



Albuquerque Bernalillo County Water Authority

Albuquerque/Bernalillo
County
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Albuquerque, NM 87102

Legislation Text

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ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. R-21-31

RESOLUTION

Authorizing the Execution and Delivery of Water Project Fund Loan/Grant Agreement by and between the New Mexico Water Trust Board and the New Mexico Finance Authority ("Finance Authority") and the Albuquerque Bernalillo County Water Utility Authority (the "Water Authority"), in the Total Amount of \$2,000,000 (\$1,200,000 Grant Amount/\$800,000 Loan Amount), Evidencing A Special Limited Obligation of the Water Authority To Utilize the Loan/Grant Amount Solely for the Purpose of Financing the Cost of the Water Authority's Advanced Metering Infrastructure Project, and Solely in the Manner Described in the Loan/Grant Agreement; Providing for the Pledge and Payment of the Loan Amount and an Administrative Fee Solely From 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

Capitalized terms used in the following preambles have the same meaning as defined in this Resolution unless the context requires otherwise.

WHEREAS, the Water Authority is a legally and regularly created, established, duly organized and existing public body politic and corporate, separate and apart from the City and the County, under the general laws of the State, is a qualifying entity under the Act and is qualified for financial assistance as determined by the Finance Authority and approved by the Water Trust Board pursuant to the Board Rules and the applicable policies and the Act; and

WHEREAS, pursuant to the Board Rules the Water Trust Board has recommended the Project for funding as a qualifying project to the legislature 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 outstanding Senior Obligations set forth in Exhibit A, payable from Net Revenues with a senior first lien on the Net Revenues; and

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

WHEREAS, the Water Authority currently has no Super Subordinated Obligations outstanding payable from Net Revenues with a lien on the Net Revenues subordinate 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 Resolution; and

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

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

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

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

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to the Loan/Grant Agreement, that the Loan/Grant Amount, together with the Additional Funding Amount and other moneys available to the Water Authority, is sufficient to complete the Project, and that it is in the best interest of the Water Authority and the constituent public it serves that the Loan/Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Loan/Grant Agreement; and

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

thereunder; and

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

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

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

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

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

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

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

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

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

“Additional Funding Amount” means the amount to be provided by the Water Authority which

includes the total value of hard or of the soft match, which, in combination with the Loan/Grant Amount and other amounts available to the Water Authority, is sufficient to complete the Project. The Additional Funding Amount is One Million Two Hundred Thousand Dollars (\$1,200,000).

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

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

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

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

“County” means Bernalillo County, New Mexico.

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

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

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

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

“Debt Service Account” means 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/Grant Agreement as the same become due.

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

“Debt Service Requirements” means 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.

"Eligible Fiscal Agent Fees" has the meaning given to that term in the Loan/Grant Agreement.

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

"Eligible Legal Costs" has the meaning given to that term in the Loan/Grant Agreement.

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

"Expenses" means 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/Grant 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.

"Finance Authority" means the New Mexico Finance Authority.

"Generally Accepted Accounting Principles" means the officially established accounting

principles applicable to the Water Authority consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Finance Authority establishing accounting principles applicable to the Water Authority.

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

“Grant” or “Grant Amount” means the amount provided to the Water Authority as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall not equal more than \$1,200,000 (one million two hundred thousand dollars).

“Gross Revenues” means 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, Project 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.

“Joint Water and Sewer Fund” means 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 Resolution as the “Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer Fund.”

“Loan” or “Loan Amount” means the amount provided to the Water Authority as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, in the maximum amount of eight hundred thousand dollars (\$800,000).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Water Authority as the Grant Amount and partially borrowed by the Water Authority as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project, in the maximum aggregate amount of two million dollars (\$2,000,000).

“Loan/Grant Agreement” means the Water Project Fund Loan/Grant Agreement entered into by and between the Water Authority and the Finance Authority as authorized by this Resolution.

“Net Revenues” means the Gross Revenues after deducting Operation and Maintenance Expenses.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Operation and Maintenance Expenses” means 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/Grant Agreement.

“Outstanding” means 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 or resolution 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 Resolution or other ordinances or resolutions 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.

“Project” means the replacement of approximately 18,000 existing water meters with advanced metering infrastructure meters and devices as may be more fully described in the Term Sheet.

“Project Account” means the book account established by the Finance Authority in the name of the Water Authority for purposes of tracking expenditure of the Loan/Grant Amount 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.

“Qualified Exchange Agreement” means 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.

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

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

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

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

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

“State” means the State of New Mexico.

“Subordinate Obligations” means the “Subordinate Obligations” set forth in Exhibit A, 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 Subordinated Obligations on the Net Revenues.

“Super Subordinated Obligations” means 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 and as may be further set forth in Exhibit A.

“System” means 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 Resolution) 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 Governing Body as part of the water and sanitary sewer system, whether situated within or without the geographical limits of the Water Authority.

“System Obligations” means 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 Subordinated Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Water Authority and officers of the Water Authority directed toward the acquisition and completion of the Project, the pledge of the Net Revenues to payment of amounts due under the Loan/Grant Agreement, and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

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

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

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

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

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

D. The Water Authority will acquire and complete the Project with the proceeds of the Loan/Grant, the Additional Funding Amount and other amounts available to the Water Authority, and

except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life, which is not less than twenty (20) years, as required by NMSA 1978, § 72-4A-7(A)(1), as amended.

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

F. The Finance Authority shall maintain on behalf of the Water Authority a separate Project Account as a book account only on behalf of the Water Authority and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

Section 6. Loan/Grant Agreement-Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of a majority of all members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the constituent public served by the Water Authority and acquiring and completing the Project, it is hereby declared necessary that the Water Authority execute and deliver the Loan/Grant Agreement evidencing the special limited obligation of the Water Authority to make payments on the Loan Amount of Eight Hundred Thousand Dollars (\$800,000) and the Water Authority's acceptance of the Grant Amount of One Million Two Hundred Thousand Dollars (\$1,200,000). The Loan/Grant Amount shall be utilized solely for Eligible Items necessary to finance the acquisition and completion of the Project, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which is hereby authorized.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of One Million Two Hundred Thousand Dollars (\$1,200,000) and the Loan shall be in the amount of Eight Hundred Thousand Dollars (\$800,000). Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount, and the Administrative Fee shall be one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Water Authority and hardship waivers of payments granted to the Water Authority.

Section 7. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body at which this Resolution was adopted, is hereby

approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant 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/Grant Agreement and attest the same. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 8. Security. The Loan Amount and Administrative Fee shall be solely secured by a subordinate lien (but not an exclusive subordinate lien) on the pledge of the Net Revenues herein made and as set forth in the Loan/Grant Agreement. The Loan/Grant 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 Resolution, and the Loan/Grant Agreement shall not constitute a general obligation of the Water Authority, the City, the County, or the State, and the holders of the Loan/Grant Agreement may not look to any general or other fund of the Water Authority for payment of the obligations thereunder. Nothing contained in this Resolution nor in the Loan/Grant 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 Resolution, the Loan/Grant Agreement, or any other instrument impose any pecuniary liability upon the Water Authority or any charge upon its general credit. The Loan/Grant 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/Grant Agreement, in its sole and absolute discretion.

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

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

B. Completion of the Project. The Water Authority shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Water Authority shall execute a

certificate stating that completion of and payment for the Project has been completed. Following the Completion Date or the earlier expiration of the time allowed for disbursement of the Loan/Grant Amount as provided in the Loan/Grant Agreement, any balance remaining in the Project Account shall be transferred and deposited into the Water Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

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

Section 10. Payment of Loan Amount.

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 and Administrative Fees due under the Loan/Grant Agreement, as provided in the Loan/Grant 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 payments to become due as to principal and interest due under the Loan/Grant 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 Subordinated 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/Grant Agreement shall be issued with a lien on the Net Revenues on parity with the lien of the Subordinate Obligations on the Net Revenues and a lien inferior to the lien of the Senior Obligations but superior to the lien of the Super Subordinated 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 and Administrative Fees due under the Loan/Grant Agreement, subject to the uses thereof permitted by and the priorities set forth in this Resolution and the Loan/Grant Agreement. The Loan/Grant Agreement constitutes an irrevocable subordinate lien, but not necessarily an exclusive subordinate lien, on the Net Revenues on a parity with the lien of the Subordinate Obligations on the Net Revenues.

Section 12. Authorized Officers. 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 Resolution, the Loan/Grant 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 Resolution and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

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/Grant 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/Grant 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 Resolution. Prior to the Closing Date, the provisions of this Resolution may be supplemented or amended by resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Resolution. After the Closing Date, this Resolution 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. Resolution Irrepealable. After the Closing Date, this Resolution shall be and

remain irrevocable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as herein provided.

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

Section 17. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent herewith are hereby 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, heretofore repealed.

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

[Remainder of page intentionally left blank.]

[Form of Notice of Adoption of Resolution for Publication]

Albuquerque Bernalillo County Water Utility Authority

Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in a resolution duly adopted and approved by the Board of the Albuquerque Bernalillo County Water Utility Authority (the "Water Authority") on November __, 2021.

The title of the Resolution is:

RESOLUTION

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 TOTAL AMOUNT OF \$2,000,000 (\$1,200,000 GRANT AMOUNT/\$800,000 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 PHASE 6 ADVANCED METER

INFRASTRUCTURE 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 FROM 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.

A general summary of the subject matter of the Resolution is contained in its title. This notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

[End of Form of Notice of Adoption for Publication]

PASSED AND ADOPTED THIS ____ DAY OF NOVEMBER 2021.

BY A VOTE OF ____ FOR AND ____ AGAINST.

Chair

ATTEST:

Executive Director

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	524,858
Joint Water and Sewer System Improvement and Refunding Revenue Bonds Series 2013AO-13-2 & R-13-13		62,950,000	9,775,000
Joint Water and Sewer System Improvement and Refunding Revenue Bonds Series 2013BO-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	2,607,551
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	47,800,000	46,630,000
Senior Lien Joint Water and Sewer System Improvement Revenue Bonds, Taxable Series 2021	R-21-21	73,255,000	73,255,000
Subordinate Obligations	Subordinate Obligations	Original Principal Amount (\$)	Principal Amount Outstanding (\$)
2008 NMFA Drinking Water Loan	Authorizing Legislation O-08-4 & R-08-13 as amended by F/S O-14-2	12,000,000	5,315,115
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

Super Subordinate Obligations	Super Subordinate Obligations Authorizing Legislation	Original Principal Amount(\$)	Principal Amount Outstanding(\$)
None	None	0	0