gross Receipts Tax.

**VILLAGE.** The Village of Taos Ski Valley, in the County of Taos, and the State of New Mexico.

**Section 2. RATIFICATION.** All action heretofore taken (not inconsistent with the provisions of the Ordinance) by the Council, the officers and employees of the Village, 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 Village and will result in savings of interest costs to the Village.
- (B) The Village 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 sewer system the purposes of which include the disposition of wastes, either by surface or underground methods.

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

**Section 5. AUTHORIZATION OF PROJECT.** The acquisition 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 amount of two million dollars (\$2,000,000.00) 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 Village and acquiring the Project, it is hereby declared necessary that the Village, pursuant to the Act, and the Regulations execute and deliver, and the Village is hereby authorized to execute and deliver, with the prior written consent of the Lender, the Loan Agreement and Note, to be payable and collectible solely from the Net Revenues. The Lender has agreed to disburse the proceeds of the Loan Agreement to the Village over the construction period of the Project, without discount. The aggregate principal amount of the Note shall not exceed two million dollars (\$2,000,000.00) without the adoption of another Ordinance by the Council, and the annual interest rate on that principal amount shall not exceed three percent (3%) per annum. The final maturity date on the Note shall not extend beyond twenty (20) years from the Project Completion Date. The Loan shall be repaid in substantially equal annual installments of principal and interest with the first annual installment due within one (1) year of the Project Completion Date. The Village must obtain the written consent of the Lender before issuing additional obligations secured by Net Revenues on a parity with the lien on the Net Revenues. The Lender has given its written consent allowing the Village to issue and incur the obligation evidenced by the Loan Agreement and the Note.
- (B) 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 substitutions therefore, substantially in the form attached hereto as Exhibit 1, 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 thereof, in their final forms shall constitute conclusive evidence of their approval and compliance with this Section. The Village Clerk is authorized to affix the seal of the Village and to attest to the Loan Agreement and the Note and other documents pertaining to the Loan Agreement, if required.

- (C) 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 Village 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 and interest thereon shall be special limited obligations of the Village and shall be payable and collectible solely from Net Revenues are irrevocably pledged as set forth in Section 6 and Paragraph 12 of the Ordinance. The Lender may not look to any general or other municipal fund for the payment of the principal of or interest on the Loan Agreement and the Note except the designated special funds pledged therefor. 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 Village and shall recite that they are payable and collectible solely out of the Net Revenues, the income from which is so pledged, and that the holders of the Loan Agreement and the Note may not look to any general or other municipal fund for the payment of the principal of and interest on the Loan Agreement or the Note.

**Section 8. OPERATION OF PROJECT.** The Village will operate and maintain the Project so that it will function properly over its structural and material design life, which is not less than twenty (20) years.

**Section 9. USE OF PROCEEDS; PROJECT COMPLETION; PURCHASERS NOT RESPONSIBLE.** Funds shall be disbursed pursuant to the Loan Agreement for costs incurred by the Village for the Project or to pay contractors of suppliers of materials for work performed on the Project as set forth in the Loan Agreement or for other purposes permitted by the Act and Regulations.

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

**Section 11. ADMINISTRATION OF THE SYSTEM FUND.**

- (A) APPLICATION OF GROSS REVENUES. The Gross Revenues shall be applied directly at time of recognition.
- (B) SUBORDINATE OBLIGATIONS. Net Revenues 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 Net Revenues which have a lien on Net Revenues on a parity with the lien thereon the Loan Agreement and the Note which are approved in writing by the Lender.
- (C) EQUITABLE AND RATABLE DISTRIBUTION. Obligations of the Village secured by Net Revenues on a parity with the Loan Agreement and the Note on Net Revenues, from time to time outstanding, shall not be entitled to any priority one over the other in the application of the Net Revenues, regardless of the time or times of their issuance or creation.

**Section 12. LIEN OF LOAN AGREEMENT AND NOTE.** The Loan Agreement and the Note shall constitute irrevocable liens upon the Net Revenues of the System with priorities on the Net Revenues as set forth in Section 11 of the Ordinance. The Village hereby pledges and grants a security interest in the Net Revenues for the payment of the Note and any other amounts owed by the Village to the Lender pursuant to the Loan Agreement.

**Section 13. OTHER OBLIGATIONS PERMITTED.** Nothing in the Ordinance shall be construed to prevent the Village from issuing Bonds or other obligations payable from Net Revenues and having a lien thereon superior or subordinate to the liens of the Loan Agreement and the Note on the Net Revenues; provided that prior to the issuance or incurrence of any obligation payable from Net Revenues with a lien on the Net Revenues superior to the lien thereon of the Loan Agreement and the Note, the Village shall have satisfied the test required from the issuance of additional bonds payable from Net Revenue. The Village shall not issue additional obligations secured by Net Revenues on a parity with or superior to the lien on the Net Revenues of the Loan Agreement and Note without the prior written consent of the Lender.

**Section 14. DEFAULT.** The following shall constitute an event of default under the Agreement:

- (A) The failure by the Borrower to pay the principal of or interest on the repayment of the Loan set forth in the Agreement and Interim and Final Promissory Notes 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 Agreement (other than a default set forth in Clause 1 of this paragraph) for sixty (60) days after written notice specifying such default and requiring the same to be remedied has been given to the Borrower by NMED.

Upon occurrence of default:

- (A) The entire unpaid principal amount of the Interim and Final Promissory Note and accrued interest thereon may be declared by NMED to be immediately due and payable and the Borrower shall pay the amounts due under Note from the Net Revenues, either immediately or in the manner required by NMED in its declarations, but only to the extent funds are available for payment of the Agreement and Notes, pursuant to the Notes; and
- (B) NMED shall have no further obligation to make payments to the Borrower under the Agreement.



**Section 15.** NMED retains the right to seek enforcement of the terms of the Agreement. The parties agree that if the parties cannot reach agreement regarding disputes as to the terms and conditions of this Agreement, such disputes are to be resolved as promptly and expeditiously in the district court of Santa Fe County. The parties agree that the district court for Taos County shall have exclusive jurisdiction over the parties and the subject matter of this Agreement and waive the right to challenge such jurisdiction.

**Section 16. REMEDIES UPON DEFAULT.** Upon the happening and continuance of any of the events of default as provided in the Loan Agreement or in Section 14 of the Ordinance, the Lender may proceed against the Village to protect and enforce its rights under the Ordinance by mandamus or other suit, action of 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 such owner or owners may deem most effectual to protect and enforce the rights provided above, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of the Lender, or to require the Village to act as if it were the trustee of an express trust, or any combination of such remedies. Each right or privilege of the Lender 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 Lender shall not be deemed a waiver of any other right or privilege thereof.

**Section 17. DUTIES UPON DEFAULT.** Upon the happening of any of the events of default as provided in Section 14 of the Ordinance, the Village, in addition, will do and perform all proper acts on behalf of and for the Lender to protect and preserve the security created for the payment of the Note to ensure the payment of the principal of and interest 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 Village fails or refuses to proceed as required by this Section, the Lender, after demand in writing, may proceed to protect and enforce the rights of the Lender as provided in the Ordinance and the Loan Agreement.

**Section 18. DEFEASANCE.** When all obligations under the Note and Loan Agreement have been paid, the Loan Agreement and Note shall no longer be deemed to be outstanding. When all obligations under the Loan Agreement and Note have been paid, the pledge, lien and all other obligations of the Village 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 Village and the prepayments of principal shall be applied as set forth in the Loan Agreement.

**Section 19. AMENDMENT OF ORDINANCE.** This Ordinance may be amended with the prior written consent of the Lender

**Section 20. ORDINANCE IRREPEALABLE.** After the Loan Agreement and Note have been executed and delivered, the Ordinance shall be and remain irrepealable until the Note has been fully paid, canceled and discharged, as provided in the Ordinance.

**Section 21. 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 22. REPEALER CLAUSE.** All by-laws, 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 by-law, order, resolution or ordinance, or part thereof, heretofore repealed.

**APPROVED, PASSED AND ADOPTED THIS 10<sup>th</sup> DAY OF AUGUST , 2004, AT THE VILLAGE OFFICES IN TAOS SKI VALLEY, NEW MEXICO.**



By Neal King  
Mayor

ATTEST:

Vanessa S. Chisholm  
Municipal Clerk

Vote: For 4 Against 0