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Meeting Date: December 7, 2022  
Staff Contact: Stan Allred, Chief Financial Officer

**TITLE: R-22-32 – Authorizing the Execution and Delivery of a Water Project Fund Loan/Grant Agreement by and Between the New Mexico Finance Authority (“Finance Authority”) and the Albuquerque Bernalillo County Water Utility Authority (The “Water Authority”), in the Amount of \$7,100,000 (\$6,390,000 Grant Amount/\$710,000 Loan Amount), Evidencing a Special Limited Obligation of the Water Authority to Utilize the Loan/Grant Amount Solely for the Purpose of Financing the Costs of the Water Authority’s Volcano Cliffs Arsenic Treatment Facility and Pump Station Upgrade Project in the Manner Described in the Loan/Grant Agreement; Providing for the Pledge and Payment of the Loan Amount and An Administrative Fee Solely for Net Revenues; Certifying that the Loan/Grant Amount, Together With Other Funds Available to the Water Authority, is Sufficient to Complete the Project; Approving the Form of and Other Details Concerning the Loan/Grant Agreement; Ratifying Actions Heretofore Taken; Repealing All Action Inconsistent with this Resolution; and Authorizing the Taking of Other Actions in Connection with the Execution and Delivery of the Loan/Grant Agreement**

**ACTION: Recommend Approval**

**BACKGROUND:**

Installation of the Volcano Cliffs Arsenic Treatment Facility (arsenic treatment plant) will enhance utilization of a combination of renewable supplies, providing treatment of impaired groundwater (consistent with Policies B2, F1 and F5 of Water 2120) by putting five existing high arsenic wells back into service that are currently not available for use in drinking water production. This arsenic treatment plant will increase resiliency of the drinking water system during times of drought, supplementing supplies while reducing carbon footprint by minimizing transmission of groundwater from the east to the west side of the service area (consistent with Water 2120 Policy K2).

Pump station improvements will expand the ability to move treated San Juan Chama surface water into the Corrales Trunk, reducing demand on groundwater when surface water is available (consistent with Water 2120 Policy B).

**SUMMARY:**

This resolution authorizes a loan/grant agreement in the amount of \$7,100,000 (\$710,000 Loan/\$6,390,000 Grant) between the New Mexico Water Trust Board and

New Mexico Finance Authority (NMFA) and the Water Authority for the purpose of financing the costs of the Volcano Cliffs Arsenic Treatment Facility & Pump Station Upgrades Project, which will construct an arsenic treatment plant that will be capable of treating an average flow rate of 12 million gallon per day (MGD) and improving pumping capacity at Volcano Cliffs Reservoirs and Pump Station. The loan amount is \$710,000 and the grant amount is \$6,390,000. The resolution was prepared by McCall, Parkhurst & Horton L.L.P. who is serving as the Water Authority's Counsel for this borrowing. The financing will be completed by January 2023.

The application for funding was approved by the Water Authority Board.

**FISCAL IMPACT:**

The Water Authority will provide a match of \$10,500,000, which would come from appropriated ARPA Funding for this project. Repayment of the loan in the amount of \$710,000 will need to be paid. A subordinate lien of the Net Revenues of the System are pledged as security for this loan.

**COMMENTS:**

This Resolution gives the Executive Director authorization to enter into the loan agreement with the New Mexico Water Trust Board and the NMFA to construct an arsenic treatment plant that will be capable of treating an average flow rate of 12 million gallon per day (MGD) and improving pumping capacity at Volcano Cliffs Reservoirs and Pump Station.



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1 and approved by the Water Trust Board pursuant to the Board Rules and the applicable  
2 policies and the Act; and

3 WHEREAS, pursuant to the Board Rules the Water Trust Board has recommended  
4 the Project for funding as a qualifying project to the legislature of the State; and

5 WHEREAS, the Water Authority owns, operates and maintains the System as a  
6 joint public utility water and sanitary sewer system; and

7 WHEREAS, the Water Authority is obligated on the outstanding Senior Obligations  
8 set forth in Exhibit A, payable from Net Revenues with a senior first lien on the Net  
9 Revenues; and

10 WHEREAS, the Water Authority is obligated on the outstanding Subordinate  
11 Obligations set forth in Exhibit A, payable from Net Revenues with a lien on the Net  
12 Revenues subordinate to the Senior Obligations, and superior to the lien of the Super  
13 Subordinated Obligations; and

14 WHEREAS, the Water Authority currently has no Super Subordinated Obligations  
15 outstanding payable from Net Revenues with a lien on the Net Revenues subordinate to  
16 the Senior Obligations and Subordinate Obligations; and

17 WHEREAS, except as stated in these preambles, the Net Revenues have not been  
18 pledged or hypothecated to the payment of any Outstanding obligations and no other  
19 obligations are payable from the Net Revenues on the date of this Resolution; and

20 WHEREAS, there are no obligations which have a lien on the Net Revenues  
21 superior to the lien thereon of the Senior Obligations; and

22 WHEREAS, legislature of the State, authorized the funding of the Project from the  
23 Water Project Fund; and

24 WHEREAS, the Water Trust Board has recommended that the Finance Authority  
25 enter into and administer the Loan/Grant Agreement in order to finance the Project; and

26 WHEREAS, the Finance Authority approved the Water Authority's qualification and  
27 ability to receive financial assistance in the form of the Loan/Grant; and

28 WHEREAS, the Governing Body has determined and hereby determines that the  
29 Project may be financed with amounts granted and loaned pursuant to the  
30 Loan/Grant Agreement, that the Loan/Grant Amount, together with the Additional  
31 Funding Amount and other moneys available to the Water Authority, is sufficient to  
32 complete the Project, and that it is in the best interest of the Water Authority and the  
33 constituent public it serves that the Loan/Grant Agreement be executed and

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1 delivered and that the funding of the Project take place by executing and delivering  
2 the Loan/Grant Agreement; and

3 WHEREAS, the Governing Body has determined that it may lawfully enter into the  
4 Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations  
5 and by the restrictions thereunder; and

6 WHEREAS, the Governing Body has determined that it may lawfully pledge the  
7 Net Revenues for repayment of the Loan/Grant Agreement; and

8 WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of  
9 the Water Authority, the Water Trust Board or the Finance Authority or a debt or pledge  
10 of the full faith and credit of the Water Authority, the Water Trust Board, the Finance  
11 Authority or the State; and

12 WHEREAS, there have been presented to the Governing Body and there presently  
13 are on file with the Water Authority this Resolution and the form of the Loan/Grant  
14 Agreement which is incorporated by reference and considered to be a part hereof; and

15 WHEREAS, the Governing Body hereby determines that the Additional Funding  
16 Amount is now available to the Water Authority to complete the Project; and

17 WHEREAS, the Water Authority has met or will meet prior to the first disbursement  
18 of any portion of the Loan/Grant Amount, the Conditions and readiness to proceed  
19 requirements established for the portion of the Loan/Grant Amount disbursed or  
20 caused to be disbursed by the Finance Authority, including but not limited to the  
21 requirements of Executive Order 2013-006; and

22 WHEREAS, all required authorizations, consents and approvals in connection with  
23 (i) the use of the Loan/Grant Amount for the purposes described, and according to  
24 the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other  
25 moneys necessary and sufficient, including the Additional Funding Amount and  
26 together with the Loan/Grant Amount, to complete the Project; and (iii) the  
27 authorization, execution and delivery of the Loan/Grant Agreement which are  
28 required to have been obtained by the date of this Resolution, have been obtained  
29 or are reasonably expected to be obtained.

30 NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF WATER  
31 AUTHORITY:

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1 Section 1. Definitions. As used in this Resolution, the following terms shall, for  
2 all purposes, have the meanings herein specified, unless the context clearly requires  
3 otherwise (such meanings to be equally applicable to both the singular and the plural  
4 forms of the terms defined); and, any term not defined herein shall have the definition  
5 given it by the Loan/Grant Agreement:

6 “Act” means the general laws of the State, particularly the Water Project  
7 Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended, and  
8 enactments of the Governing Body relating to the Loan/Grant Agreement, including  
9 this Resolution, all as amended and supplemented.

10 “Additional Funding Amount” means the amount to be provided by the Water  
11 Authority which includes the total value of hard or of the soft match, which, in  
12 combination with the Loan/Grant Amount and other amounts available to the Water  
13 Authority, is sufficient to complete the Project. The Additional Funding Amount is  
14 \$10,500,000.

15 “Administrative Fee” means an amount equal to one-quarter of one percent  
16 (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into  
17 account both payments made by the Water Authority and hardship waivers of payments  
18 granted to the Water Authority pursuant to Section 5.1(a)(iii) of the Loan/Grant  
19 Agreement.

20 “Authorized Officers” The Chair, the Executive Director of the Water Authority, the  
21 Chief Financial Officer or other officer or employee of the Water Authority when  
22 designated by a certificate signed by the Chair from time to time.

23 “Board Rules” means Review and Eligibility of Proposed Water Projects, New  
24 Mexico Water Trust Board, 19.25.10 NMAC.

25 “City” means the City of Albuquerque, New Mexico.

26 “County” means Bernalillo County, New Mexico.

27 “Completion Date” means the date of final payment of the cost of the Project.

28 “Conditions” has the meaning given to that term in the Loan/Grant Agreement.

29 “Closing Date” means the date of execution and delivery of the Loan/Grant  
30 Agreement, by the Water Authority and the Finance Authority.

31 “Credit Facility” means a letter of credit, line of credit, bond insurance policy or  
32 reserve account surety bond, guaranty or similar agreement provided by a Credit Source

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1 to provide support to pay the purchase price of, or the payment when due of the principal  
2 of and interest on, System Obligations.

3 “Credit Source” means any bank, insurance company or other financial institution  
4 which provides a Credit Facility for a series of System Obligations.

5 “Debt Service Account” means the debt service account established in the name  
6 of the Water Authority and administered by the Finance Authority to pay principal and  
7 interest on the Loan/Grant Agreement as the same become due.

8 “Debt Service Fund” means Debt Service Fund previously established by the  
9 Water Authority and continued in Section 13 of this Resolution.

10 “Debt Service Requirements” means with respect to System Obligations and for  
11 any given period, the sum of: (1) the amount required to pay the interest, or to make  
12 reimbursements for payments of interest, becoming due on System Obligations during  
13 that period, plus (2) the amount required to pay the principal or to make reimbursements  
14 for the payment of principal becoming due on System Obligations during that period,  
15 whether at maturity or upon mandatory sinking fund redemption dates, plus (3) the  
16 periodic payments required to be made by the Water Authority pursuant to a Qualified  
17 Exchange Agreement minus (4) the periodic payments to be received by the Water  
18 Authority pursuant to a Qualified Exchange Agreement. No payments required for any  
19 System Obligations which may be tendered or otherwise presented for payment at the  
20 option or demand of the owners of System Obligations, or which may occur because of  
21 the exercise of an option by the Water Authority, or which may otherwise become due by  
22 reason of any other circumstance or contingency, including acceleration or early  
23 termination payments, which constitute other than regularly scheduled payments of  
24 principal, interest or other regularly scheduled payments on System Obligations shall be  
25 included in any computation of Debt Service Requirements for that period.

26 Unless, at the time of computation of Debt Service Requirements, payments on  
27 System Obligations are owed to, or System Obligations are owned or held by, the provider  
28 of a Credit Facility pursuant to the provisions of that Credit Facility, the computation of  
29 interest for the purposes of this definition shall be made without considering the interest  
30 rate payable pursuant to a Credit Facility.

31 In any computation of Debt Service Requirements relating to the issuance of  
32 additional System Obligations, there shall be excluded from the computation of the Debt  
33 Service Requirements amounts and investments which are irrevocably committed to

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1 make designated payments on System Obligations during the applicable period,  
2 including, without limitation, money on deposit in any Debt Service Account and amounts  
3 on deposit in an escrow account irrevocably committed to make designated payments on  
4 System Obligations during the applicable period and earnings on such investments which  
5 are payable and committed to the payment of such System Obligations during the  
6 applicable period.

7 Unless otherwise required by a Water Authority ordinance or resolution relating to  
8 a series of System Obligations, to determine Debt Service Requirements of Variable Rate  
9 Obligations, the Water Authority shall use the procedures set forth in the following  
10 paragraphs to determine the amount of interest or other payments to be paid by the Water  
11 Authority on Variable Rate Obligations.

12 (1) During any historical period for which the actual variable interest rate or  
13 rates are determinable, the actual variable interest rate shall be used. During any  
14 historical period when the actual variable interest rate is not determinable, the variable  
15 interest rate shall, for the purpose of determining Debt Service Requirements, be deemed  
16 to be the higher of:

- 17 (a) the actual variable interest rate, if any, at the time of computation; or
- 18 (b) a fixed annual rate equal to the prevailing rate on the Variable Rate  
19 Obligations on the date of computation (which, for the purpose of determining the  
20 Debt Service Requirements, shall be a date which is no more than 60 days prior  
21 to the date of issuance of the applicable System Obligations) as certified by the  
22 Water Authority's financial advisor, the underwriters of the System Obligations, an  
23 investment banker designated by the Water Authority from time to time or a  
24 counterparty with respect to a Qualified Exchange Agreement.

25 (2) Prospective computations of interest payable on Variable Rate Obligations,  
26 including those relating to the issuance of additional System Obligations or required by  
27 the Rate Covenant, shall be made on the assumption that such obligations bear interest  
28 at a fixed annual rate equal to:

- 29 (a) the average of the daily rates of such System Obligations during the  
30 365 consecutive days (or any lesser period such System Obligations have been  
31 Outstanding) next preceding a date which is no more than 60 days prior to the date  
32 of the issuance of the additional System Obligations; or

1 (b) with respect to System Obligations initially issued or incurred as or  
2 being converted to Variable Rate Obligations, the estimated initial rate of interest  
3 of such System Obligations upon the date of issuance, exchange or conversion as  
4 certified by the Water Authority’s financial advisor, another investment banker, as  
5 designated by the Water Authority from time to time, or a counterparty with respect  
6 to a Qualified Exchange Agreement.

7 “Eligible Fiscal Agent Fees” has the meaning given to that term in the  
8 Loan/Grant Agreement.

9 “Eligible Items” means eligible Project costs for which grants and loans may be  
10 made pursuant to NMSA 1978, § 72-4A-7(C), as amended, of the Act, the Board Rules  
11 and applicable policies, and includes, without limitation, Eligible Legal Costs and Eligible  
12 Fiscal Agent Fees.

13 “Eligible Legal Costs” has the meaning given to that term in the Loan/Grant  
14 Agreement.

15 “Expense Account” means the account within the Debt Service Fund which shall  
16 be continued and used for purposes of paying Expenses.

17 “Expenses” means the reasonable and necessary fees, costs and expenses  
18 incurred by the Water Authority and the Finance Authority with respect to the execution  
19 and delivery of the Loan/Grant Agreement, including, without limitation, attorneys’ fees  
20 and costs, financial advisor’s fees and costs, costs of advertising and publication, and all  
21 reasonable and necessary fees and administrative costs of the Water Authority and  
22 Finance Authority relating to the foregoing.

23 “Finance Authority” means the New Mexico Finance Authority.

24 “Generally Accepted Accounting Principles” means the officially established  
25 accounting principles applicable to the Water Authority consisting of the statements,  
26 determinations and other official pronouncements of the Government Accounting  
27 Standards Board, Financial Accounting Standards Board, Federal Accounting Standards  
28 Board or other principle-setting body acceptable to the Finance Authority establishing  
29 accounting principles applicable to the Water Authority.

30 “Governing Body” means the duly organized board of the Water Authority, or  
31 any future successor governing body of the Water Authority.

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1           “Grant” or “Grant Amount” means the amount provided to the Water Authority  
2           as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the  
3           Project, and shall not equal more than \$6,390,000.

4           “Gross Revenues” means all income and revenues directly or indirectly derived by  
5           the Water Authority from the operation and use of the System, or any part of the System,  
6           and includes, without limitation, all revenues received by the Water Authority, or any  
7           municipal corporation or agency succeeding to the rights of the Water Authority, from the  
8           System and from the sale and use of water, water services or facilities, sewer service or  
9           facilities or any other service, commodity or facility or any combination thereof furnished  
10          to the inhabitants of the geographic area served by the Water Authority by means of the  
11          System as the same may at any time exist to serve customers outside the Water  
12          Authority’s geographical limits as well as customers within the Water Authority’s  
13          geographical limits. Such term also includes:

14           (1)     All income derived from the investment of any money in the Joint Water and  
15           Sewer Fund, Debt Service Account, Project Account and Rate Stabilization Fund and  
16           income derived from surplus Net Revenues;

17           (2)     Money released from a rebate fund to the Water Authority;

18           (3)     Money released from the Rate Stabilization Fund to the Water Authority to  
19           the extent that the amount released is used to pay Operation and Maintenance Expenses  
20           or Debt Service Requirements on System Obligations in the year released; provided that  
21           withdrawals from the Rate Stabilization Fund shall not be included in Gross Revenues for  
22           the purposes of the Rate Covenant in any two consecutive calendar years;

23           (4)     Property insurance proceeds which are not necessary to restore or replace  
24           the property lost or damaged and the proceeds of the sale or other disposition of any part  
25           of the System; and

26           (5)     Funds received from users of the System as a reimbursement of, or  
27           otherwise in connection with, franchise fees to be paid by the Water Authority.

28           Gross Revenues do not include:

29           (1)     any money received as grants or gifts from the United States of America,  
30           the State or other sources, or the proceeds of any charge or tax intended as a  
31           replacement therefor or other capital contributions from any source which are restricted  
32           as to use; and

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1 (2) condemnation proceeds or the proceeds of any insurance policy, except  
2 any property insurance proceeds described above in clause (4) of this definition or derived  
3 in respect of loss of use or business interruption.

4 "Joint Water and Sewer Fund" means the "City of Albuquerque, New Mexico,  
5 Joint Water and Sewer Fund" originally established in Section 16 of City Ordinance  
6 No. 18-1984 and continued in Section 13 of this Resolution as the "Albuquerque  
7 Bernalillo County Water Utility Authority Joint Water and Sewer Fund."

8 "Loan" or "Loan Amount" means the amount provided to the Water Authority  
9 as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the  
10 Project, in the maximum amount of \$710,000.

11 "Loan/Grant" or "Loan/Grant Amount" means the combined amount partially  
12 provided to the Water Authority as the Grant Amount and partially borrowed by the  
13 Water Authority as the Loan Amount pursuant to the Loan/Grant Agreement for the  
14 purpose of funding the Project, in the maximum aggregate amount of \$7,100,000.

15 "Loan/Grant Agreement" means the Water Project Fund Loan/Grant Agreement  
16 entered into by and between the Water Authority and the Finance Authority as authorized  
17 by this Resolution.

18 "Net Revenues" means the Gross Revenues after deducting Operation and  
19 Maintenance Expenses.

20 "NMAC" means the New Mexico Administrative Code.

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

23 "Operation and Maintenance Expenses" means all reasonable and necessary  
24 current expenses of the System, paid or accrued, related to operating, maintaining and  
25 repairing the System including, without limiting the generality of the foregoing:

26 (1) legal and overhead expenses directly related and reasonably allocable to  
27 the administration of the System;

28 (2) insurance premiums for the System, including, without limitation, premiums  
29 for property insurance, public liability insurance and workmen's compensation insurance,  
30 whether or not self-funded;

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1 (3) premiums, expenses and other costs (other than required reimbursements  
2 of insurance proceeds and other amounts advanced to pay Debt Service Requirements  
3 on System Obligations) for Credit Facilities;

4 (4) Expenses other than expenses paid from the proceeds of System  
5 Obligations;

6 (5) the costs of audits of the books and accounts of the Water Authority and the  
7 System;

8 (6) amounts required to be deposited in a rebate fund or otherwise required to  
9 make rebate payments to the United States Government;

10 (7) salaries, administrative expenses, labor costs, surety bonds and the cost  
11 of materials and supplies used for or in connection with the current operation of the  
12 System; and

13 (8) franchise tax payments to the City, County or any other local government.

14 Operation and Maintenance Expenses do not include any allowance for  
15 depreciation, payments in lieu of taxes, liabilities incurred by the Water Authority as a  
16 result of its negligence or other misconduct in the operation of the System or any charges  
17 or costs allocable to capital improvements or replacements. Operation and Maintenance  
18 Expenses do not include any payment of or reimbursement for the payment of Debt  
19 Service Requirements on the Loan/Grant Agreement.

20 "Outstanding" means when used in reference to System Obligations, on any  
21 particular date, the aggregate of all System Obligations issued and delivered under  
22 the applicable Water Authority ordinance or resolution authorizing the issuance of  
23 System Obligations except:

24 (1) those canceled at or prior to such date or delivered to or acquired by the  
25 Water Authority at or prior to such date for cancellation;

26 (2) those which have been paid or are deemed to be paid in accordance with  
27 the Water Authority ordinance or resolution authorizing the issuance of the  
28 applicable System Obligations or otherwise relating thereto, provided that the  
29 payment of insured Obligations with the proceeds of a bond insurance policy shall  
30 not result in those insured obligations ceasing to be Outstanding;

31 (3) in the case of Variable Rate Obligations, System Obligations deemed  
32 tendered but not yet presented for payment;

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1 (4) any System Obligation which has been refunded in accordance with this  
2 Resolution or other ordinances or resolutions of the Water Authority authorizing the  
3 defeasance of such designated System Obligations; and

4 (5) those in lieu of or in exchange or substitution for which other System  
5 Obligations shall have been delivered, unless proof satisfactory to the Water  
6 Authority and the paying agent for the applicable System Obligations is presented  
7 that any System Obligation for which a new System Obligation was issued or  
8 exchanged is held by a bona fide holder in due course.

9 “Project” means the Volcano Cliffs Arsenic Treatment Facility and pump station  
10 upgrade project as may be more fully described in the Term Sheet.

11 “Project Account” means the book account established by the Finance Authority in  
12 the name of the Water Authority for purposes of tracking expenditure of the  
13 Loan/Grant Amount by the Water Authority to pay for the costs of the Project, as  
14 shown in the Term Sheet, which account shall be kept separate and apart from all  
15 other accounts of the Finance Authority.

16 “Qualified Exchange Agreement” means any interest rate exchange between  
17 the Water Authority and a counterparty which, when entered into by the Water  
18 Authority, satisfies the requirements of Section 6-18-8.1 NMSA 1978.

19 “Qualifying Water Project” means a water project for (i) storage, conveyance  
20 or delivery of water to end-users; (ii) implementation of the federal Endangered  
21 Species Act of 1973 collaborative programs; (iii) restoration and management of  
22 watersheds; (iv) flood prevention or (v) water conservation or recycling, treatment or  
23 reuse of water as provided by law; and which has been approved by the state  
24 legislature pursuant to NMSA 1978, § 72-4A-9(B), as amended.

25 “Rate Covenant” means the covenants in the Loan/Grant Agreement relating  
26 to charging rates for use of the System to pay Debt Service Requirements.

27 “Rate Stabilization Fund” means the Rate Stabilization Fund for System  
28 Obligations previously established by the Water Authority and continued in Section  
29 13 of this Resolution.

30 “Resolution” means this Resolution as it may be supplemented or amended  
31 from time to time.

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1 “Senior Obligations” means the outstanding “Senior Obligations” set forth in Exhibit  
2 A and obligations related thereto designated as Senior Obligations, in any ordinance or  
3 resolution of the Water Authority relating to those bonds, and any other System  
4 Obligations issued with a lien on the Net Revenues on a parity with the lien of the  
5 Outstanding Senior Obligations on Net Revenues.

6 “State” means the State of New Mexico.

7 “Subordinate Obligations” means the “Subordinate Obligations” set forth in Exhibit  
8 A, and all other bonds and other obligations of the Water Authority now or hereafter issued  
9 with a lien on the Net Revenues subordinate to the lien of Senior Obligations and superior  
10 to the lien of the Super Subordinated Obligations on the Net Revenues.

11 “Super Subordinated Obligations” means all bonds and other obligations of the  
12 Water Authority now or hereafter issued with a lien on the Net Revenues subordinate to  
13 the liens of the Senior Obligations and the Subordinate Obligations on the Net Revenues  
14 and as may be further set forth in Exhibit A.

15 “System” means the public utility owned by the Water Authority and designated as  
16 the Water Authority’s water system and sanitary sewer system (continued as a joint utility  
17 system in Section 4 of this Resolution) consisting of all properties, real, personal, mixed  
18 or otherwise, now owned or hereafter acquired by the Water Authority, through purchase,  
19 construction or otherwise, including all extensions, enlargements and improvements of or  
20 to the water and sanitary sewer system and used in connection therewith or relating  
21 thereto, and any other related activity or enterprise of the Water Authority designated by  
22 the Governing Body as part of the water and sanitary sewer system, whether situated  
23 within or without the geographical limits of the Water Authority.

24 “System Obligations” means all bonds and other similar indebtedness payable  
25 solely or primarily from Net Revenues, including, without limitation, the Senior  
26 Obligations, the Subordinate Obligations and the Super Subordinated Obligations.

27 “Term Sheet” means Exhibit “A” attached to the Loan/Grant Agreement.

28 “Variable Rate Obligations” means System Obligations, including reimbursement  
29 obligations pursuant to a Credit Facility, the interest rate on which is subject to change  
30 from time to time.

31 “Useful Life” means the structural and material design life of the Project, including  
32 planning and design features, which shall not be less than twenty (20) years as required  
33 by the Act and the Board Rules.

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1 “Water Authority” means the Albuquerque Bernalillo County Water Utility created  
2 by Section 72-1-10 NMSA 1978 as a joint agency of the City of Albuquerque, New Mexico  
3 and the County of Bernalillo, New Mexico and operating under the name Albuquerque  
4 Bernalillo County Water Utility Authority.

5 “Water Project Fund” means the fund of the same name created pursuant to  
6 the Act and held and administered by the Finance Authority.

7 “Water Trust Board” or “WTB” means the water trust board created and  
8 established pursuant to the Act.

9 Section 2. Rules of Construction. For purposes of this Resolution, unless  
10 otherwise expressly provided or unless the context requires otherwise:

11 A. Unless otherwise stated in this Resolution, all references in this Resolution  
12 to designated Sections and other subdivisions are to the designated Section and  
13 other subdivisions of this Resolution.

14 B. The words “herein”, “hereby”, “hereof”, “hereunder”, “hereinabove”,  
15 “hereafter” and “herewith” and other words of similar import in this Resolution refer to  
16 this entire Resolution and not solely to any particular section or paragraph of this  
17 Resolution in which such word is used.

18 C. All accounting terms not otherwise defined in this Resolution have the  
19 meanings assigned to them in accordance with Generally Accepted Accounting  
20 Principles.

21 D. Words of the masculine gender shall be deemed and construed to include  
22 correlative words of the feminine and neuter genders, and vice versa.

23 E. The headings used in this Resolution are for convenience of reference  
24 only and shall not define or limit the provisions of this Resolution.

25 F. Terms in the singular include the plural and vice versa.

26 Section 3. Ratification. All action heretofore taken (not inconsistent with the  
27 provisions of this Resolution) by the Water Authority and officers of the Water Authority  
28 directed toward the acquisition and completion of the Project, the pledge of the Net  
29 Revenues to payment of amounts due under the Loan/Grant Agreement, and the

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1 execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is,  
2 ratified, approved and confirmed.

3 Section 4. Authorization of the Project and the Loan/Grant Agreement. The  
4 acquisition and completion of the Project and the method of funding the Project through  
5 execution and delivery of the Loan/Grant Agreement and the other documents related to  
6 the transaction are hereby authorized and ordered. The Project is for the benefit and use  
7 of the Water Authority and the public whom it serves.

8 Section 5. Findings. The Governing Body hereby declares that it has  
9 considered all relevant information and data and hereby makes the following findings:

10 A. The Project is needed to meet the needs of the Water Authority and the public  
11 whom it serves.

12 B. Moneys available and on hand for the Project from all sources other than the  
13 Loan/Grant are not sufficient to defray the cost of acquiring and completing the  
14 Project but, together with the Loan/Grant Amount, are sufficient to complete the  
15 Project.

16 C. The Project and the execution and delivery of the Loan/Grant  
17 Agreement pursuant to the Act to provide funds for the financing of the Project are  
18 necessary, convenient and in furtherance of the governmental purposes of the Water  
19 Authority, and in the interest of the public health, safety, and welfare of the constituent  
20 public served by the Water Authority.

21 D. The Water Authority will acquire and complete the Project with the  
22 proceeds of the Loan/Grant, the Additional Funding Amount and other amounts available  
23 to the Water Authority, and except as otherwise expressly provided by the Loan/Grant  
24 Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life,  
25 which is not less than twenty (20) years, as required by NMSA 1978, §72-4A-7(A)(1), as  
26 amended.

27 E. Together with the Loan/Grant Amount, and other amounts available  
28 to the Water Authority, the Additional Funding Amount is now available to the Water  
29 Authority, and in combination with the Loan/Grant Amount, will be sufficient to  
30 complete the Project.

31 F. The Finance Authority shall maintain on behalf of the Water Authority a separate  
32 Project Account as a book account only on behalf of the Water Authority and

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1 financial records in accordance with Generally Accepted Accounting Principles  
2 during the construction or implementation of the Project.

3 Section 6. Loan/Grant Agreement—Authorization and Detail.

4 A. Authorization. This Resolution has been adopted by the affirmative vote of  
5 a majority of all members of the Governing Body. For the purpose of protecting the public  
6 health, conserving the property, and protecting the general welfare and prosperity of the  
7 constituent public served by the Water Authority and acquiring and completing the  
8 Project, it is hereby declared necessary that the Water Authority execute and deliver the  
9 Loan/Grant Agreement evidencing the special limited obligation of the Water Authority to  
10 make payments on the Loan Amount of Seven Hundred Ten Thousand Dollars  
11 (\$710,000) and the Water Authority’s acceptance of the Grant Amount of Six Million Three  
12 Hundred Ninety Thousand Dollars (\$6,390,000). The Loan/Grant Amount shall be utilized  
13 solely for Eligible Items necessary to finance the acquisition and completion of the Project,  
14 and solely in the manner and according to the restrictions set forth in the Loan/Grant  
15 Agreement, the execution and delivery of which is hereby authorized.

16 B. Detail. The Loan/Grant Agreement shall be in substantially the form of the  
17 Loan/Grant Agreement presented at the meeting of the Governing Body at which this  
18 Resolution was adopted. The Grant shall be in the amount of Six Million Three Hundred  
19 Ninety Thousand Dollars (\$6,390,000) and the Loan shall be in the amount of Seven  
20 Hundred Ten Thousand Dollars (\$710,000). Interest on the Loan Amount shall be zero  
21 percent (0%) per annum of the unpaid principal balance of the Loan Amount, and the  
22 Administrative Fee shall be one-quarter of one percent (0.25%) per annum of the unpaid  
23 principal balance of the Loan Amount, taking into account both payments made by the  
24 Water Authority and hardship waivers of payments granted to the Water Authority.

25 Section 7. Approval of Loan/Grant Agreement. The form of the Loan/Grant  
26 Agreement as presented at the meeting of the Governing Body at which this Resolution  
27 was adopted, is hereby approved. Authorized Officers are hereby individually authorized  
28 to execute, acknowledge and deliver the Loan/Grant Agreement with such changes,  
29 insertions and omissions as may be approved by such individual Authorized Officers, and  
30 the Executive Director is hereby authorized to affix the seal of the Water Authority on the  
31 Loan/Grant Agreement and attest the same. The execution of the Loan/Grant Agreement  
32 shall be conclusive evidence of such approval.

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1           Section 8.    Security. The Loan Amount and Administrative Fee shall be solely  
2 secured by a subordinate lien (but not an exclusive subordinate lien) on the pledge of the  
3 Net Revenues herein made and as set forth in the Loan/Grant Agreement. The  
4 Loan/Grant Agreement, together with interest thereon and other obligations of the Water  
5 Authority thereunder, shall be a special, limited obligation of the Water Authority, payable  
6 solely from the Net Revenues as provided in this Resolution, and the Loan/Grant  
7 Agreement shall not constitute a general obligation of the Water Authority, the City, the  
8 County, or the State, and the holders of the Loan/Grant Agreement may not look to any  
9 general or other fund of the Water Authority for payment of the obligations thereunder.  
10 Nothing contained in this Resolution nor in the Loan/Grant Agreement, nor any other  
11 instruments, shall be construed as obligating the Water Authority (except with respect to  
12 the application of the Net Revenues) or as imposing a pecuniary liability or a charge upon  
13 the general credit of the Water Authority, nor shall a breach of any agreement contained  
14 in this Resolution, the Loan/Grant Agreement, or any other instrument impose any  
15 pecuniary liability upon the Water Authority or any charge upon its general credit. The  
16 Loan/Grant Agreement shall never constitute an indebtedness of the Water Authority  
17 within the meaning of any State constitutional provision or statutory limitation and shall  
18 never constitute or give rise to a pecuniary liability of the Water Authority or a charge  
19 against its general credit. Nothing herein shall prevent the Water Authority from applying  
20 other funds of the Water Authority legally available therefor to payments required by the  
21 Loan/Grant Agreement, in its sole and absolute discretion.

22           Section 9.    Disposition of Proceeds: Completion of the Project.

23           A.    Accounts. The Water Authority hereby consents to creation of the  
24 Project Account and the Debt Service Account by the Finance Authority. Until the  
25 Completion Date, the amount of the Loan/Grant credited to the Project Account shall be  
26 used and paid out solely for Eligible Items necessary to acquire and complete the Project  
27 in compliance with applicable law and the provisions of the Loan/Grant Agreement.

28           B.    Completion of the Project. The Water Authority shall proceed to  
29 complete the Project with all due diligence. Upon the Completion Date, the Water  
30 Authority shall execute a certificate stating that completion of and payment for the Project  
31 has been completed. Following the Completion Date or the earlier expiration of the time  
32 allowed for disbursement of the Loan/Grant Amount as provided in the Loan/Grant  
33 Agreement, any balance remaining in the Project Account shall be transferred and

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1 deposited into the Water Project Fund or otherwise distributed as provided in the  
2 Loan/Grant Agreement.

3 C. Finance Authority Not Responsible. Water Authority shall apply the  
4 funds derived from the Loan/Grant Agreement as provided therein, and in particular  
5 Article VII of the Loan/Grant Agreement. The Finance Authority shall not in any manner  
6 be responsible for the application or disposal by the Water Authority or by its officers of  
7 the funds derived from the Loan/Grant Agreement or of any other funds held by or made  
8 available to the Water Authority in connection with the Project.

9 Section 10. Payment of Loan Amount.

10 A. DEPOSIT OF NET REVENUES. Net Revenues shall be paid directly by  
11 the Water Authority to the Finance Authority in an amount sufficient to pay principal and  
12 interest and Administrative Fees due under the Loan/Grant Agreement, as provided in  
13 the Loan/Grant Agreement.

14 B. TERMINATION OF DEPOSITS TO MATURITY. No payment shall be made  
15 into the Debt Service Account if the amount in the Debt Service Account totals a sum at  
16 least equal to the entire aggregate amount of payments to become due as to principal  
17 and interest due under the Loan/Grant Agreement, in which case moneys in such account  
18 in an amount at least equal to such principal and interest requirements shall be used  
19 solely to pay such obligations as the same become due, and any moneys in excess  
20 thereof in such accounts shall be transferred to the Water Authority and used as provided  
21 in Section 10(C) below.

22 C. USE OF SURPLUS REVENUES. After making all the payments  
23 hereinabove required to be made by this Section, any moneys remaining in the Debt  
24 Service Account shall be transferred to the Water Authority on a timely basis and applied  
25 to any other lawful purpose, including, but not limited to, the payment of any Senior  
26 Obligations, Subordinate Obligations or Super Subordinated Obligations, or purposes  
27 authorized by the Water Authority, the Constitution and laws of the State, as the Water  
28 Authority may from time to time determine.

29 Section 11. Lien on Net Revenues. The Loan/Grant Agreement shall be  
30 issued with a lien on the Net Revenues on parity with the lien of the Subordinate  
31 Obligations on the Net Revenues and a lien inferior to the lien of the Senior Obligations  
32 but superior to the lien of the Super Subordinated Obligations on the Net Revenues. The  
33 Net Revenues are hereby authorized to be pledged, and are hereby pledged, and the

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1 Water Authority grants a security interest therein, for the payment of the principal and  
2 interest and Administrative Fees due under the Loan/Grant Agreement, subject to the  
3 uses thereof permitted by and the priorities set forth in this Resolution and the Loan/Grant  
4 Agreement. The Loan/Grant Agreement constitutes an irrevocable subordinate lien, but  
5 not necessarily an exclusive subordinate lien, on the Net Revenues on a parity with the  
6 lien of the Subordinate Obligations on the Net Revenues.

7 Section 12. Authorized Officers. Authorized Officers are hereby individually  
8 authorized and directed to execute and deliver any and all papers, instruments, opinions,  
9 affidavits and other documents and to do and cause to be done any and all acts and  
10 things necessary or proper for carrying out this Resolution, the Loan/Grant Agreement  
11 and all other transactions contemplated hereby and thereby. Authorized Officers are  
12 hereby individually authorized to do all acts and things required of them by this Resolution  
13 and the Loan/Grant Agreement for the full, punctual and complete performance of all the  
14 terms, covenants and agreements contained in this Resolution and the Loan/Grant  
15 Agreement including but not limited to, the execution and delivery of closing documents  
16 in connection with the execution and delivery of the Loan/Grant Agreement.

17 Section 13. Funds and Accounts.

18 A. JOINT WATER AND SEWER FUND. The Water Authority shall continue  
19 the Joint Water and Sewer Fund as a separate, distinct and segregated fund. As long as  
20 the Loan/Grant Agreement is outstanding, all Gross Revenues shall continue to be set  
21 aside and credited to the Joint Water and Sewer Fund.

22 B. DEBT SERVICE FUND AND ACCOUNTS. The Water Authority shall  
23 continue the Debt Service Fund as a separate, distinct and segregated fund for the  
24 deposit of Net Revenues for the payment of System Obligations, including the Loan/Grant  
25 Agreement. The Water Authority shall continue the Expense Account as part of the Debt  
26 Service Fund. Money on deposit or credited to the Expense Account shall be used for  
27 the purpose of payment of Expenses.

28 C. RATE STABILIZATION FUND. The Water Authority shall continue the Rate  
29 Stabilization Fund as a separate, distinct and segregated fund.

30 Section 14. Amendment of Resolution. Prior to the Closing Date, the provisions  
31 of this Resolution may be supplemented or amended by resolution of the Governing Body  
32 with respect to any changes which are not inconsistent with the substantive provisions of  
33 this Resolution. After the Closing Date, this Resolution may be amended without receipt

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1 by the Water Authority of any additional consideration, but only with the prior written  
2 consent of the Finance Authority.

3 Section 15. Resolution Irrepealable. After the Closing Date, this Resolution shall  
4 be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall  
5 be fully discharged, as herein provided.

6 Section 16. Severability Clause. If any section, paragraph, clause or provision  
7 of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity  
8 or unenforceability of such section, paragraph, clause or provision shall not affect any of  
9 the remaining provisions of this Resolution.

10 Section 17. Repealer Clause. All bylaws, orders, ordinances, resolutions, or  
11 parts thereof, inconsistent herewith are hereby repealed to the extent only of such  
12 inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution  
13 or ordinance, or part thereof, heretofore repealed.

14 Section 18. General Summary for Publication. Pursuant to the general laws of  
15 the State, the title and a general summary of the subject matter contained in this  
16 Resolution shall be published in substantially the following form:

17

18

19

*[Remainder of page intentionally left blank.]*

1 *[Form of Notice of Adoption of Resolution for Publication]*

2 Albuquerque Bernalillo County Water Utility Authority

3 Notice of Adoption of Resolution

4 Notice is hereby given of the title and of a general summary of the subject matter  
5 contained in a resolution duly adopted and approved by the Board of the Albuquerque  
6 Bernalillo County Water Utility Authority (the "Water Authority") on December 7, 2022.

7 The title of the Resolution is:

8 **RESOLUTION**

9 **AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT**  
10 **FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO**  
11 **FINANCE AUTHORITY ("FINANCE AUTHORITY") AND THE ALBUQUERQUE**  
12 **BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE "WATER**  
13 **AUTHORITY"), IN THE TOTAL AMOUNT OF \$7,100,000 (\$6,390,000 GRANT**  
14 **AMOUNT/\$710,000 LOAN AMOUNT), EVIDENCING A SPECIAL LIMITED**  
15 **OBLIGATION OF THE WATER AUTHORITY TO UTILIZE THE LOAN/GRANT**  
16 **AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE**  
17 **WATER AUTHORITY'S VOLCANO CLIFFS ARSENIC TREATMENT FACILITY**  
18 **AND PUMP STATION UPGRADE PROJECT IN THE MANNER DESCRIBED IN**  
19 **THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND**  
20 **PAYMENT OF THE LOAN AMOUNT AND AN ADMINISTRATIVE FEE SOLELY**  
21 **FROM NET REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT,**  
22 **TOGETHER WITH OTHER FUNDS AVAILABLE TO THE WATER AUTHORITY,**  
23 **IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF**  
24 **AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT;**  
25 **RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION**  
26 **INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING**  
27 **OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND**  
28 **DELIVERY OF THE LOAN/GRANT AGREEMENT.**

29 A general summary of the subject matter of the Resolution is contained in its title.

30 This notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

31  
32 *[End of Form of Notice of Adoption for Publication]*

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1 PASSED AND ADOPTED THIS 7<sup>th</sup> DAY OF DECEMBER 2022.  
2 BY A VOTE OF \_\_\_\_ FOR AND \_\_\_\_ AGAINST.

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\_\_\_\_\_  
Chair

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ATTEST:

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Executive Director

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**Exhibit A**  
**ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY**  
**OUTSTANDING SYSTEM OBLIGATIONS**

<u>Senior Obligations</u>	<u>Senior Obligations Authorizing Legislation</u>	<u>Original Principal Amount (\$)</u>	<u>Principal Amount Outstanding (\$)</u>
New Mexico Finance Authority Drinking Water Revolving Fund Loan Agreement (2009)	O-09-9 & R-09-24	1,010,000	274,858
Joint Water and Sewer System Improvement and Refunding Revenue Bonds Series 2013A	O-13-2 & R-13-13	62,950,000	9,775,000
Joint Water and Sewer System Improvement and Refunding Revenue Bonds Series 2013B	O-13-2 & R-13-13	55,265,000	11,540,000
Senior Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014A	O-14-2 and R-14-10	97,270,000	52,915,000
Senior Lien Joint Water and Sewer System Refunding and Improvement Revenue Bonds, Series 2015	O-15-2 & R-15-6	211,940,000	150,500,000
Senior Lien Joint Water and Sewer System Refunding and Improvement Revenue Bonds, Series 2017	O-16-2 & R-16-13	87,970,000	71,350,000
Senior Lien Joint Water and Sewer System Improvement Revenue Bonds, Series 2018	O-18-7 & R-18-20	75,085,000	64,250,000
New Mexico Finance Authority Drinking Water Revolving Fund Loan Agreement DW-4877 (2019)	O-19-1 & R-19-4	3,430,081	2,724,282
Senior Lien Joint Water and Sewer System Improvement Revenue Bonds, Series 2020	O-19-3 & R-19-26	69,440,000	69,440,000
Drinking Water State Revolving Fund Loan Agreement DW-5028 (2020)	O-20-1 & R-20-3	1,515,000	1,515,000
Senior Lien Joint Water and Sewer System Refunding Revenue Bonds, Taxable Series 2020A	O-20-2 & R-19-26	47,600,000	46,630,000
Senior Lien Joint Water and Sewer System Improvement Revenue Bonds, Series 2021	R-21-21	73,255,000	73,255,000
	<b>Total</b>		<b>554,169,140</b>
<u>Subordinate Obligations*</u>	<u>Subordinate Obligations Authorizing Legislation</u>	<u>Original Principal Amount (\$)</u>	<u>Principal Amount Outstanding (\$)</u>
2008 NMFA Drinking Water Loan	O-08-4 & R-08-13 as amended by F/S O-14-2	12,000,000	4,770,344
Subordinate Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014B	O-14-2 & R-14-10	87,005,000	34,145,000
Water Project Fund Loan/Grant Agreement No. WPF-5103 (2021)	R-20-26	800,000	800,000
Water Project Fund Loan/Grant Agreement No. WPF-5401 (2021)	R-21-31	800,000	800,000
Water Project Fund Loan/Grant Agreement No. WPF-5402 (2022)	R-22-7	770,827	770,827
	<b>Total</b>		<b>41,286,171</b>
<u>Super Subordinate Obligations</u>	<u>Super Subordinate Obligations Authorizing Legislation</u>	<u>Original Principal Amount(\$)</u>	<u>Principal Amount Outstanding(\$)</u>
None	None	0	0

\* the \$2,000,000 (\$200,000 Loan/\$1,800,000 Grant) Water Project Fund Loan/Grant Agreement No. WPF-5659 (2023) and the \$7,100,000 (\$710,000 Loan/\$6,390,000 Grant) Water Project Fund Loan/Grant Agreement No. WPF-5660 (2023) are in the process of issuance with an expected closing date of January 13, 2023.