



Albuquerque Bernalillo County Water Authority

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

Legislation Text

File #: O-21-1, Version: 1

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. O-21-1

ORDINANCE

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

Capitalized terms used in the following preambles have the same meaning as 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 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 for the Project defined in the Original Ordinance, as amended by this Ordinance No. O-21-1 (collectively, the “Ordinance”); and

WHEREAS, 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

WHEREAS, 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; and

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

WHEREAS, all required authorizations, consents and approvals in connection with (i) the First Amendment to the Loan Agreement, and (ii) the authorization, execution and delivery of the First Amendment to 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.

BE IT ORDAINED BY THE BOARD OF THE WATER AUTHORITY:

Section 1. DEFINITIONS.

(A) DEFINITIONS. Capitalized terms defined in Section 1 of the Original Ordinance and the Loan Agreement shall, for all purposes, have the meaning herein specified or defined in the Original Ordinance and the Loan Agreement, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined). In addition, the following capitalized terms shall have for the purposes, the meaning herein specified:

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

“LOAN AGREEMENT” means the drinking water state revolving loan fund loan and subsidy agreement dated the Closing Date between the Finance Authority and the Water Utility Authority which provides for the financing of the Project and requires payments by or on behalf of the Water Utility Authority to the Finance Authority, and any amendments or supplements thereto, including the

exhibits attached to the Loan Agreement and the amendments to the Loan Agreement and the First Amendment authorized by this Ordinance and contained in this Ordinance.

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

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 execution and delivery of the First Amendment is ratified, approved and confirmed.

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

Section 4. FINDINGS.

(A) The Water Authority declares that it has considered all relevant information and data and finds that the execution and delivery of the First Amendment to the Loan Agreement to finance the Project, as amended by the First Amendment, 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, as amended by the First Amendment, 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, as amended by the First Amendment, by the execution and delivery of the First Amendment.

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

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

Section 5. FIRST AMENDMENT - 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, as amended by the First Amendment, it is hereby declared necessary that the Water Authority, pursuant to the Act, execute and deliver the First Amendment. The Project authorized in the Loan Agreement and the First Amendment will be owned by the Water Authority.

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

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

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

Section 6. APPROVAL OF THE FIRST AMENDMENT. The form of the First Amendment 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 First Amendment 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 First Amendment and attest the same. The execution of the First Amendment by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. 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 First Amendment 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 First Amendment for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the First Amendment 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 First Amendment, and the publication of the summary of this Ordinance set out in Section 13 of this Ordinance (with such changes, additions and deletions as may be necessary).

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

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 Los Padillas community as part of the South Valley water project, including the construction of a water transmission line and all appurtenances along Coors Blvd from Gun Club Rd to Pajarito Rd, and the payment of Expenses associated with the execution and delivery of the Loan Agreement.

Section 9. AMENDMENT OF ORDINANCE. Prior to the initial delivery of the First Amendment to the Finance Authority, 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 delivery of the First Amendment to the Finance Authority, 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 10. ORDINANCE IRREPEALABLE. After the First Amendment has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided in the Ordinance and the Loan Agreement.

Section 11. 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 12. 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 13. 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 April 21, 2021, the Board of Albuquerque Bernalillo County Water Utility Authority (the "Water Authority") adopted Water Authority Ordinance No. O-21-1, an ordinance which authorizes the execution and delivery of a first amendment to a loan agreement with the New Mexico Finance

Authority in an aggregate principal amount of \$3,430,081 to make improvements to the Water Authority's Joint Water and Sanitary Sewer System.

The title of the Ordinance is:

ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT DATED MAY 7, 2021 TO A DRINKING WATER STATE REVOLVING LOAN FUND LOAN AND SUBSIDY AGREEMENT AUTHORIZED BY ORDINANCE NO. O-19-1 ("LOAN AGREEMENT") BY AND BETWEEN THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE "WATER AUTHORITY") AND THE NEW MEXICO FINANCE AUTHORITY ("THE "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 RD; EXTENDING THE TWENTY-FOUR (24) MONTH CONSTRUCTION PERIOD IN THE LOAN 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.

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 21st DAY OF APRIL, 2021.

BY A VOTE OF ____ FOR AND ____ AGAINST.

Chair

ATTEST:

Executive Director