



Albuquerque Bernalillo County Water Authority

Albuquerque/Bernalillo
County
Government Center
One Civic Plaza
Albuquerque, NM 87102

Legislation Text

File #: O-18-5, Version: 1

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. O-18-5

ORDINANCE

Authorizing the Execution and Delivery of a Loan and Subsidy Agreement (“Loan Agreement”) By and Between the Albuquerque Bernalillo County Water Utility Authority (“Water Authority”) and the New Mexico Finance Authority, Evidencing a Special Limited Obligation of the Water Authority to Pay a Principal Amount of No More Than Two Hundred Fifty Thousand Dollars (\$250,000), Together With Interest, Costs of Issuance and Administrative Fees Thereon, and to Accept a Loan Subsidy of No More Than Seven Hundred Fifty Thousand Dollars (\$750,000), For the Purpose of Financing the Cost of Extending and Improving the Water Infrastructure System to the Carnuel Community, Including, Acquisition and Installation of Water Distribution Lines; Providing for the Pledge and Payment of the Principal, Interest and Administrative Fees Due Under the Loan Agreement Solely From Net Revenues; Setting a Maximum Interest Rate for the Loan; Approving the Form of and Other Details Concerning the Loan Agreement; Ratifying Actions Heretofore Taken; Repealing All Action Inconsistent With This Ordinance; and Authorizing the Taking of Other Actions In Connection With the Execution and Delivery of the Loan Agreement

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

WHEREAS, the Water Authority is a legally and regularly created, established, organized and existing public body politic and corporate, separate and apart from the City and the County, under the general laws of the State; and

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

WHEREAS, the Water Authority is obligated on the following Senior Obligations, payable from Net Revenues, Outstanding on the date of the adoption of this Ordinance in the following principal amounts:

	Amount
<u>Senior Obligations</u>	<u>Outstanding</u>
Series 2009A-1 Bonds	\$ 31,925,000
Series 2013A&B Bonds	\$ 83,620,000
Series 2014A Bonds	\$ 88,270,000
Series 2015 Bonds	\$208,730,000
Series 2017 Bonds	\$ 87,970,000
Drinking Water State Revolving Fund Loan Agreement (2009)	\$ 766,470
Public Project Revolving Fund Loan Agreement (2011)	\$ 35,855,000
Drinking Water State Revolving Fund Loan Agreement (2018)	\$ 1,010,000

and

WHEREAS, the Water Authority is obligated on the following Subordinate Obligations, payable from Net Revenues with a lien on the Net Revenues subordinated to the Senior Obligations, and superior to the lien of the Super Subordinate Obligations, Outstanding on the date of the adoption of this Ordinance in the following principal amounts:

	Amount
<u>Subordinate Obligations</u>	<u>Outstanding</u>
Series 2014B Bonds	\$ 66,950,000
Drinking Water State Revolving Fund Loan Agreement (2008)	\$ 7,370,187

and

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

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

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

WHEREAS, funds may be provided from the Drinking Water State Revolving Loan Fund to

finance infrastructure projects in the State; and

WHEREAS, the Board has determined that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Water Authority and its customers that the Loan Agreement be executed and delivered and that the financing of the construction of the Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Board has determined that it may lawfully pledge the Net Revenues for repayment of the Loan Agreement; and

WHEREAS, the Water Authority intends to use a portion of the proceeds of the Loan Agreement for the purpose of acquiring and installing additional System assets and improving the System; and

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

BE IT ORDAINED BY THE BOARD OF THE WATER AUTHORITY:

Section 1. DEFINITIONS AND RULES OF CONSTRUCTION.

(A) DEFINITIONS. As used in this Ordinance, the following terms have the meanings specified, unless the context clearly requires otherwise:

ACT. The DWSRLF Act, and the general laws of the State, including Section 72-1-10 NMSA 1978, Sections 3-31-1 through 3-31-12 NMSA 1978, Sections 4-62-1 to 4-62-10 NMSA 1978, as amended, and enactments of the Board relating to the Loan Agreement, including this Ordinance.

ADMINISTRATIVE FEE or ADMINISTRATIVE FEE COMPONENT. The 0.25% annual fee payable to the Finance Authority as 0.125% of the Loan Agreement Principal Amount then outstanding as a part of each Loan Agreement Payment for the costs of originating and servicing the Loan.

AGGREGATE DISBURSEMENTS. At any time after the Closing Date, the sum of all Disbursements.

AGGREGATE FORGIVEN DISBURSEMENTS. The amount of Subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date be equal to seventy-five percent (75%) of the Aggregate Disbursements, up to a maximum of seven hundred fifty thousand

dollars (\$750,000).

AGGREGATE REPAYABLE DISBURSEMENTS. At any time after the Closing Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

APPROVED REQUISITION. A requisition in the form of Exhibit "C" to the Loan Agreement, together with supporting documentation submitted to and approved by the Finance Authority pursuant to Section 4.2 of the Loan Agreement.

AUTHORIZED OFFICER. The Chair, the Executive Director of the Water Authority, or other officer or employee of the Water Authority when designated by a certificate signed by the Chair from time to time.

BOARD. The governing body in which is vested the legislative power of the Water Authority.

CHAIR. The duly elected Chair of the Board or the Vice Chair of the Board acting in the absence of the Chair.

CITY. The City of Albuquerque, in the County of Bernalillo and State of New Mexico.

CLOSING DATE. The date of execution, delivery and funding of the Loan Agreement authorized by this Ordinance.

COMPLETION DATE. The date of completion of the Project.

COUNTY. Bernalillo County, New Mexico.

CREDIT FACILITY. A letter of credit, line of credit, bond insurance policy or reserve account surety bond, guaranty or similar agreement provided by a Credit Source to provide support to pay the purchase price of, or the payment when due of the principal of and interest on, System Obligations.

CREDIT SOURCE. Any bank, insurance company or other financial institution which provides a Credit Facility for a series of System Obligations.

DEBT SERVICE ACCOUNT. The debt service account established in the name of the Water Authority and administered by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

DEBT SERVICE FUND. The Debt Service Fund previously established by the Water Authority and continued in Section 13 of this Ordinance.

DEBT SERVICE REQUIREMENTS. With respect to System Obligations and for any given period, the sum of: (1) the amount required to pay the interest, or to make reimbursements for

payments of interest, becoming due on System Obligations during that period, plus (2) the amount required to pay the principal or to make reimbursements for the payment of principal becoming due on System Obligations during that period, whether at maturity or upon mandatory sinking fund redemption dates, plus (3) the periodic payments required to be made by the Water Authority pursuant to a Qualified Exchange Agreement minus (4) the periodic payments to be received by the Water Authority pursuant to a Qualified Exchange Agreement. No payments required for any System Obligations which may be tendered or otherwise presented for payment at the option or demand of the owners of System Obligations, or which may occur because of the exercise of an option by the Water Authority, or which may otherwise become due by reason of any other circumstance or contingency, including acceleration or early termination payments, which constitute other than regularly scheduled payments of principal, interest or other regularly scheduled payments on System Obligations shall be included in any computation of Debt Service Requirements for that period.

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

In any computation of Debt Service Requirements relating to the issuance of additional System Obligations, there shall be excluded from the computation of the Debt Service Requirements amounts and investments which are irrevocably committed to make designated payments on System Obligations during the applicable period, including, without limitation, money on deposit in any Debt Service Account and amounts on deposit in an escrow account irrevocably committed to make designated payments on System Obligations during the applicable period and earnings on such investments which are payable and committed to the payment of such System Obligations during the applicable period.

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

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

(a) the actual variable interest rate, if any, at the time of computation; or

(b) a fixed annual rate equal to the prevailing rate on the Variable Rate Obligations on the date of computation (which, for the purpose of determining the Debt Service Requirements, shall be a date which is no more than 60 days prior to the date of issuance of the applicable System Obligations) as certified by the Water Authority's financial advisor, the underwriters of the System Obligations, an investment banker designated by the Water Authority from time to time or a counterparty with respect to a Qualified Exchange Agreement.

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

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

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

DISBURSEMENT. An amount caused to be paid by the Finance Authority for an Approved Requisition for costs of the Project, including the Expense Fund Component.

DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT (2008). The loan agreement dated November 7, 2008 between the Finance Authority and the Water Authority in the original principal amount of \$9,627,877, authorized and approved by Water Authority Ordinance Enactment No. F/S O-08-4 and Resolution Enactment No. F/S R-08-13 as amended by Ordinance No. F/S O-14-2 and the Amendment to the Loan Agreement dated July 24, 2014 constituting a subordinate lien on the Net Revenues.

DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT (2009). The loan agreement between the Finance Authority and the Water Authority in the original principal amount of \$1,010,000, authorized and approved by Water Authority Ordinance Enactment No. O-09-9 and

Resolution Enactment No. R-09-24 constituting a senior lien on the Net Revenues.

DRINKING WATER STATE REVOLVING FUND LOAN AGREEMENT (2018). The loan agreement between the Finance Authority and the Water Authority in the original principal amount of \$1,010,000, authorized and approved by Water Authority Ordinance Enactment No. O-18-2 and Resolution Enactment No. R-18-7 constituting a senior lien on the Net Revenues.

DRINKING WATER STATE REVOLVING LOAN FUND. The drinking water state revolving loan fund established by the DWSRLF Act.

DWSRLF ACT. The general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978 §§ 6-21A-1 through 6-21A-9, as amended.

EXPENSE FUND. The expense fund hereby created to be held and administered by the Finance Authority to pay Expenses.

EXPENSE FUND COMPONENT. An amount equal to one percent (1%) of each Disbursement for the Project, minus any amount forgiven under the Loan Agreement, simultaneously withdrawn and deposited in the Expense Fund to pay Expenses.

EXPENSES. The reasonable and necessary fees, costs and expenses incurred by the Water Authority and the Finance Authority with respect to the execution and delivery of the Loan Agreement, including, without limitation, attorneys' fees and costs, financial advisor's fees and costs, costs of advertising and publication, and all reasonable and necessary fees and administrative costs of the Water Authority and Finance Authority relating to the foregoing.

FINAL LOAN AGREEMENT PAYMENT SCHEDULE. The schedule of Loan Agreement Payments due on the Loan Agreement following the Final Requisition, as determined on the basis of the Aggregate Repayable Disbursements.

FINAL REQUISITION. The final requisition of moneys to be submitted by the Water Authority, which shall be submitted by the Water Authority on or before the date provided for in Section 4.1(b) of the Loan Agreement.

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

GROSS REVENUES. All income and revenues directly or indirectly derived by the Water Authority from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the Water Authority, or any municipal corporation or agency succeeding to the rights of the Water Authority, from the System and from the sale and use of

water, water services or facilities, sewer service or facilities or any other service, commodity or facility or any combination thereof furnished to the inhabitants of the geographic area served by the Water Authority by means of the System as the same may at any time exist to serve customers outside the Water Authority's geographical limits as well as customers within the Water Authority's geographical limits. Such term also includes:

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

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

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

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

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

Gross Revenues do not include:

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

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

INTEREST COMPONENT. The portion of each Loan Agreement Payment paid as interest accruing on the Aggregate Repayable Disbursements then outstanding, calculated from the date of each Disbursement.

INTEREST RATE. The rate of interest on the Loan Agreement as shown on the Term Sheet.

JOINT WATER AND SEWER FUND. The "City of Albuquerque, New Mexico, Joint

Water and Sewer Fund” originally established in Section 16 of City Ordinance No. 18-1984 and continued in Section 13 of this Ordinance as the “Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer Fund.”

LOAN. The funds to be loaned to the Water Authority by the Finance Authority pursuant to the Loan Agreement, up to the Maximum Principal Amount.

LOAN AGREEMENT. The loan and subsidy agreement and any amendments or supplements thereto, including the exhibits attached to the loan agreement.

LOAN AGREEMENT PAYMENT. Collectively, the Principal Component, the Interest Component, Expense Fund Component, and the Administrative Fee Component to be paid by the Water Authority as payment on the Aggregate Repayable Disbursements under the Loan Agreement, as shown on Exhibit “B” thereto.

LOAN AGREEMENT PRINCIPAL AMOUNT. As of any date of calculation, the Aggregate Repayable Disbursements (including the Expense Fund Component) then outstanding.

MAXIMUM PRINCIPAL AMOUNT. One million dollars (\$1,000,000).

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

NET REVENUES. The Gross Revenues after deducting Operation and Maintenance Expenses.

OPERATION AND MAINTENANCE EXPENSES. All reasonable and necessary current expenses of the System, paid or accrued, related to operating, maintaining and repairing the System including, without limiting the generality of the foregoing:

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

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

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

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

(5) the costs of audits of the books and accounts of the Water Authority and

the System;

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

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

(8) franchise tax payments to the City, County or any other local government. Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, liabilities incurred by the Water Authority as a result of its negligence or other misconduct in the operation of the System or any charges or costs allocable to capital improvements or replacements. Operation and Maintenance Expenses do not include any payment of or reimbursement for the payment of Debt Service Requirements on the Loan Agreement.

ORDINANCE. This Ordinance, as amended or supplemented from time to time.

OUTSTANDING. When used in reference to System Obligations, on any particular date, the aggregate of all System Obligations issued and delivered under the applicable Water Authority ordinance authorizing the issuance of, System Obligations except:

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

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

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

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

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

PROGRAM ACCOUNT. The book account established by the Finance Authority in the

name of the Water Authority for purposes of tracking expenditure of the Loan by the Water Authority to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

PROJECT. Acquiring additional System assets, extending, repairing, replacing and improving the Water Authority's System, including, acquisition and installation of water distribution lines for the Carnuel, New Mexico community and the payment of Expenses associated with the execution and delivery of the Loan Agreement.

PUBLIC PROJECT REVOLVING FUND LOAN AGREEMENT (2011). The loan agreement dated December 15, 2011 between the Finance Authority and the Water Authority in the principal amount of \$53,400,000 and approved by Ordinance No. O-11-5 and Resolution No. R-11-17 constituting a senior lien on the Net Revenues.

QUALIFIED EXCHANGE AGREEMENT. Any interest rate exchange between the Water Authority and a counterparty which, when entered into by the Water Authority, satisfies the requirements of Section 6-18-8.1 NMSA 1978.

RATE COVENANT. The covenants in the Loan Agreement relating to charging rates for use of the System to pay Debt Service Requirements.

RATE STABILIZATION FUND. The Rate Stabilization Fund for System Obligations previously established by the Water Authority and continued in Section 13 of this Ordinance.

SENIOR OBLIGATIONS. The Series 2009A-1 Bonds, the Drinking Water State Revolving Fund Loan Agreement (2009), the Public Project Revolving Fund Loan Agreement (2011), the Series 2013A&B Bonds, the Series 2014A Bonds, the Series 2015 Bonds, the Series 2017 Bonds, the Drinking Water State Revolving Fund Loan Agreement (2018), the Loan Agreement and obligations related thereto designated as Senior Obligations, in any ordinance or resolution of the Water Authority relating to those Senior Obligations, and any other System Obligations issued with a lien on the Net Revenues on parity with the lien of the Outstanding Senior Obligations on Net Revenues.

SERIES 2009A-1 BONDS. The Senior Obligations designated as "Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer System Improvement Revenue Bonds, Series 2009A-1" in the original principal amount of \$135,990,000, authorized and issued pursuant to Ordinance No. O-09-1 and Resolution No. R-09-7 constituting a senior lien on the Net Revenues.

SERIES 2013A&B BONDS. The Senior Obligations designated as the "Albuquerque

Bernalillo County Water Utility Authority Joint Water and Sewer System Improvement Revenue Bonds, Series 2013A” and the “Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer System Refunding Revenue Bonds, Series 2013B” in the combined original principal amount of \$118,215,000, authorized and issued pursuant to Ordinance No. O-13-2 and Resolution R-13-13 constituting a senior lien on the Net Revenues.

SERIES 2014A BONDS. The Senior Obligations designated as the “Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014A” in the original principal amount of \$97,270,000, authorized and issued pursuant to Ordinance No. F/S O-14-2 and Resolution F/S R-14-10 constituting a senior lien on the Net Revenues.

SERIES 2014B BONDS. The Subordinate Obligations designated as the “Albuquerque Bernalillo County Water Utility Authority Subordinate Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014B” in the original principal amount of \$87,005,000, authorized and issued pursuant to Ordinance No. F/S O-14-2 and Resolution F/S R-14-10 constituting a subordinate lien on the Net Revenues.

SERIES 2015 BONDS. The Senior Obligations designated as the “Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and Sewer System Refunding and Improvement Revenue Bonds, Series 2015” in the original principal amount of \$211,940,000, authorized and issued pursuant to Ordinance No. O-15-2 and Resolution F/S R-15-6 constituting a senior lien on the Net Revenues.

SERIES 2017 BONDS. The Senior Obligations designated as the “Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and Sewer System Refunding and Improvement Revenue Bonds, Series 2017” in the original principal amount of \$87,970,000, authorized and issued pursuant to Ordinance No. WUA O-16-2 and Resolution WUA R-16-13 constituting a senior lien on the Net Revenues.

STATE. The State of New Mexico.

SUBORDINATE OBLIGATIONS. The Drinking Water State Revolving Fund Loan Agreement (2008), the Series 2014B Bonds, and all other bonds and other obligations of the Water Authority now or hereafter issued with a lien on the Net Revenues subordinate to the lien of Senior Obligations and superior to the lien of the Super Subordinate Obligations on the Net Revenues.

SUBSIDY. The subsidy in the form of principal forgiveness for the Water Authority, to be applied proportionally at the time of each disbursement of moneys from the Program Account to the

Water Authority, being fifty percent (50%) of such disbursements.

SUPER SUBORDINATE OBLIGATIONS. All bonds and other obligations of the Water Authority now or hereafter issued with a lien on the Net Revenues subordinate to the liens of the Senior Obligations and the Subordinate Obligations on the Net Revenues.

SYSTEM. The public utility owned by the Water Authority and designated as the Water Authority's water system and sanitary sewer system (continued as a joint utility system in Section 4 of this Ordinance) consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Water Authority, through purchase, construction or otherwise, including all extensions, enlargements and improvements of or to the water and sanitary sewer system and used in connection therewith or relating thereto, and any other related activity or enterprise of the Water Authority designated by the Board as part of the water and sanitary sewer system, whether situated within or without the geographical limits of the Water Authority.

SYSTEM OBLIGATIONS. All bonds and other similar indebtedness payable solely or primarily from Net Revenues, including, without limitation, the Senior Obligations, the Subordinate Obligations and the Super Subordinate Obligations.

TERM SHEET. Exhibit "A" to the Loan Agreement.

VARIABLE RATE OBLIGATIONS. System Obligations, including reimbursement obligations pursuant to a Credit Facility, the interest rate on which is subject to change from time to time.

WATER AUTHORITY. The Albuquerque Bernalillo County Water Utility Authority created by Section 72-1-10 NMSA 1978 as a joint agency of the City and the County and operating under the name Albuquerque Bernalillo County Water Utility Authority.

RULES OF CONSTRUCTION. For purposes of this Ordinance, unless otherwise expressly provided or unless the context requires otherwise:

(1) Unless otherwise stated in this Ordinance, all references in this Ordinance to designated Sections and other subdivisions are to the designated Section and other subdivisions of this Ordinance.

(2) The words "herein", "hereof", "hereunder", and "herewith" and other words of similar import in this Ordinance refer to this Ordinance, as a whole, and not to any particular Section or other subdivision.

(3) All accounting terms not otherwise defined in this Ordinance have the meanings assigned to them in accordance with generally accepted accounting principles.

(4) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(5) The headings used in this Ordinance are for convenience of reference only and shall not define or limit the provisions of this Ordinance.

(6) Terms in the singular include the plural and vice versa.

Section 2. RATIFICATION. All actions previously taken (not inconsistent with the provisions of this Ordinance) by the Board and the officers of the Water Authority, directed toward the authorization, pledge, collection and distribution of the Net Revenues, the Project, and the authorization, execution and delivery of the Loan Agreement are ratified, approved and confirmed.

Section 3. FINDINGS.

(A) The Water Authority declares that it has considered all relevant information and data and finds that the execution and delivery of the Loan Agreement under the Act in the Maximum Principal Amount to finance the Project is necessary and in the interest of the public health, safety and welfare of the residents of the geographic area served by the Water Authority.

(B) The Water Authority will finance the Project with the proceeds of the Loan Agreement, together with other funds of the Water Authority, if necessary.

(C) It is economically feasible to accomplish the Project by the execution and delivery of the Loan Agreement.

(D) The Net Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

Section 4. JOINT UTILITY. The System shall continue to be operated and maintained as a joint public utility.

Section 5. LOAN AGREEMENT - AUTHORIZATION AND DETAIL.

(A) AUTHORIZATION. This Ordinance has been adopted by the affirmative vote of at least a majority of all of the members of the Board. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Water Authority and acquiring and constructing the Project, it is hereby declared necessary that the Water Authority, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special limited obligation of the Water Authority to pay a principal amount of two hundred fifty thousand dollars (\$250,000) and interest thereon, and to accept a loan subsidy in the amount of seven hundred fifty thousand dollars (\$750,000) and the execution and delivery of the Loan Agreement is hereby authorized. The Water Authority shall use the proceeds of the Loan and Subsidy (i) to finance the acquisition and construction of the Project and (ii) to pay Expenses. The Project will be owned by the Water Authority.

(B) DETAIL. The Loan Agreement shall be in substantially the form of the Loan

Agreement presented at the meeting of the Board at which this Ordinance was adopted. The Loan shall be in an amount not to exceed the Maximum Principal Amount of one million dollars (\$1,000,000). The Loan Agreement Principal Amount shall be payable in installments of principal due on May 1 of the years designated in the Final Loan Agreement Payment Schedule and bear interest payable on May 1 and November 1 of each year, commencing on November 1, 2018, at the rates designated in the Loan Agreement, including Exhibit "A" thereto, which rates include the Administrative Fee. Interest on Loan Agreement will be computed on the basis of a 360-day year consisting of twelve 30-day months.

Section 6. AUTHORIZATION OF PROJECT AND EXPENSES.

(A) PROJECT. The Project is hereby authorized and approved.

(B) EXPENSES. The payment of Expenses is authorized and approved.

(C) PROCEEDS. The proceeds of the Loan Agreement will be used exclusively to finance the Project including the payment of Expenses.

Section 7. APPROVAL OF THE LOAN AGREEMENT. The form of the Loan Agreement as presented at the meeting of the Board at which this Ordinance was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the Executive Director is hereby authorized to affix the seal of the Water Authority on the Loan Agreement and attest the same. The execution of the Loan Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 8. SPECIAL LIMITED OBLIGATIONS. The Loan Agreement shall be secured by the pledge of the Net Revenues as set forth in the Loan Agreement and shall be payable solely from the Net Revenues. The Loan Agreement, together with interest thereon and other obligations of the Water Authority thereunder, shall be a special, limited obligation of the Water Authority, payable solely from the Net Revenues as provided in this Ordinance, and the Loan Agreement shall not constitute a general obligation of the Water Authority, the City, the County, or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Water Authority for payment of the obligations thereunder. Nothing contained in this Ordinance nor in the Loan Agreement, nor any other instruments, shall be construed as obligating the Water Authority (except with respect to the application of the Net Revenues) or as imposing a pecuniary liability or a charge upon the general credit of the Water Authority, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Water Authority or

any charge upon its general credit. The Loan Agreement shall never constitute an indebtedness of the Water Authority within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Water Authority or a charge against its general credit. Nothing herein shall prevent the Water Authority from applying other funds of the Water Authority legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 9. DISPOSITION OF PROCEEDS; COMPLETION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT.

(A) **ACCOUNTS.** The Water Authority hereby consents to creation of the Program Account, Expense Fund and Debt Service Account to be held and maintained by the Finance Authority as provided in the Loan Agreement. The Water Authority hereby approves of the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and Expense Fund. The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon receipt thereof in the Expense Fund and the Program Account, as provided in the Loan Agreement. Until the Completion Date or the date of the Final Disbursement, the money in the Program Account shall be used and paid out solely for the purpose of acquiring and constructing the Project and to pay Expenses in compliance with applicable law and the provisions of the Loan Agreement.

(B) **PROMPT COMPLETION OF THE PROJECT.** The Water Authority will acquire, construct and complete the Project with all due diligence. Upon the acquisition and completion of the Project, the Water Authority shall execute and send to the Finance Authority a certificate stating that the completion of and payment for the Project has been completed.

(C) **FINANCE AUTHORITY NOT RESPONSIBLE FOR APPLICATION OF LOAN PROCEEDS.** The Finance Authority shall in no manner be responsible for the application or disposal by the Water Authority or by its officers of the net proceeds derived from the Loan Agreement.

Section 10. DEPOSIT OF NET REVENUES; DISTRIBUTIONS OF NET REVENUES AND FLOW OF FUNDS.

(A) **DEPOSIT OF NET REVENUES.** Net Revenues shall be paid directly by the Water Authority to the Finance Authority in an amount sufficient to pay principal and interest due under the Loan Agreement, as provided in Section 5.2 of the Loan Agreement.

(B) **TERMINATION OF DEPOSITS TO MATURITY.** No payment shall be made into the Debt Service Account if the amount in the Debt Service Account totals a sum at least equal to the

entire aggregate amount of Loan Agreement Payments to become due as to principal and interest due under the Loan Agreement, in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Water Authority and used as provided in Section 10(C) below.

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

Section 11. LIEN ON NET REVENUES. The Loan Agreement shall be issued with a lien on the Net Revenues on parity with the lien of the Senior Obligations on the Net Revenues and a lien superior to the liens of the Subordinate Obligations and the Super Subordinate Obligations on the Net Revenues. The Net Revenues are hereby authorized to be pledged, and are hereby pledged, and the Water Authority grants a security interest therein, for the payment of the principal and interest due under the Loan Agreement, subject to the uses thereof permitted by and the priorities set forth in this Ordinance and the Loan Agreement. The Loan Agreement constitutes an irrevocable first lien, but not necessarily an exclusive first lien, on the Net Revenues as set forth herein and therein, and the Water Authority shall not create a lien on the Net Revenues superior to that of the Loan Agreement without the express prior written approval of the Finance Authority.

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

Section 13. FUNDS AND ACCOUNTS.

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

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

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

Section 14. AMENDMENT OF ORDINANCE. Prior to the Closing Date, the provisions of this Ordinance may be supplemented or amended by ordinance of the Board with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. After the Closing Date, this Ordinance may be amended without receipt by the Water Authority of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 15. LIMITATION OF RIGHTS. Nothing in this Ordinance expressed or implied is intended or shall be construed to give to any person other than the Water Authority, the Finance Authority and the parties to which such right, remedy or claim is expressly granted by this Ordinance any legal or equitable right, remedy or claim under or in respect to the Ordinance.

Section 16. ORDINANCE IRREPEALABLE. After the Closing Date, this Ordinance shall be and remain irrevocable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

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

Section 18. REPEALER CLAUSE. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 19. GENERAL SUMMARY FOR PUBLICATION. The title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

Albuquerque Bernalillo County Water Utility Authority

Notice of Adoption of Ordinance

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 6-14-6 NMSA 1978, that on May 23, 2018, the Board of Albuquerque Bernalillo County Water Utility Authority (the "Water Authority") adopted Water Authority Ordinance No. O-18-5, an ordinance which authorizes the execution and delivery of a loan agreement with the New Mexico Finance Authority in an aggregate principal amount of \$1,000,000 to make improvements to the Water Authority's Joint Water and Sanitary Sewer System.

The title of the Ordinance is:

ORDINANCE

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE "WATER AUTHORITY") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE WATER AUTHORITY TO PAY A PRINCIPAL AMOUNT OF NO MORE THAN TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), TOGETHER WITH INTEREST, COSTS OF ISSUANCE AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO MORE THAN SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000), FOR THE PURPOSE OF FINANCING THE COSTS OF EXTENDING AND IMPROVING THE WATER INFRASTRUCTURE SYSTEM TO THE CARNUEL COMMUNITY, INCLUDING, ACQUISITION AND INSTALLATION OF WATER DISTRIBUTION LINES; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL, INTEREST AND ADMINISTRATIVE FEES DUE UNDER THE LOAN AGREEMENT SOLELY FROM NET REVENUES; SETTING A MAXIMUM INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

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

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

(End of Summary of Ordinance for Publication)

PASSED AND ADOPTED THIS 23rd DAY OF MAY, 2018.

BY A VOTE OF ____ FOR AND ____ AGAINST.

Chair

ATTEST:

Secretary