ORDINANCE NO. ___2023-05___

AUTHORIZING THE VILLAGE OF RUIDOSO (VILLAGE) TO ENTER INTO A LOAN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT (NMED) FOR THE PURPOSE OF OBTAINING PROJECT LOAN FUNDS IN THE PRINCIPAL AMOUNT OF $100,000 *PLUS (0.01%) ACCRUED INTEREST;* AND LOAN SUBSIDY GRANT FUNDS IN THE AMOUNT OF $250,000 FOR A TOTAL FUNDED AMOUNT OF $350,000; DESIGNATING THE USE OF THE FUNDS FOR THE PURPOSE DEFINED IN THE MOST CURRENT PROJECT DESCRIPTION FORM AS APPROVED BY NMED; DECLARING THE NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE VILLAGE'S PLEDGED REVENUES DEFINED BELOW; PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFORE.

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

WHEREAS the Village is a legally and regularly created public body organized under the general laws of the State of New Mexico (State); and

WHEREAS the Village now owns a public utility for water pollution control, (System); and

WHEREAS the present System is insufficient and inadequate to meet the needs of the Village; and

WHEREAS the Loan Agreement and Note will be payable solely from the Pledged Revenues; and

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

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

WHEREAS, the Village has the following obligations outstanding to which the Pledged Revenues have already been pledged:

Funding Source (e.g., Revenue Bond, NMED, NMFA, etc.) and Series# or Loan/Project #	Principal Amount Outstanding at 06/30/2022 (use the most current fiscal year end date)	Is the listed funding source superior, subordinate or on parity with this funding?
Gross Receipts Tax Revenue Bonds on Capital Projects	$5,355,000	Parity
Gross Receipts Tax Revenue Bonds on Water Infrastructure	$2,425,000	Parity

WHEREAS, the Governing Body of the Village 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 NMED.

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

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 governing Body of the Village relating to the Note and the Loan Agreement made by resolution or ordinance, including this Ordinance; and the powers of the Village as a public body under authority given by the Constitution and Statutes of the State.

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

AUTHORIZED OFFICER. The Village's mayor, chairperson, director, or other officer or agent of the Village as designated by the Village's Signature Resolution Number 2023-13 adopted by 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 succeeding year, or any other twelve-month period which the Village hereafter may establish as the fiscal year or the System.

FUNDS. Loan and Loan Subsidy Grant funds.

GOVERNING BODY OF THE VILLAGE.

The Village of Ruidoso Council.

GROSS RECEIPTS TAX REVENUE BOND. The Municipal Revenue Bond Act at Section 3-31-1 to 3-31-12 NMSA 1978, as amended; enactments of the governing Body of the Village relating to the Note and the Loan Agreement made by resolution or ordinance, including this Ordinance; and the powers of the Village as a public body under authority given by the Constitution and Statutes of the State.

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

LOAN AGREEMENT. The loan agreement between the Village and the NMED, pursuant to which funds will be loaned to the Village for the Project and to pay eligible costs relating thereto; and the final loan agreement which shall state the final amount the NMED loaned to the Village, which shall be executed upon completion of the Project and dated on the date of execution.

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

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

NOTE. The interim and final promissory notes issued by the Village to the NMED evidencing the obligation of the Village to the NMED incurred pursuant to the Ordinance and Loan Agreement.

OPERATION AND MAINTENANCE EXPENSES. All reasonable and necessary current expenses of the Village, paid or accrued, of operating, maintaining and repairing the System, and shall include, without limiting the generality of the foregoing, legal and overhead expense of the various Village departments directly related and reasonably allocable to the administration of the System, insurance premiums, the reasonable charges of depositary banks and paying agents, contractual services, professional services required by this Ordinance, salaries and administrative expenses, labor, the cost of materials and supplies used for current operation, but shall not include any allowance for depreciation, liabilities incurred by the Village as the result of its negligence in the operation of the System, extensions, enlargements or betterments, or any charges for the accumulation of reserves for capital replacements.

ORDINANCE. This Ordinance including amendments.

PARITY BONDS or PARITY OBLIGATIONS. Revenue Bonds and other bonds or other obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues on parity with the bonds or obligations as listed in this Ordinance.

PLEDGED REVENUES. Supplemental Gross Receipts Taxes.

PROJECT. The most current NMED approved Project Description listed on the Project Description Form on file with NMED.

PROJECT COMPLETION DATE. Means the date that the final project documents are submitted to and approved by the NMED.

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.

SUBORDINATE OBLIGATIONS. Other obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues subordinate to the lien of the Loan Agreement and Note as may be listed in this Ordinance.

VILLAGE. The entity requesting funds pursuant to the Act.

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 Governing Body of the Village 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, and welfare of the residents of the Village.

(B) The Project will be used to plan improvements to the System.

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

Section 4. SYSTEM. The System shall continue to constitute a public utility and shall be operated and maintained as such.

Section 5. AUTHORIZATION OF PROJECT. The Project and payment of eligible items from proceeds of the Loan Agreement and Note is hereby authorized at a cost not to exceed the principal Loan amount of **$100,000** and the Loan Subsidy Grant amount of **$250,000** 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, and protecting the general welfare of the residents 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 the Loan Agreement and Note, to be payable and collectible solely from the Pledged Revenues. The NMED has agreed to disburse the proceeds according to the terms of the Loan Agreement to the Village over the active period of the Project. The principal Loan amount of the Note shall not exceed $100,000 plus accrued interest without the adoption of another Ordinance amending this Ordinance by the Governing Body of the Village, *and the annual interest rate on that principal amount shall not exceed 0.01 percent per annum. Interest shall be computed as a percentage per year on the outstanding principal amount on the Loan based on a 365-day year, actual number of days lapsed.* The final maturity date on the Note shall not extend beyond five years or the agreed upon useful life of the project should the agreement be converted to a construction loan. The Loan shall be repaid in substantially equal annual installments in the amount and on the dates provided in the Loan Agreement with the first annual installment due no later than one year after the project completion date. The Village must maintain a debt service coverage ratio of no less than 1.2 and must also obtain the written consent of the NMED before issuing additional obligations secured by the Pledged Revenues.

(B) The Village is hereby authorized to accept a Loan Subsidy Grant under the terms of the Loan Agreement. By accepting a Loan Subsidy Grant, the Village is a sub-recipient of a one-time federal grant of funds to NMED by EPA. As a sub-recipient, the Village is responsible for complying with the specific requirements and the conditions of the one-time federal grant. If the Village fails to satisfy any federal grant requirements or conditions, the Village may be required to refund any federal grant funds disbursed to the Village from NMED.

(C) The form of the Loan Agreement and the Note are approved. The Authorized Officer is hereby 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, with such changes therein consistent 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 of the Village are 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 thereon shall be special limited obligations of the Village and shall be payable and collectible solely from the Pledged Revenues which are irrevocably pledged as set forth in this

Ordinance. The NMED may not look to any general or other fund for the payment 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 Village and shall recite that they are payable and collectible solely from the Pledged Revenues the income from which is so pledged.

Section 8. USE OF PROCEEDS. The NMED shall disburse Funds pursuant to the Loan Agreement for NMED approved costs incurred by the Village for the Project.

Section 9. APPLICATION OF REVENUES.

(A) PARITY OBLIGATIONS AND OTHER APPROVED DEBT(S). The Village shall pay the principal, interest and administrative fees (if applicable) of parity obligations and other approved debts which are secured from the Pledged Revenues as scheduled.

(B) EQUITABLE AND RATABLE DISTRIBUTION. Obligations of the Village secured by the Pledged Revenues 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 Pledged Revenues, regardless of the time or times of their issuance or creation.

(C) SUBORDINATE OBLIGATIONS. The Pledged 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 the Pledged Revenues which have a lien on the Pledged Revenues on parity with the Loan Agreement and the Note.

Section 10. LIEN OF LOAN AGREEMENT AND NOTE. The Loan Agreement and the Note shall constitute irrevocable liens upon the Pledged Revenues with priorities on the Pledged Revenues as set forth in this Ordinance. The Village hereby pledges and grants a security interest in the Pledged Revenues for the payment of the Note and any other amounts owed by the Village to the NMED pursuant to the Loan Agreement.

<u>Section 11</u>. OTHER OBLIGATIONS. Nothing in the Ordinance shall be construed to prevent the Village from issuing bonds or other obligations payable from the Pledged Revenues and having a lien thereon subordinate to the liens of the Loan Agreement and the Note. The Village must obtain the written consent of the NMED before issuing additional obligations secured by the Pledged Revenues.

<u>Section 12</u>. DEFAULT. The following shall constitute an event of default under the Loan Agreement:

(A) The failure by the Village to pay the annual payment due 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 Village 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 Village 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 any fees thereon may be declared by the NMED to be immediately due and payable and the Village shall pay the amounts due under Note from the Pledged Revenues, 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 Village to secure an additional source of pledged revenues approved by NMED to ensure repayment of the Note.

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

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

Section 13. ENFORCEMENT; VENUE. The NMED retains the right to seek enforcement of the terms of the Loan Agreement. If the NMED and the Village 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 Village agrees that the district court for Santa Fe County shall have exclusive jurisdiction over the Village and the subject matter of this Loan Agreement and waives the right to challenge such jurisdiction.

Section 14. REMEDIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in the Loan Agreement or in this Ordinance, the NMED may proceed against the Village 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 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 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.

<u>Section 15</u>. DUTIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in this Ordinance, the Village, 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 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 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.

<u>Section 16</u>. 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 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.

<u>Section 17</u>. AMENDMENT OF ORDINANCE. This Ordinance may be amended with the prior written consent of the NMED.

<u>Section 18</u>. 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, terminated and discharged, as provided in the Ordinance.

<u>Section 19</u>. 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.

<u>Section 20</u>. 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, or Ordinance, or part thereof, heretofore repealed.

(VILLAGE SHOULD ADD SIGNATURE PAGE AS USUAL AND CUSTOMARY)