
Meeting Date: April 21, 2021
Staff Contact: Stan Allred, Chief Financial Officer

TITLE: **O-21-1 – Authorizing the Execution and Delivery of a First Amendment to A Drinking Water State revolving Loan Fund Loan and Subsidy Agreement Authorized by Ordinance O-19-1 (“Loan Agreement”) by and Between the Albuquerque Bernalillo County Water Utility Authority (“The Water Authority”) and the New Mexico Finance Authority; Amending and expanding the Scope of the Project Financed by the Loan Agreement to Include the Construction of a Water Transmission line and all Appurtenances along Coors Blvd from Gun Club Rd to Pajarito Road; Extending the Twenty-Four (24) Month construction period in the Loan and Agreement by Seven (7) Months to Reflect a Completion Date of November 30, 2021; Amending Ordinance No. O-19-1 to Conform to the Provisions of this Ordinance; Approving the Form of and Other Details Concerning the First Amendment to the Loan Agreement; Ratifying Actions Heretofore Taken; Repealing all Action Inconsistent with this Ordinance; and Authorizing the Taking of Other Actions in Connection with the Execution and Delivery of the First Amendment to the Loan Agreement**

ACTION: **Recommend Approval**

BACKGROUND:

The Water Authority adopted Ordinance No. O-19-1 on March 20, 2019 (the “Original Ordinance”) authorizing the Water Utility Authority to execute a Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement.

On April 26, 2019, the Finance Authority and the Water Authority entered into the Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement (the “Loan Agreement”) for the purpose of funding the Loan, and the Finance Authority and the Water Authority desire to amend the Original Ordinance and the Loan Agreement to expand the scope of the Project in the Original Ordinance and the Loan Agreement, respectively, to include the construction of a water transmission line and all appurtenances along Coors Blvd from Gun Club Rd to Pajarito Rd and to extend the twenty-four (24) month construction period in the Loan Agreement by seven (7) months to reflect a completion date of November 30, 2021.

SUMMARY:

Ordinance O-21-1 expands the scope of the project financed by the loan agreement Approved by O-19-1. to include the construction of the water transmission line and all

appurtenances along Coors Blvd from Gun Club Rd to Pajarito Road. Extends the 24 month construction period in the original loan agreement by 7 months to reflect a completion date of November 30, 2021. This Ordinance Amends Ordinance No. O-19-1 to conform to the provisions of this Ordinance, approving the form of and other details concerning the first amendment to the loan agreement; ratifying actions heretofore taken, repealing all action Inconsistent with this Ordinance, and authorizing the taking of other actions about the execution and delivery of the first amendment to the Loan Agreement.

The application for funding has been approved by the Water Authority Board.

FISCAL IMPACT:

This loan portion of the agreement is for 32 years with an effective interest rate of 1.00%, which includes the Administrative Fee. Gross Revenues, all income and revenues directly or indirectly derived by the Water Authority from the operation and use of the System, are pledged as security for these loans. Connection fees are expected to pay the outstanding debt over the term.

COMMENTS:

This Ordinance gives the Executive Director authorization to amend the loan agreement with the NMFA to add scope and extend time of the completion.

BILL NO. 0-21-1

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

3 WHEREAS, the Water Authority adopted Ordinance No. O-19-1 on March 20,
4 2019 (the "Original Ordinance") authorizing the Water Utility Authority to execute a
5 Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement for the
6 Project defined in the Original Ordinance, as amended by this Ordinance No. O-21-1
7 (collectively, the "Ordinance"); and

8 WHEREAS, on April 26, 2019, the Finance Authority and the Water Authority
9 entered into the Drinking Water State Revolving Loan Fund Loan and Subsidy
10 Agreement (the "Loan Agreement") for the purpose of funding the Loan; and

11 WHEREAS, the Finance Authority and the Water Authority desire to amend
12 the Original Ordinance and the Loan Agreement to expand the scope of the Project
13 in the Original Ordinance and the Loan Agreement, respectively, to include the
14 construction of a water transmission line and all appurtenances along Coors Blvd
15 from Gun Club Rd to Pajarito Rd and to extend the twenty-four (24) month
16 construction period in the Loan Agreement by seven (7) months to reflect a
17 completion date of November 30, 2021; and

18 WHEREAS, other than as described in Exhibit "A" to Water Project Fund
19 Loan/Grant Agreement for WPF-5103, the Pledged Revenues have not heretofore
20 been pledged to secure the payment of any obligation which is currently outstanding;
21 and

22 WHEREAS, all required authorizations, consents and approvals in
23 connection with (i) the First Amendment to the Loan Agreement, and (ii) the
24 authorization, execution and delivery of the First Amendment to the Loan
25 Agreement, which are required to have been obtained by the date of the Ordinance
26 have been obtained or are reasonably expected to be obtained.

27 BE IT ORDAINED BY THE BOARD OF THE WATER AUTHORITY:

28 Section 1. DEFINITIONS.

29 (A) DEFINITIONS. Capitalized terms defined in Section 1 of the
30 Original Ordinance and the Loan Agreement shall, for all purposes, have the
31 meaning herein specified or defined in the Original Ordinance and the Loan

1 Agreement, unless the context clearly requires otherwise (such meanings to be
2 equally applicable to both the singular and the plural forms of the terms defined). In
3 addition, the following capitalized terms shall have for the purposes, the meaning
4 herein specified:

5 “FIRST AMENDMENT” means the First Amendment to the Loan Agreement
6 approved by this Ordinance.

7 “LOAN AGREEMENT” means the drinking water state revolving loan fund
8 loan and subsidy agreement dated the Closing Date between the Finance Authority
9 and the Water Utility Authority which provides for the financing of the Project and
10 requires payments by or on behalf of the Water Utility Authority to the Finance
11 Authority, and any amendments or supplements thereto, including the exhibits
12 attached to the Loan Agreement and the amendments to the Loan Agreement and
13 the First Amendment authorized by this Ordinance and contained in this Ordinance.

14 “ORDINANCE” means Ordinance No. 0-19-1 adopted by the Board of the
15 Water Utility on March 20, 2019, approving the Loan Agreement and pledging the
16 Pledged Revenues to the payment of the Loan Agreement Payments as shown on
17 the Term Sheet and the Final Loan Agreement Payment Schedule, as supplemented
18 from time to time in accordance with the provisions thereof and hereof, and as
19 amended by this Ordinance No. O-21-1.

20 Section 2. RATIFICATION. All actions previously taken (not inconsistent
21 with the provisions of this Ordinance) by the Board and the officers of the Water
22 Authority, directed toward the execution and delivery of the First Amendment is
23 ratified, approved and confirmed.

24 Section 3. AUTHORIZATION OF THE FIRST AMENDMENT. The Water
25 Utility through its Board authorizes and instructs its Authorized Officers to execute
26 the First Amendment and all other agreements, certifications, and documents as are
27 necessary to complete the First Amendment, in accordance with the terms of this
28 Ordinance.

29 Section 4. FINDINGS.

30 (A) The Water Authority declares that it has considered all relevant
31 information and data and finds that the execution and delivery of the First

1 Amendment to the Loan Agreement to finance the Project, as amended by the First
2 Amendment, is necessary and in the interest of the public health, safety and welfare
3 of the residents of the geographic area served by the Water Authority.

4 (B) The Water Authority will finance the Project, as amended by the
5 First Amendment, with the proceeds of the Loan Agreement, together with other
6 funds of the Water Authority, if necessary.

7 (C) It is economically feasible to accomplish the Project, as
8 amended by the First Amendment, by the execution and delivery of the First
9 Amendment.

10 (D) The Net Revenues may lawfully be pledged to secure the
11 payment of amounts due under the Loan Agreement and the First Amendment does
12 not change the terms of the payment of the amounts due under the Loan
13 Agreement.

14 (E) Other than as described in Exhibit "A" to the Water Project Fund
15 Loan/Grant Agreement for WPF-5103, the Governmental Unit does not have any
16 outstanding obligations payable from Pledged Revenues which it has incurred or will
17 incur prior to the initial execution and delivery of the First Amendment.

18 Section 5. FIRST AMENDMENT – AUTHORIZATION AND DETAIL.

19 (A) AUTHORIZATION. This Ordinance has been adopted by the
20 affirmative vote of at least a majority of all of the members of the Board. For the
21 purpose of protecting the public health, conserving the property, and protecting the
22 general welfare and prosperity of the public served by the Water Authority and
23 acquiring and constructing the Project, as amended by the First Amendment, it is
24 hereby declared necessary that the Water Authority, pursuant to the Act, execute
25 and deliver the First Amendment. The Project authorized in the Loan Agreement
26 and the First Amendment will be owned by the Water Authority.

27 (B) DETAIL. The First Amendment shall be in substantially the form
28 presented at the meeting of the Board at which this Ordinance was adopted.

29 (C) Except as expressly amended by the First Amendment, the
30 Loan Agreement shall remain effective in its entirety.

31 (D) Except as expressly amended by this Ordinance, the Original

1 Ordinance shall remain effective in its entirety.

2 Section 6. APPROVAL OF THE FIRST AMENDMENT. The form of the
3 First Amendment as presented at the meeting of the Board at which this Ordinance
4 was adopted is hereby approved. Authorized Officers are hereby individually
5 authorized to execute, acknowledge and deliver the First Amendment with such
6 changes, insertions and omissions as may be approved by such individual
7 Authorized Officers, and the Executive Director is hereby authorized to affix the seal
8 of the Water Authority on the First Amendment and attest the same. The execution
9 of the First Amendment by an Authorized Officer shall be conclusive evidence of
10 such approval.

11 Section 7. AUTHORIZED OFFICERS; DELEGATED POWERS.
12 Authorized Officers are hereby individually authorized and directed to execute and
13 deliver any and all papers, instruments, opinions, affidavits and other documents
14 and to do and cause to be done any and all acts and things necessary or proper for
15 carrying out this Ordinance, the First Amendment and all other transactions
16 contemplated hereby and thereby. Authorized Officers are hereby individually
17 authorized to do all acts and things required of them by this Ordinance and the First
18 Amendment for the full, punctual and complete performance of all the terms,
19 covenants and agreements contained in this Ordinance and the First Amendment
20 including, but not limited to, the execution and delivery of closing documents,
21 additional agreements and reports required in connection with the execution and
22 delivery of the First Amendment, and the publication of the summary of this
23 Ordinance set out in Section 13 of this Ordinance (with such changes, additions and
24 deletions as may be necessary).

25 Section 8. FIRST AMENDMENT OF ORIGINAL ORDINANCE. The
26 Original Ordinance is hereby amended so that the definition of "PROJECT" in
27 Section 1 of the Original Ordinance is replaced in its entirety as follows:

28 PROJECT. Acquiring additional System assets, extending, repairing,
29 replacing and improving the Water Authority's System, including,
30 acquisition and installation of water distribution lines for the Los
31 Padillas community as part of the South Valley water project, including

1 the construction of a water transmission line and all appurtenances
2 along Coors Blvd from Gun Club Rd to Pajarito Rd, and the payment of
3 Expenses associated with the execution and delivery of the Loan
4 Agreement.

5 Section 9. AMENDMENT OF ORDINANCE. Prior to the initial delivery of
6 the First Amendment to the Finance Authority, the provisions of this Ordinance may
7 be supplemented or amended by ordinance of the Board with respect to any
8 changes which are not inconsistent with the substantive provisions of this
9 Ordinance. After delivery of the First Amendment to the Finance Authority, this
10 Ordinance may be amended without receipt by the Water Authority of any additional
11 consideration, but only with the prior written consent of the Finance Authority.

12 Section 10. ORDINANCE IRREPEALABLE. After the First Amendment has
13 been executed and delivered, this Ordinance shall be and remain irrepealable until
14 all obligations due under the Loan Agreement shall be fully paid, canceled and
15 discharged, as provided in the Ordinance and the Loan Agreement.

16 Section 11. SEVERABILITY CLAUSE. If any section, paragraph, clause or
17 provision of this Ordinance shall for any reason be held to be invalid or
18 unenforceable, the invalidity or unenforceability of that section, paragraph, clause or
19 provision shall not affect any of the remaining provisions of this Ordinance.

20 Section 12. REPEALER CLAUSE. All bylaws, orders, resolutions and
21 ordinances, or parts thereof, inconsistent with this Ordinance are repealed to the
22 extent only of such inconsistency. This repealer shall not be construed to revive any
23 bylaw, order, resolution or ordinance, or part thereof, previously repealed.

24 Section 13. GENERAL SUMMARY FOR PUBLICATION. The title and a
25 general summary of the subject matter contained in this Ordinance shall be
26 published in substantially the following form:

27 (Form of Summary of Ordinance for Publication)

28 Albuquerque Bernalillo County Water Utility Authority

29 Notice of Adoption of Ordinance

30 NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 6-14-6
31 NMSA 1978, that on April 21, 2021, the Board of Albuquerque Bernalillo County

1 Water Utility Authority (the "Water Authority") adopted Water Authority Ordinance
2 No. O-21-1, an ordinance which authorizes the execution and delivery of a first
3 amendment to a loan agreement with the New Mexico Finance Authority in an
4 aggregate principal amount of \$3,430,081 to make improvements to the Water
5 Authority's Joint Water and Sanitary Sewer System.

6 The title of the Ordinance is:

7 **ORDINANCE**

8 **AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT**
9 **DATED MAY 7, 2021 TO A DRINKING WATER STATE REVOLVING LOAN FUND**
10 **LOAN AND SUBSIDY AGREEMENT AUTHORIZED BY ORDINANCE NO. O-19-1**
11 **("LOAN AGREEMENT") BY AND BETWEEN THE ALBUQUERQUE**
12 **BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE "WATER**
13 **AUTHORITY") AND THE NEW MEXICO FINANCE AUTHORITY ("THE "FINANCE**
14 **AUTHORITY"); AMENDING AND EXPANDING THE SCOPE OF THE PROJECT**
15 **FINANCED BY THE LOAN AGREEMENT TO INCLUDE THE CONSTRUCTION**
16 **OF A WATER TRANSMISSION LINE AND ALL APPURTENANCES ALONG**
17 **COORS BLVD FROM GUN CLUB RD TO PAJARITO RD; EXTENDING THE**
18 **TWENTY-FOUR (24) MONTH CONSTRUCTION PERIOD IN THE LOAN**
19 **AGREEMENT BY SEVEN (7) MONTHS TO REFLECT A COMPLETION DATE OF**
20 **NOVEMBER 30, 2021; AMENDING ORDINANCE NO. O-19-1 TO CONFORM TO**
21 **THE PROVISIONS OF THIS ORDINANCE; APPROVING THE FORM OF AND**
22 **OTHER DETAILS CONCERNING THE FIRST AMENDMENT TO THE LOAN**
23 **AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL**
24 **ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE**
25 **TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND**
26 **DELIVERY OF THE FIRST AMENDMENT TO THE LOAN AGREEMENT.**

27 The title contains a general summary of the subject matter contained in the
28 Ordinance.

29 This notice constitutes compliance with § 6-14-6 NMSA 1978.

30 (End of Summary of Ordinance for Publication)

1 PASSED AND ADOPTED THIS 21st DAY OF APRIL, 2021.
2 BY A VOTE OF ____ FOR AND ____ AGAINST.

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Chair

7 ATTEST:

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10 Executive Director

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