

Meeting Date: January 28, 2015
Staff Contact: Frank Roth, Senior Policy Manager

TITLE: O-15-1 - Authorizing the Execution and Delivery of a First Amendment to Water Project Fund Loan/Grant Agreement (WTB #206) by and between the New Mexico Water Trust Board and the New Mexico Finance Authority and the Water Authority

ACTION: Recommend Approval

SUMMARY:

The Water Authority adopted Ordinance O-11-3 in October 2011 which authorized a loan/grant agreement in the amount of \$1,600,000, between the New Mexico Water Trust Board (WTB) and New Mexico Finance Authority (NMFA) and the Water Authority for the planning, design, engineering and construction of a regional water conveyance and delivery project to provide a safe and sustainable drinking water source for the community of Carnuel in Bernalillo County.

The agreement expired in November 2014. The Water Authority requested a three-month extension to the agreement in order to complete the project. Additional time was needed as result of overruns in rock excavation and import material for the reservoir site which delayed the project in meeting the original substantial completion date. The WTB approved the time extension at its December 2014 meeting. The WTB approval requires that the Water Authority board approve the amendment to the original ordinance. The ordinance amendment was reviewed by Modrall, Sperling, Roehl, Harris & Sisk, P.A. who is serving as the Water Authority's Counsel.

FISCAL IMPACT:

None.

1 WHEREAS, the Borrower/Grantee and the Lenders/Grantors entered into the
2 Loan/Grant Agreement on November 23, 2011 pursuant to NMSA 1978, §§ 72-1-10, as
3 amended, NMSA 1978, §§ 3-31-1 through 3-31-12, as amended, and NMSA 1978, §§
4 6-21-1 through 6-21-31, as amended, payable from the Pledged Revenues described in
5 the Original Ordinance (the "Loan/Grant Agreement"); and

6 WHEREAS, under the terms of the Loan/Grant Agreement, the Loan/Grant
7 Amount was to be expended no later than November 23, 2014, that date being the date
8 that was three (3) years after the Closing Date of the Loan/Grant Agreement; and

9 WHEREAS, due to circumstances beyond the control of the Borrower/Grantee
10 the Project could not be completed and Loan/Grant Amount provided by the
11 Loan/Grant Agreement 206-WTB could not be expended within three (3) years of
12 the Closing Date; and

13 WHEREAS, the Borrower/Grantee now anticipates that the Project can be
14 completed and the Loan/Grant Amount can be expended by February 23, 2015; and

15 WHEREAS, on December 3, 2014, and on December 18, 2014, the WTB and
16 the Finance Authority, respectively, approved and consented to the request of the
17 Borrower/Grantee to a first amendment to the Loan/ Grant Agreement to extend the
18 funding period by an additional three months to February 23, 2015; and

19 WHEREAS, the Governing Body has determined and hereby determines that the
20 First Amendment is in the best interest of the Borrower/Grantee and the constituent
21 public it represents and that the Loan/Grant Agreement be amended and that the
22 financing of the acquisition and completion of the Project take place by executing and
23 delivering the First Amendment; and

24 WHEREAS, there have been presented to the Governing Body and there
25 presently are on file with the Executive Director this Ordinance and the form of First
26 Amendment; and

27 WHEREAS, the Governing Body hereby determines that the Project is to be used
28 for governmental purposes of the Borrower/Grantee; and

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

31

1 WHEREAS, all required authorizations, consents and approvals in connection
2 with: (i) the use of the proceeds of the First Amendment and the Loan/Grant Agreement
3 to finance the Project; and (ii) the authorization, execution and delivery of the First
4 Amendment which are required to have been obtained by the date of this Ordinance,
5 have been obtained or are reasonably expected to be obtained.

6 NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE
7 ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY, NEW
8 MEXICO:

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

12 Section 2. Ratification. All action heretofore taken (not inconsistent with the
13 provisions of this Ordinance) by the Governing Body and officers of the
14 Borrower/Grantee directed toward the execution and delivery of the First Amendment to
15 the Loan/Grant Agreement be, and the same hereby is, ratified, approved and
16 confirmed.

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

22 Section 4. Findings. The Borrower/Grantee hereby declares that it has considered
23 all relevant information and data and hereby makes the following findings:

24 The Project is needed to meet the needs of the Borrower/Grantee and its residents.

25 Moneys available and on hand for the Project from all sources other than the
26 Loan/Grant are not sufficient to defray the cost of acquiring the Project.

27 The Pledged Revenues may lawfully be pledged pursuant to the Act to secure the
28 payment of amounts due under the Original Ordinance, and this Ordinance and the
29 First Amendment does not change the terms of the payment of the amounts due
30 under the Original Ordinance.

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

3 B. The Project and the execution and delivery of the First Amendment pursuant
4 to the Act to provide funds for the financing of the Project are necessary and in
5 the interest of the public health, safety, morals and welfare of the public served
6 by the Borrower/Grantee.

7 C. The Borrower/Grantee will acquire and complete the Project, in whole or in
8 part, with the net proceeds of the Loan/Grant on or before February 23, 2015, which
9 extends the funding period of the Loan/Grant by three (3) months, as provided in
10 the First Amendment.

11 Section 5. First Amendment - Authorization and Detail.

12 A. Authorization. This Ordinance has been adopted by the affirmative vote of at
13 least a majority of all of the members of Governing Body. For the purpose of protecting
14 the public health, conserving the property, protecting the general welfare and prosperity
15 of the constituent public served by the Borrower/Grantee and acquiring the Project, it is
16 hereby declared necessary that the Borrower/Grantee, pursuant to the Act, execute and
17 deliver the First Amendment. The Borrower/Grantee shall use the proceeds of the
18 Loan/Grant Agreement to finance the Project and to pay the costs of issuance of the
19 First Amendment. The Project will be owned by the Borrower/Grantee.

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

22 C. Except as expressly amended by the First Amendment, the Loan/Grant
23 Agreement shall remain effective in their entirety.

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

26 Section 6. Approval of First Amendment. The form of the First Amendment as
27 presented at the meeting of the Governing Body at which this Ordinance was adopted is
28 hereby approved. Authorized Officers are hereby individually authorized to execute,
29 acknowledge and deliver the First Amendment with such changes, insertions and
30 omissions as may be approved by such individual Authorized Officers, and the
31 Executive Director is hereby authorized to affix the seal of the Borrower/Grantee on the

1 First Amendment and attest the same. The execution of the First Amendment by an
2 Authorized Officer shall be conclusive evidence of such approval.

3 Section 7. Authorized Officers. Authorized Officers are hereby individually authorized
4 and directed to execute and deliver any and all papers, instruments, opinions, affidavits
5 and other documents and to do and cause to be done any and all acts and things
6 necessary or proper for carrying out this Ordinance, the First Amendment and all other
7 transactions contemplated hereby and thereby. Authorized Officers are hereby
8 individually authorized to do all acts and things required of them by this Ordinance and
9 the First Amendment for the full, punctual and complete performance of all the terms,
10 covenants and agreements contained in this Ordinance and the First Amendment,
11 including but not limited to, the publication of the summary of this Ordinance set out in
12 Section 13 below (with such changes, additions and deletions as they may determine).

13 Section 8. Amendment of Ordinance. Prior to the date of the initial delivery of the
14 First Amendment to the Lenders/Grantors, the provisions of this Ordinance may be
15 supplemented or amended by resolution of the Governing Body with respect to any
16 changes that are not inconsistent with the substantive provisions of this Ordinance. This
17 Ordinance may be amended without receipt by the Borrower/Grantee of any additional
18 consideration, but only with the prior written consent of the Lenders/Grantors.

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

23 Section 10. Severability Clause. If any section, paragraph, clause or provision of this
24 Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or
25 unenforceability of such section, paragraph, clause or provision shall not affect any of
26 the remaining provisions of this Ordinance.

27 Section 11. Repealer Clause. All other bylaws, orders, resolutions and ordinances, or
28 parts thereof, inconsistent herewith are hereby repealed to the extent only of such
29 inconsistency. This repealer shall not be construed to revive any bylaw, order,
30 resolution or ordinance, or part thereof, heretofore repealed.

1 Section 12. Effective Date. Upon due adoption of this Ordinance, it shall be recorded
2 in the book of the Borrower/Grantee kept for that purpose, authenticated by the
3 signatures of the Chair and Executive Director of the Borrower/Grantee, notice of its
4 adoption shall be published and this Ordinance shall be in full force and effect
5 thereafter, in accordance with law; provided, however, that if recording is not required
6 for the effectiveness of this Ordinance, this Ordinance shall be effective upon adoption
7 of this Ordinance by the Governing Body.

8 Section 13. General Summary for Publication. Pursuant to the rules of practice and
9 procedure of the Borrower/Grantee and the general laws of the State, the title and a
10 general summary of the subject matter contained in this Ordinance shall be published in
11 substantially the following form:

12

13 [Form of Summary of Ordinance for Publication]

14 ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

15 Notice of Adoption of Ordinance

16 Notice is hereby given of the title and of a general summary of the subject matter
17 contained in Ordinance No. O-15-1 duly adopted and approved by the Governing Body
18 of the Albuquerque Bernalillo County Water Utility Authority (the "Authority") on January
19 28, 2015. A complete copy of the Ordinance is available for public inspection during
20 normal and regular business hours in the office of the Executive Director of the
21 Authority, at the City/County Government Center, One Civic Plaza N.W., 5th and
22 Marquette, Albuquerque, New Mexico 87102.

23 The title of the Ordinance is:

24 ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY,

25 ORDINANCE NO. O-15-1

26 AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST
27 AMENDMENT TO A WATER PROJECT FUND LOAN/GRANT AGREEMENT ("FIRST
28 AMENDMENT") BY AND BETWEEN THE ALBUQUERQUE BERNALILLO COUNTY
29 WATER UTILITY AUTHORITY AS BORROWER/GRANTEE AND THE NEW
30 MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE
31 AUTHORITY AS LENDERS/GRANTORS; AMENDING THE WATER PROJECT

1 FUND LOAN/GRANT AGREEMENT TO EXTEND THE FUNDING PERIOD FOR
2 AN ADDITIONAL THREE MONTHS TO FEBRUARY 23, 2015; APPROVING THE
3 FORM AND TERMS OF AND OTHER DETAILS CONCERNING THE FIRST
4 AMENDMENT; AMENDING ORDINANCE NO. O-11-3 TO CONFORM TO THE
5 PROVISIONS OF THIS ORDINANCE; RATIFYING ACTIONS HERETOFORE
6 TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND
7 AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE
8 EXECUTION AND DELIVERY OF THE FIRST AMENDMENT.

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

10

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

12 PASSED, APPROVED AND ADOPTED THIS 28TH DAY OF JANUARY, 2015.

13

14 ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

15

16

17 By _____

18 _____, Chair

19 Board of Directors

20

21 ATTEST:

22

23

24 By _____

25 Mark S. Sanchez,

26 Executive Director

27

28 [End of Form of Summary for Publication]

29

30

31

1 Governing Body Member _____ then moved adoption of the
2 foregoing Ordinance, duly seconded by Governing Body Member
3 _____.

4
5 The motion to adopt the Ordinance, upon being put to a vote, was passed and adopted
6 on the following recorded vote:

7
8 Those Voting Aye:

9 Those Voting Nay:

10 Those Absent:

11
12 _____() Members of the Governing Body having voted in favor of the motion, the
13 Chair declared the motion carried and the Ordinance adopted, whereupon the Chair and
14 Executive Director signed the Ordinance upon the records of the minutes of the
15 Governing Body.

16
17 After consideration of matters not relating to the Ordinance, the meeting upon motion
18 duly made, seconded and carried, was adjourned.

19
20 ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

21
22
23 By _____
24 _____, Chair
25 Board of Directors

26 ATTEST:

27
28 By _____
29 Mark S. Sanchez,
30 Executive Director

31

1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)
4

5 I, Mark S. Sanchez, the duly qualified and acting Executive Director of the Albuquerque
6 Bernalillo County Water Utility Authority (the "Borrower/Grantee"), do hereby certify:

7 1. The foregoing pages are a true, perfect, and complete copy of the record of the
8 proceedings of the Board of Directors of the Borrower/Grantee (the "Governing Body"),
9 had and taken at a duly called regular meeting held at the Vincent E. Griego Chambers,
10 One Civic Plaza Government Center, Albuquerque, New Mexico, New Mexico, on
11 January 28, 2015 at the hour of 5:00 p.m., insofar as the same relate to the adoption of
12 Ordinance No. O-15-1 and the execution and delivery of the proposed First Amendment
13 to Loan/Grant Agreement, a copy of which is set forth in the official records of the
14 proceedings of the Governing Body kept in my office. None of the action taken has
15 been rescinded, repealed, or modified.

16 2. The proceedings were duly had and taken as therein shown, the meeting therein
17 was duly held, and the persons therein named were present at said meeting, as therein
18 shown.

19 3. Notice of the meeting was given in compliance with the permitted methods of
20 giving notice of regular meetings of the Governing Body as required by the State Open
21 Meetings Act, NMSA 1978, § 10-15-1 through 10-15-4, as amended, including the
22 Borrower/Grantee's open meetings standards presently in effect.

23
24 IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of February, 2015.

25
26 ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

27
28
29 By _____
30 Mark S. Sanchez,
31 Executive Director

FIRST AMENDMENT

to

\$1,600,000

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

Dated

November 23, 2011

By and between the

**NEW MEXICO WATER TRUST BOARD
and the
NEW MEXICO FINANCE AUTHORITY,
as Lenders/Grantors,**

and the

**ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY,
as Borrower/Grantee.**

Finance Authority Loan/Grant No. 206-WTB

Effective Date of Amendment:

February 9, 2015

FIRST AMENDMENT TO LOAN/GRANT AGREEMENT

THIS FIRST AMENDMENT TO LOAN/GRANT AGREEMENT (the “First Amendment”) dated February 9, 2015, is made and entered into by and between the **NEW MEXICO WATER TRUST BOARD** (the “Water Trust Board”) and **THE NEW MEXICO FINANCE AUTHORITY** (the “Finance Authority”) (collectively, the “Lenders/Grantors”), and the **ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY** (the “Borrower/Grantee”).

WITNESSETH:

WHEREAS, the Water Trust Board is a public body duly organized and created under and pursuant to the laws of the State of New Mexico (the “State”), particularly NMSA 1978, §§ 72-4A-1 through 72-4A-10, as amended; and

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State of New Mexico constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1 through 6-21-31, as amended; and

WHEREAS, the Borrower/Grantee, is a legally and regularly created, established, organized and existing water utility authority under the general laws of the State and more specifically, NMSA 1978, §72-1-10, as amended, as amended, and is a qualifying entity under the Act and is qualified for financial assistance as defined by the Board Rules; and

WHEREAS, on November 23, 2011, the Lenders/Grantors and the Borrower/Grantee entered into a Loan/Grant Agreement (the “Loan/Grant Agreement”) under which the Lenders/Grantors granted to the Borrower/Grantee and the Borrower/Grantee accepted from the Lenders/Grantors a grant in the amount of nine hundred sixty thousand dollars (\$960,000), and the Lenders/Grantors loaned to the Borrower/Grantee and the Borrower/Grantee borrowed from the Lenders/Grantors a loan in the amount of six hundred forty thousand dollars (\$640,000), (collectively, the “Loan/Grant Amount”), subject to the terms and conditions set forth in the Loan/Grant Agreement; and

WHEREAS, under the terms of the Loan/Grant Agreement, the Loan Amount and the Grant Amount were to be expended no later than November 23, 2014, that being the date that was three (3) years after the Closing Date of the Loan/Grant Agreement; and

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

WHEREAS, the Borrower/Grantee now anticipates that the Project can be completed and the Loan/Grant Amount can be expended by February 23, 2015; and

WHEREAS, the Borrower/Grantee has requested that the Lenders/Grantors authorize the time for completion of the Project and expenditure of the Loan/Grant Amount be extended by three months to February 23, 2015; and

WHEREAS, the Borrower/Grantee has determined that the effective date of this Amendment shall be February 9, 2015; and

WHEREAS, the Borrower/Grantee by all necessary and appropriate action of its officers and Governing Body has authorized the First Amendment of the Loan/Grant Agreement as provided herein and on January 28, 2015 has adopted Ordinance No. _____ approving the First Amendment; and

WHEREAS, at its duly called regular meeting on December 3, 2014, the WTB authorized the amendment of the Loan/Grant Agreement, as provided herein and at its duly called regular meeting on December 18, 2014, the Finance Authority consented to the amendment of the Loan/Grant Agreement, as provided herein.

NOW, THEREFORE, for and in consideration of the foregoing premises and their mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms in this First Amendment shall have the same meaning as those terms have in the Loan/Grant Agreement, unless a different meaning is expressly stated in this First Amendment or is clearly required by the Board Rules and context.

Section 2. Representations, Covenants and Warranties. The Borrower/Grantee represents, covenants and warrants that the representations, covenants and warranties contained in Section 2.1 of the Loan/Grant Agreement, and each of them, remain true and correct as of the date hereof. The Lenders/Grantors represent, covenant and warrant that the representations, covenants and warranties contained in Section 2.2 of the Loan/Grant Agreement, and each of them, remain true and correct as of the date hereof.

Section 3. Amendment of Loan/Grant Agreement. The parties agree that the Loan/Grant Agreement shall be, and upon execution of this First Amendment is, amended as follows:

(a) Section 7.5 of the Loan/Grant Agreement entitled “Completion of Disbursement of Loan/Grant Funds” is amended to read:

Section 7.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of disbursement of Loan/Grant funds, an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the NMFA and the Water Trust Board, substantially in the form of Exhibit “E” attached hereto, stating that, to his or her knowledge, the Project (or the applicable phase of the Project) has been completed and Loan/Grant funds have been disbursed in accordance with the terms of this Agreement.

(b) Section 7.6 of the Loan/Grant Agreement entitled “Application of Project Account Subsequent to Disbursement of Loan/Grant Funds” is amended to read:

Section 7.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds. Within six (6) months following the first to occur of either (a) completion of the disbursement of Loan/Grant funds as signified by delivery of the completion certificate contemplated in Section 7.5 hereof; or (b) February 23, 2015, the NMFA shall transfer any amounts remaining on deposit in the Project Account to the severance tax bonding fund in accordance with Section 7-27-10.1(C), NMSA 1978, or to such other fund permitted by law as may be established by the Water Trust Board, the Finance Authority or an agency of the State having authority to establish such fund.

Section 4. Effective Date of Amendment. The effective date of this Amendment is February 9, 2015.

Section 5. Loan/Grant Agreement Remains Effective and Binding. Except as specifically amended herein, the Loan/Grant Agreement and all provisions thereof shall remain fully effective, and the Loan/Grant Agreement as amended by this First Amendment shall be binding upon the parties hereto and their respective successors and assigns, if any.

Section 6. Severability. In the event that any provision of this First Amendment or any provision of the Loan/Grant Agreement as hereby amended should be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or of the Loan/Grant Agreement as amended.

Section 7. Execution in Counterparts. This First Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8. Applicable Law. This First Amendment shall be governed by and construed in accordance with the laws of the State.

Section 9. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this First Amendment.

[Remainder of page intentionally left blank.]

[Signature pages follow]

IN WITNESS WHEREOF, the Water Trust Board, on behalf of itself, has executed this First Amendment, which was approved by the Water Trust Board on December 3, 2014, and the Finance Authority, on behalf of itself, has consented to this First Amendment on December 18, 2014 each in their respective corporate names with their corporate seals affixed hereto and attested by their duly authorized officers; and the Borrower/Grantee has caused this Amendment to be executed and attested by duly authorized officers thereof. All of the above are effective as of the date first above written.

LENDERS/GRANTORS:

NEW MEXICO FINANCE AUTHORITY

By _____
Chief Executive Officer or Designee

ATTEST:

By _____

NEW MEXICO WATER TRUST BOARD

By _____
Chairman or Co-Chairman

ATTEST:

By _____

Prepared for Execution by Officers of the
New Mexico Finance Authority and the
New Mexico Water Trust Board:

VIRTUE & NAJJAR, PC
As Loan/Grant Counsel

By _____
Richard L.C. Virtue

Approved for Execution by Officers of the
New Mexico Finance Authority and the
New Mexico Water Trust Board:

By _____
Daniel C. Opperman
Finance Authority General Counsel

BORROWER/GRANTEE:

ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY

By _____
_____ [TBD], Chair

ATTEST:

By _____
Mark S. Sanchez, Executive Director

5. There is no reason within our knowledge why the Borrower/Grantee may not enter into the First Amendment to the Loan/Grant Agreement (the "First Amendment") with the New Mexico Finance Authority (the "Finance Authority") and the New Mexico Water Trust Board (the "Water Trust Board"), as authorized by the Ordinance.

6. The Borrower/Grantee has duly authorized the execution, delivery and performance of its obligations under the First Amendment. The First Amendment has been duly authorized, executed and delivered by the Borrower/Grantee.

7. The Ordinance has been duly signed and adopted in accordance with all applicable laws and has not been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Ordinance. The Ordinance constitutes valid and sufficient legal authority for the Borrower/Grantee to carry out and enforce the provisions of the First Amendment. No referendum petition has been filed with respect to the Ordinance under the provisions of the laws, bylaws or regulations of the Borrower/Grantee or the State.

8. No event will result from the execution and delivery of the First Amendment that constitutes a default or an event of default under the First Amendment or the Ordinance, and no event of default and no default under the First Amendment or the Ordinance have occurred and are continuing on the date of this Certificate.

9. The Borrower/Grantee has duly authorized and approved the consummation by it of all transactions and has complied with all requirements and satisfied all conditions, which are required by the First Amendment to have been authorized, approved, performed or consummated by the Borrower/Grantee at or prior to the date of this Certificate. The Borrower/Grantee has full legal right, power and authority to carry out and consummate the transactions contemplated by the Ordinance and the First Amendment.

10. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the financing of the Project, the enforceability of the First Amendment or any of the actions required to be taken by the Ordinance or the First Amendment on or prior to the date of this Certificate have been obtained and are in full force and effect.

11. To the best of the Borrower/Grantee's knowledge after due investigation, neither the Borrower/Grantee's adoption of the Ordinance nor any action contemplated by or pursuant to the Ordinance or the First Amendment does or will conflict with, or constitute a breach by the Borrower/Grantee of, or default by the Borrower/Grantee under, any law, court decree or order, governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Borrower/Grantee is subject or by which it is bound.

12. No material adverse change has occurred, nor has any development occurred involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects, properties of the Borrower/Grantee or the Pledged Revenues since the date of the Ordinance.

13. To the best of our knowledge and belief, none of the events of default referred to in Article X of the Loan/Grant Agreement has occurred.

14. Subsequent to the adoption of the Ordinance, the Borrower/Grantee has not pledged or otherwise encumbered the Pledged Revenues.

15. The Loan/Grant Agreement permits the Borrower/Grantee to issue additional bonds or other obligations with a lien on the Pledged Revenues, superior to, on parity with or subordinate to the lien of the Loan/Grant Agreement on the Pledged Revenues.

16. There is no threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to our knowledge is there any basis therefore, affecting the existence of the Borrower/Grantee or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of Pledged Revenues to pay the principal, interest, and Administrative Fee on the First Amendment, or in any way materially adversely affecting or questioning (a) the use of the proceeds of the First Amendment for the Project and to pay Expenses of the Finance Authority, (b) the enforceability of the First Amendment or any proceedings of the Borrower/Grantee taken with respect to the First Amendment or the Ordinance, (c) the execution and delivery of the First Amendment, or (d) the power of the Borrower/Grantee to carry out the transactions contemplated by the First Amendment or the Ordinance.

17. The Borrower/Grantee has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof, and the representations and warranties of the Borrower/Grantee contained in the First Amendment and the Ordinance are true and correct as of the date hereof.

18. The Borrower/Grantee is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest except that no representation is made with respect to industrial revenue bonds or conduit bonds payable solely from installment sale or lease payments, loan repayments or other amounts received by the Borrower/Grantee from private entities.

19. To the best of our knowledge and belief after due investigation, neither the Chair, the Executive Director, any member of the Governing Body, nor any other officer, employee or other agent of the Borrower/Grantee is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

20. Regular meetings of the Governing Body have been held at the Vincent E. Griego Chambers in the One Civic Plaza Government Center, Albuquerque, New Mexico, the principal meeting place of the Governing Body.

21. The Governing Body has no rules of procedure which would invalidate or make ineffective the Ordinance or other action taken by the Governing Body in connection with the First Amendment. The Open Meetings Act Resolutions adopted and approved on January 29, 2014 and January 28, 2015 by the Governing Body establish notice standards. The Open Meetings Act Resolutions have not been amended or repealed and were in full force and effect on the date of adoption of the Ordinance. All action of the Governing Body with respect to the First Amendment and the Ordinance was taken at meetings held in compliance with the Open Meetings Act Resolutions.

22. The Chair and Executive Director, on the date of the signing of the First Amendment, and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Borrower/Grantee authorized to execute such agreements.

23. Nothing has occurred that would adversely affect the Final Opinion of Counsel signed by Charles W. Kolberg, as attorney for the Borrower/Grantee on November 23, 2011. The November 23, 2011, Final Opinion of Counsel remains in full force and effect.

24. Nothing has occurred that would adversely affect the Right of Way Certificate signed by Charles W. Kolberg as attorney for the Borrower/Grantee on November 23, 2011. The November 23, 2011, Right of Way Certificate remains in full force and effect.

25. This Certificate is for the benefit of the Finance Authority and the Water Trust Board.

26. This Certificate may be executed in counterparts.

[Remainder of page left intentionally blank.]

[Signature page follows.]

WITNESS our signatures and the seal of the Borrower/Grantee this 9th day of February, 2015.

ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY

(SEAL)

By _____
_____, Chair

By _____
Mark S. Sanchez, Executive Director

Paragraphs 7,9,16, 23 & 24 are approved and confirmed.

By _____
Charles W. Kolberg, Esq.
Attorney for Borrower/Grantee