

**CITY OF ELEPHANT BUTTE
ORDINANCE NO. 118**

AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS"), AND THE CITY OF ELEPHANT BUTTE (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF SIX HUNDRED FORTY-TWO THOUSAND DOLLARS (\$642,000) EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF PHASE II OF A WASTEWATER TREATMENT AND COLLECTION SYSTEM TO EXTEND SEWER SERVICE IN THE CITY OF ELEPHANT BUTTE, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, 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 ORDINANCE; 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 Ordinance unless the context requires otherwise.

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State of New Mexico and more specifically, Section 3-2-1 et seq., NMSA 1978; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to this Loan/Grant Agreement, that the Loan/Grant Amount, together with other moneys available to the Borrower/Grantee, is sufficient to complete the Project, and that it is in the best interest of the Borrower/Grantee and the public it represents 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 Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the Board or the NMFA or a debt or pledge of the faith and credit of the

Borrower/Grantee, the Board, the NMFA or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance 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 (i) the Additional Funding Amount is now available to the Borrower/Grantee to complete the Project; or (ii) that the Governing Body will take such steps as are necessary to obtain the Additional Funding Amount within six (6) months after the Closing Date; and

WHEREAS, the Borrower/Grantee acknowledges that, in the event that it is unable to provide the Additional Funding Amount within six (6) months after the Closing Date, the Loan/Grant Agreement shall, at the option of the Board and the NMFA, terminate and be of no further force or effect; 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, 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 Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ELEPHANT BUTTE, NEW MEXICO:

Section 1. Definitions. As used in this Ordinance, 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):

“Act” means the Water Project Finance Act, Sections 72-4A-1 through 72-4A-10, NMSA 1978, as amended and supplemented.

"Additional Funding Amount" means the amounts to be provided by the Borrower/Grantee which, in combination with the Loan/Grant Amount, are sufficient to complete the Project. The Additional Funding Amount for the Project is zero dollars (\$0).

“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 Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

"Authorized Officers" means the Mayor, City Manager and City Clerk of the Borrower/Grantee.

"Board" means the New Mexico Water Trust Board.

"Borrower/Grantee" means the City of Elephant Butte in Sierra County, New Mexico.

"Closing Date" means the date of execution, delivery and funding of the Loan/Grant Agreement.

"Completion Date" means the date of final payment of the cost of the Project.

"Expense Account" means the account established pursuant to this Ordinance and held by the NMFA in connection with the Loan/Grant to pay the Expenses.

"Expenses" means the costs of originating and administering the Loan/Grant, including legal fees, in the amount shown in Exhibit "A" to the Loan/Grant Agreement.

"Generally Accepted Accounting Principles" means the officially established accounting principles applicable to the Borrower/Grantee 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 Lenders/Grantors establishing accounting principles applicable to the Borrower/Grantee.

"Governing Body" means the City Council of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

"Grant" or "Grant Amount" means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is five hundred thirteen thousand six hundred dollars (\$513,600).

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

"Lenders/Grantors" means the Water Trust Board and the NMFA.

"Loan" or "Loan Amount" means the amount provided to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and is one hundred twenty-eight thousand four hundred dollars (\$128,400).

"Loan/Grant Agreement" means the Water Project Fund Loan/Grant Agreement entered into by and between the Borrower/Grantee, the Board and the NMFA as authorized by this Ordinance.

"NMFA" means the New Mexico Finance Authority.

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

"Ordinance" means this Ordinance as supplemented or amended from time to time.

"Pledged Revenues" means the designated revenue stream which is intended to be utilized in funding the repayment of the Loan Amount.

"Project Account" means the account in the name of the Borrower/Grantee established pursuant to this Ordinance and held by the NMFA for deposit of the Loan/Grant Amount for disbursement to the Borrower/Grantee for payment of the costs of the Project.

"Project" means the project described in Exhibit "A" to the Loan/Grant Agreement.

"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) conservation, recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to Section 72-4A-9(B) NMSA.

"State" means the State of New Mexico.

"Useful Life" means the structural and material design life of the Project.

"Water Project Fund" means the fund of the same name created pursuant to Section 72-4A-9 NMSA and held and administered by the NMFA.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition of the Project and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition of the Project and the method of funding the Project through execution and delivery of the Loan/Grant Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee and the public whom it serves.

Section 4. Findings. The Borrower/Grantee 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 Borrower/Grantee 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 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 and in the interest of the public health, safety, and welfare of the public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, 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 Section 72-4A-7(A)(1) NMSA.

E. Together with the Loan/Grant Amount, the Additional Funding Amount is now available to the Borrower/Grantee, or is expected to become available to the Borrower/Grantee within six (6) months after the Closing Date, and, in combination with the Loan/Grant Amount, will be sufficient to complete the Project and pay Expenses.

F. The Lenders/Grantors shall maintain on behalf of the Borrower/Grantee a separate Project account or Project accounts and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

G. The Borrower/Grantee has or will acquire title to or easements or rights of way on the real property upon which the Project is being constructed or located.

Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the constituent public served by the Borrower/Grantee and by the other qualifying entities involved in the Project and acquiring the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of five hundred thirteen thousand six hundred dollars (\$513,600) and borrowing the Loan Amount of one hundred twenty-eight thousand four hundred dollars (\$128,400) to be utilized solely for the purpose of completing the Project and paying Expenses, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which are hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to pay Expenses and to finance the completion of the Project.

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 Ordinance was adopted. The Grant shall be in the amount of five hundred thirteen thousand six hundred dollars (\$513,600) and the Loan shall be in the amount of one hundred twenty-eight thousand four hundred dollars (\$128,400). 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 Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body at which this Ordinance 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 City Clerk is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account and Expense Account. The Borrower/Grantee hereby consents to creation of the Project Account and the Expense Account by the NMFA and approves of the deposit of the Loan/Grant Amount in those accounts as shown in Exhibit "A" to the Loan/Grant Agreement. Until the Completion Date, the money in the Project Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement. The Borrower/Grantee shall proceed to complete the Project with all due diligence.

B. Completion of the Project. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Project Account shall be transferred and deposited into the Water Project Fund.

C. Board and NMFA Not Responsible. Neither the Board nor the NMFA shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds herein designated.

Section 9. Payment of Loan Amount. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount directly to the NMFA as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, which lien shall be subordinate to any lien

on the Pledged Revenues existing on the Closing Date and, further, shall be subordinate to all other indebtedness secured or that may in the future be secured by the Pledged Revenues.

Section 11. 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 Ordinance, 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 Ordinance and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance 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 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan/Grant Agreement to the NMFA, the provisions of this Ordinance may be supplemented or amended by ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the Board and the NMFA.

Section 13. Contingent Closing. To expedite the availability of funds to the Borrower/Grantee, Authorized Officers are authorized and directed to execute and deliver the Loan/Grant Agreement at the earliest opportunity, which may be prior to the expiration of the limitation of actions period set forth in Section 6-14-7, NMSA 1978. In the event that any action attacking the validity of any proceedings had or taken in connection with this Ordinance or the Loan/Grant Agreement is filed or entered before any court or administrative body of competent jurisdiction before the end of the limitation of actions period, the Governing Body hereby agrees and covenants to take such action or actions as may be reasonably necessary and appropriate to ensure the continuing force and validity of the Loan/Grant Agreement, to the maximum extent possible, or in the alternative to provide for the termination of the Loan/Grant Agreement pursuant to the terms thereof, including reimbursement to the Lenders/Grantors of any funds distributed to the Borrower/Grantee in reliance upon the Loan/Grant Agreement.

Section 14. Ordinance Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as herein provided.

Section 15. 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 such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 16. 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 17. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Borrower/Grantee kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Borrower/Grantee, and this Ordinance shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Ordinance, this Ordinance shall be effective upon adoption of this Ordinance by the Governing Body.

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 Ordinance shall be published in substantially the following form:

[Remainder of page intentionally left blank.]

[Form of Summary of Ordinance for Publication]

CITY OF ELEPHANT BUTTE
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 118, duly adopted and approved by the City Council of the City of Elephant Butte on the 7th day of January 2009. A complete copy of the Ordinance is available for public inspection during normal and regular business hours in the office of the City Clerk, at the Municipal Offices, 103 Water Avenue, Elephant Butte, New Mexico 87935.

The title of the Ordinance is:

CITY OF ELEPHANT BUTTE
ORDINANCE NO. 118

AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO WATER TRUST BOARD AND THE NEW MEXICO FINANCE AUTHORITY (THE "LENDERS/GRANTORS"), AND THE CITY OF ELEPHANT BUTTE (THE "BORROWER/GRANTEE"), IN THE AMOUNT OF SIX HUNDRED FORTY-TWO THOUSAND DOLLARS (\$642,000) EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF PHASE II OF A WASTEWATER TREATMENT AND COLLECTION SYSTEM TO EXTEND SEWER SERVICE IN THE CITY OF ELEPHANT BUTTE, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT SOLELY FROM PLEDGED REVENUES; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, 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 ORDINANCE; 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 Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA.

[End of Form of Summary for Publication]

Section 19. Execution of Agreements. The City of Elephant Butte through its Governing Body agrees to authorize and execute all such agreements with the New Mexico Water Trust Board and the New Mexico Finance Authority as are necessary to consummate the Loan/Grant contemplated herein and consistent with the terms and conditions attached hereto.

PASSED, APPROVED AND ADOPTED THIS 7TH DAY OF JANUARY, 2009.

CITY OF ELEPHANT BUTTE

By _____
Eunice Kent
Mayor

ATTEST:

Mary Ann Dix
City Clerk

[Remainder of page intentionally left blank.]

Governing Body Member Alan Brown then moved adoption of the foregoing Ordinance, duly seconded by Governing Body Member Patsy Barnett.

The motion to adopt the Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

Mayor Eunice Kent

Mayor Pro-tem Alan Brown

Councilor Kim Skinner

Councilor Gerald La Font

Councilor Patsy Barnett

Those Voting Nay:

Those Absent:

Five (5) Members of the Governing Body having voted in favor of the motion, the Mayor declared the motion carried and the Ordinance adopted, whereupon the Mayor and City Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Ordinance, the meeting upon motion duly made, seconded and carried, was adjourned.

CITY OF ELEPHANT BUTTE

By _____
Eunice Kent, Mayor

ATTEST:

By _____
Mary Ann Dix, City Clerk

EXHIBIT "A"

Notice of Meeting