

**CITY OF FARMINGTON
CITY COUNCIL SPECIAL WORK SESSION AGENDA
May 2, 2023 – 9:00 a.m.**

DEPARTMENT HEAD REPORTS

1. Roll Call and Convening the Meeting (Mayor)
2. Ordinance No. 2023-1348 authorizing the execution and delivery of a loan and subsidy agreement by and between the City of Farmington, New Mexico and the New Mexico Finance Authority, in the total amount of \$15,000,000 evidencing a special limited obligation of the governmental unit to pay a maximum repayable principal amount of no more than \$7,500,000, together with interest, and administrative fees for the purpose of financing the costs of upgrading and retrofitting the City's water treatment plant. (Jennifer Breakell) -----1

Action Requested of Council:

Adopt Ordinance No. 2023-1348. Notice of Intent to Adopt the Ordinance was published on April 14, 2023.

3. Fiscal Year 2024 Budget Hearing – Presentation of the Preliminary Budget including the Capital Improvement Plan (Rob Mayes and Teresa Emrich)

Action Requested of Council:

Provide direction to staff on how to proceed with developing the Fiscal Year 2024 final budget.

COUNCIL BUSINESS

CITY MANAGER BUSINESS

AGENDA ITEM SUPPORT MATERIALS ARE AVAILABLE FOR INSPECTION AND/OR PURCHASE AT THE OFFICE OF THE CITY CLERK, 800 MUNICIPAL DRIVE, FARMINGTON, NEW MEXICO.

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office at 599-1106 or 599-1101 prior to the meeting so that arrangements can be made.

ORDINANCE NO. 2023-1348

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE CITY OF FARMINGTON, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY ("FINANCE AUTHORITY"), IN THE TOTAL AMOUNT OF FIFTEEN MILLION DOLLARS (\$15,000,000) ("LOAN") EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A MAXIMUM REPAYABLE PRINCIPAL AMOUNT OF NO MORE THAN SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000), TOGETHER WITH INTEREST, AND ADMINISTRATIVE FEES FOR THE PURPOSE OF FINANCING THE COSTS OF UPGRADING AND RETROFITTING THE GOVERNMENTAL UNIT'S WATER TREATMENT PLANT ("PROJECT"), AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN SOLELY FROM THE NET REVENUES OF THE WATER UTILITY SYSTEM OF THE GOVERNMENTAL UNIT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; 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 LOAN AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance, unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, duly organized and existing incorporated municipality under and pursuant to the laws of the State and more specifically, Municipal Code, NMSA 1978, Chapter 3, and specifically §§ 3-31-1 through 3-31-12, NMFA 1978, as amended; and

WHEREAS, the Governmental Unit now owns, operates and maintains an electric light and power, water and sanitary sewer system which it had previously owned and operated as a single joint utility designated as the "Utility System" but pursuant to Ordinance No. 2015-1274, adopted January 13, 2015, such systems are now owned and operated as three separate municipal utility systems; and

WHEREAS, Utility System revenue bonds payable from the net revenues of the Utility System previously were issued by the Governmental Unit but no longer are outstanding; and

WHEREAS, there presently are no outstanding Policy Costs or Reimbursement Obligations relating to any municipal bond insurance or debt service fund relating to any Utility System, Credit Facility, Reimbursement Obligation, or Qualified Swap (all as such capitalized terms were defined in the indentures authorizing such Utility System revenue bonds) and no other outstanding obligations payable from and secured by an irrevocable pledge of the net revenues of the Utility System which constituted an irrevocable lien thereon; and

WHEREAS, the Governmental Unit has executed and entered into a loan and subsidy agreement dated as of January 15, 2010 and being No. 2314-ADW (the "2010 Loan"), pursuant to its Ordinance No. 2009-1313, adopted December 8, 2009, whereby it has borrowed \$2,109,688 from the State Drinking Water Revolving Loan Fund (of which \$1,054,844 is repayable by the Governmental Unit) to better and repair the Governmental Unit's water system (herein the "Water System") such loan being payable only from the Net Revenues of the Water System (the "Pledged Revenues"); and

WHEREAS, the Government Unit has executed and entered into a loan and subsidy agreement dated as of January 18, 2013 and being No. 2759-DW (the "2012 Loan"), pursuant to its Ordinance No. 2012-1262, adopted December 11, 2012, whereby it has borrowed \$5,959,000 from the State Drinking Water Revolving Loan Fund (of which \$4,059,311 is repayable by the Governmental Unit) to improve and better the Water System by replacing and upgrading water meters, acquiring and installing ancillary equipment for reading the meters and billing customers for use of such Water System and any construction in connection therewith, all located within and without the boundaries of the Governmental Unit, such loan being repayable only from the Pledged Revenues and having a lien on the Pledged Revenues; and

WHEREAS, the Government Unit has executed and entered into a loan and subsidy agreement dated as of August 5, 2016 and being No. 3397-DW (the "2016 Loan"), pursuant to its Ordinance No. 2016-1289, adopted June 28, 2016, whereby it has borrowed \$3,232,000 from the State Drinking Water Revolving Loan Fund (of which \$2,256,110 is repayable by the Governmental Unit) to improve and better the Water System, including design, construction and acquisition of archaeological and environmental clearances, if required, for the 2P Waterline Replacement Project, Phase I, in the Governmental Unit, such loan being repayable only from the Pledged Revenues and having a lien on the Pledged Revenues; and

WHEREAS, the Government Unit has executed and entered into a loan and subsidy agreement dated as of June 16, 2017 and being No. 3632-DW (the "2017 Loan"), pursuant to its Ordinance No. 2017-1299, adopted May 9, 2017, whereby it has borrowed \$3,595,600 from the State Drinking Water Revolving Loan Fund (of which \$2,647,749 is repayable by the Governmental Unit) to improve and better the Water System, including design, construction and acquisition of archaeological and environmental clearances, if required, for the 2P Waterline Replacement Project, Phase II, in the Governmental Unit, such loan being repayable only from the Pledged Revenues and having a lien on the Pledged Revenues; and

WHEREAS, the Government Unit has executed and entered into a loan and subsidy agreement dated as of June 15, 2018 and being No. 4207-DW (the "2018 Loan"), pursuant to its Ordinance No. 2018-1307, adopted May 8, 2018, whereby it has borrowed \$2,929,000 from the State Drinking Water Revolving Loan Fund (of which \$2,196,750 is repayable by the Governmental Unit) to improve and better the Water System, including design, construction and acquisition of archaeological and environmental clearances, if required, and replacement of approximately 2.1 miles of older cast iron pipe with newer PVC ducting, for the 2P Waterline Replacement Project, Phase III in the Governmental Unit, such loan being repayable only from the Pledged Revenues and having a lien on the Pledged Revenues; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and the public it serves that the Loan Agreement be executed and delivered and that the financing of the Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due and enter into the Loan Agreement; and

WHEREAS, other than as described on the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk, this Ordinance and the form of the Loan Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan Agreement is to be used for governmental purposes of the Governmental Unit; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement, which are required to have been obtained by the date of the Ordinance have been obtained or are reasonably expected to be obtained prior to the Closing Date.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FARMINGTON, SAN JUAN COUNTY, NEW MEXICO:

Section 1. Definitions. Capitalized terms defined in this Section 1, for all purposes, shall have the meaning herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined) and, any term not defined herein shall have the definition given it by the Loan Agreement:

"Administrative Fee" or "Administrative Fee Component" means the 0.25% annual fee payable to the Finance Authority as 0.125% of the Aggregate Repayable Disbursements then outstanding as a part of each Loan Agreement Payment for the costs of originating and servicing the Loan.

"Aggregate Disbursements" means, at any time after the Closing Date, the sum of all Disbursements.

"Aggregate Forgiven Disbursements" means the amount of subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date be equal to the product of the subsidy times the Aggregate Disbursements, up to the Maximum Forgiven Principal.

"Aggregate Repayable Disbursements" means, at any time after the Closing Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

"Approved Requisition" means a requisition in the form of Exhibit "C" to the Loan Agreement, together with supporting documentation submitted to and approved by the Finance Authority pursuant to Section 4.2 of the Loan Agreement.

"Authorized Officers" means, with respect to the Governmental Unit, the Mayor, Community Works Director, Administrative Services Director, City Manager and City Clerk thereof; and with respect to the Finance Authority, any one or more of the Chairperson, Vice-Chairperson, Secretary and Chief Executive Officer, and any other officer or employee of the Finance Authority designated in writing by an Authorized Officer of the Finance Authority.

"Bonds" means drinking water state revolving loan fund revenue bonds, if any, issued hereafter by the Finance Authority and related to the Loan Agreement and the Loan Agreement Payments.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement authorized by this Ordinance.

"Debt Service Account" means the debt service account established in the name of the Governmental Unit and administered by the Finance Authority to pay the Loan Agreement Payments under the Loan Agreement as the same become due.

"Disbursement" means an amount caused to be paid by the Finance Authority for an Approved Requisition for costs of the Project.

"Drinking Water State Revolving Loan Fund" means the drinking water state revolving loan fund established by the DWSRLF Act.

"DWSRLF Act" means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9; NMSA 1978, §§ 3-31-1 through 3-31-12, all as amended; and enactments of the Governing Body relating to the Loan Agreement, including this Ordinance.

"Environmental Protection Agency" means the Environmental Protection Agency of the United States.

"Final Loan Agreement Payment Schedule" means the schedule of Loan Agreement Payments due on the Loan Agreement following the Final Requisition, as determined on the basis of the Aggregate Repayable Disbursements.

"Final Requisition" means the final requisition of moneys to be submitted by the Governmental Unit, which shall be submitted by the Governmental Unit on or before the date provided for in Section 4.1(b) of the Loan Agreement.

"Finance Authority" means the New Mexico Finance Authority, created by the New Mexico Finance Authority Act, NMSA 1978, §§ 6-21-1 through 6-21-31, as amended.

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

"Governing Body" means the duly organized City Council of the Governmental Unit, or any successor governing body of the Governmental Unit.

"Governmental Unit" or "City" means the City of Farmington, San Juan County, New Mexico.

"Gross Revenues" means all income and revenues derived by the Governmental Unit from the operation of the Water System, or any part thereof, whether resulting from extensions, enlargements or betterments to the Water System, or otherwise, and includes all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit from the Water System and from the sale and use of water to the inhabitants of the Governmental Unit (including all territorial annexations which may be made while the Loan Agreement is outstanding), or from the sale and use of water service and water facilities or any combination thereof, by means of the Water System as the same may at any time exist to serve customers outside the Governmental Unit limits, as well as customers within the Governmental Unit limits, and also means all income, except as may otherwise be provided herein, derived from the investment of any money in the Water Utility System Income Fund as defined in Section 5.2 of the Loan Agreement.

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

"Interest Component" means the portion of each Loan Agreement Payment paid as interest accruing on the Aggregate Repayable Disbursements then outstanding, calculated from the date of each Disbursement.

"Interest Rate" means the rate of interest on the Loan Agreement, which includes the Administrative Fee, as shown on the Term Sheet.

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement, up to the Maximum Principal Amount.

"Loan Agreement" means the loan and subsidy agreement and any amendments or supplements thereto, including the exhibits attached to the loan and subsidy agreement.

"Loan Agreement Payment" means, collectively, the Principal Component, the Interest Component, and the Administrative Fee Component to be paid by the Governmental Unit as payment on the Aggregate Repayable Disbursements under the Loan Agreement, as shown on Exhibit "B" thereto.

"Maximum Forgiven Principal Amount" means the maximum amount of loan subsidy available in the form of principal forgiveness to be applied proportionally at the time of each Disbursement to the Governmental Unit, up to fifty percent (50%) of the Maximum Principal Amount. The Maximum Forgiven Principal Amount is seven million five hundred thousand dollars (\$7,500,000).

"Maximum Principal Amount" means fifteen million dollars (\$15,000,000).

"Maximum Repayable Principal Amount" means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to the Loan Agreement. The Maximum Repayable Principal Amount is seven million five hundred thousand dollars (\$7,500,000).

"Net Revenues" means the Gross Revenues of the Water System minus Operation and Maintenance Expenses.

"NMSA" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the Governmental Unit, paid or accrued, in operating, maintaining and repairing the Water System, and shall include, without limiting the generality of the foregoing, legal and overhead expenses of the various Governmental Unit departments directly related and reasonably related to the administration of the Water System, insurance premiums for the Water System, the reasonable charges of depository banks and paying agents, contractual services, professional services required by

the Loan Agreement, salaries and administrative expenses, labor, the cost of materials and supplies used for the current operations, but shall not include any allowance for depreciation, payment in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit's general fund, liabilities incurred by the Governmental Unit as a result of its negligence in the operation of the Water System, extensions, enlargements or betterments, or any charges for the accumulation of reserves for capital replacements.

"Ordinance" means this Ordinance No. 2023-1348 adopted by the Governing Body of the Governmental Unit on May 2, 2023, approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet to the Loan Agreement, as supplemented from time to time in accordance with the provisions hereof.

"Parity Obligations" means any obligations of the Governmental Unit under the Loan Agreement and any other obligations now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Loan Agreement, including any such obligations shown on the Term Sheet.

"Pledged Revenues" means the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to this Ordinance and described on the Term Sheet.

"Project" means the project described in the Term Sheet.

"Senior Obligations" means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues superior to the lien created by the Loan Agreement, including any such obligations shown on the Term Sheet.

"State" means the State of New Mexico.

"Subordinate Obligations" means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the lien created by the Loan Agreement and subordinate to any other outstanding Parity Obligations having a lien on the Pledged Revenues, including any such obligations shown on the Term Sheet.

"Term Sheet" means Exhibit "A" to the Loan Agreement.

"Unrequisitioned Principal Amount" means the amount, if any, by which the Maximum Principal Amount exceeds the Aggregate Disbursements at the time the Governmental Unit submits the certificate of completion required pursuant to Section 6.3 of the Loan Agreement.

"Water System" means the public utility designated as the Governmental Unit's water system, and all improvements or additions thereto, including additions and improvements to be acquired or constructed with the proceeds of the Loan Agreement.

"2010 Loan" has the same meaning set forth in the fifth preamble of this Ordinance.

"2012 Loan" has the same meaning set forth in the sixth preamble of this Ordinance.

"2016 Loan" has the same meaning set forth in the seventh preamble of this Ordinance.

"2017 Loan" has the same meaning set forth in the eighth preamble of this Ordinance.

"2018 Loan" has the same meaning set forth in the ninth preamble of this Ordinance.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition and completion of the Project, the pledge of the Pledged Revenues to payment of amounts due under the Loan Agreement, and the execution and delivery of the

Loan Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan Agreement. The acquisition and completion of the Project and the method of funding the Project through execution and delivery of the Loan Agreement and the other documents related to the transaction are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit and the public whom it serves.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and the public whom it serves.

B. Moneys available and on hand for the Project from all sources other than the Loan Agreement are not sufficient to defray the cost of acquiring and constructing the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

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

E. The Project and the execution and delivery of the Loan Agreement in the Maximum Principal Amount pursuant to the DWSRLF Act to provide funds for the financing of the Project are necessary or advisable in the interest of the public health, safety, and welfare of the residents and the public served by the Governmental Unit.

F. The Governmental Unit will acquire and construct the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described on the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement.

H. The net effective interest rate on the Maximum Principal Amount does not exceed the current market rate, which is the maximum rate permitted by federal law.

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Governmental Unit and acquiring and constructing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the DWSRLF Act, execute and deliver the Loan Agreement evidencing a special limited obligation of the Governmental Unit to pay a principal amount of seven million five hundred thousand dollars (\$7,500,000) and interest thereon and to accept a loan subsidy in the amount of seven million five hundred thousand dollars (\$7,500,000) and the execution and delivery of the Loan Agreement is hereby authorized. The Governmental Unit shall use the proceeds of the Loan Agreement (i) to finance the acquisition and completion of the Project and (ii) to pay the Administrative Fee of the Loan Agreement and the costs of issuance of the Bonds, if any. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement shall be in substantially the form of the Loan Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an amount not to exceed the Maximum Principal Amount of fifteen million dollars (\$15,000,000). The Aggregate Repayable Disbursements shall be payable in installments of principal due on May 1 of the years designated in the Final Loan Agreement Payment Schedule and bear interest payable on May 1 and November 1 of each of the years designated in the Final Loan Agreement Payment Schedule, at the Interest Rate designated in the Loan Agreement, including Exhibit "A" thereto.

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

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance, and the Loan Agreement shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance nor in the Loan Agreement, nor any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues) or as imposing a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds; Completion of Acquisition and Completion of the Project.

A. Debt Service Account; Disbursements. The Governmental Unit hereby consents to creation of the Debt Service Account to be held and maintained by the Finance Authority as provided in the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be disbursed promptly upon receipt of an Approved Requisition (as defined in the Loan Agreement).

Until the acquisition and completion of the Project or the date of the Final Requisition, the money disbursed pursuant to the Loan Agreement shall be used and paid out solely for the purpose of acquiring and constructing the Project in compliance with applicable law and the provisions of the Loan Agreement.

B. Prompt Completion of the Project. The Governmental Unit will complete the Project with all due diligence.

C. Certification of Completion of the Project. Upon the acquisition and completion of the Project, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that the completion of and payment for the Project has been completed.

D. Finance Authority Not Responsible for Application of Loan Proceeds. The Finance Authority shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues; Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid directly by the Governmental Unit to the Finance Authority in an amount sufficient to pay principal, interest in accordance with the Interest Rate, and other amounts due under the Loan Agreement, as provided in Section 5.3 of the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Debt Service Account if the amount in the Debt Service Account totals a sum at least equal to the total amount of Loan Agreement Payments to become due as to principal, interest on, Administrative Fees and any other amounts due under the Loan Agreement, in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided in Section 9.C of this Ordinance.

C. Use of Surplus Revenues. After making all the payments required to be made by this section and any payments required by outstanding Senior and Parity Obligations, any moneys remaining in the Debt Service Account shall be transferred to the Governmental Unit on a timely basis and applied to any other lawful purpose, including, but not limited to, the payment of any Senior and Parity Obligations or bonds or Subordinate Obligations to the Loan Agreement, or purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to this Ordinance and the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged, and are hereby pledged, and the Governmental Unit grants a first lien on the Pledged Revenues and security interest therein, for the payment of the principal, interest in accordance with the Interest Rate, and any other amounts due under the Loan Agreement, subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein, and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement without the express prior written approval of the Finance Authority.

Section 11. 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 Loan Agreement 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 Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement.

Section 12. Amendment of Ordinance. Prior to the Closing Date, the provisions of this Ordinance may be supplemented or amended by ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. After the Closing Date, this Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Closing Date, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully discharged, as herein provided.

Section 14. 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 15. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent with this Ordinance 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 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which is of general circulation in the Governmental Unit, and the

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 17. 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 Notice of Adoption of Ordinance for Publication]

CITY OF FARMINGTON, SAN JUAN COUNTY, NEW MEXICO
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. 2023-1348, duly adopted and approved by the City Council of City of Farmington on May 2, 2023. A complete copy of the Ordinance is available for public inspection during normal and regular business hours in the office of the City Clerk, 800 Municipal Drive, Farmington, New Mexico 87401.

The title of the Ordinance is:

CITY OF FARMINGTON, SAN JUAN COUNTY, NEW MEXICO
ORDINANCE NO. 2023-1348

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE CITY OF FARMINGTON, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY ("FINANCE AUTHORITY"), IN THE TOTAL AMOUNT OF FIFTEEN MILLION DOLLARS (\$15,000,000) ("LOAN") EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A MAXIMUM REPAYABLE PRINCIPAL AMOUNT OF NO MORE THAN SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000) , TOGETHER WITH INTEREST, AND ADMINISTRATIVE FEES FOR THE PURPOSE OF FINANCING THE COSTS OF UPGRADING AND RETROFITTING THE GOVERNMENTAL UNIT'S WATER TREATMENT PLANT ("PROJECT"), AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN SOLELY FROM THE NET REVENUES OF THE WATER UTILITY SYSTEM OF THE GOVERNMENTAL UNIT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; 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 LOAN AGREEMENT.

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, as amended.

[End of Form of Notice of Adoption for Publication.]

Section 18. Execution of Agreements. The City of Farmington through its Governing Body agrees to authorize and execute all such agreements with the New Mexico Finance Authority as are necessary to consummate the Loan contemplated herein and consistent with the terms and conditions of the Loan Agreement and this Ordinance.

PASSED, APPROVED AND ADOPTED THIS 2ND DAY OF MAY, 2023.

Nate Duckett, Mayor

SEAL

ATTEST:

Andrea Jones, City Clerk