

**TOWN OF PALMER LAKE
COUNTY OF EL PASO
STATE OF COLORADO**

Ordinance 2018-3

AN ORDINANCE APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY ("CWRPDA") IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,100,000; AUTHORIZING THE FORMS AND EXECUTION OF THE LOAN AGREEMENT AND GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AUTHORIZING THE CONSTRUCTION OF A PROJECT; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY

WHEREAS, THE TOWN OF PALMER LAKE (THE "TOWN"), IN EL PASO COUNTY, COLORADO, IS A POLITICAL SUBDIVISION OF THE STATE OF COLORADO (THE "STATE"), DULY ORGANIZED AND EXISTING AS A STATUTORY MUNICIPALITY UNDER THE LAWS OF THE STATE, ACTING THROUGH ITS ELECTED BOARD OF TRUSTEES (THE "BOARD"); AND

WHEREAS, THE MEMBERS OF THE BOARD HAVE BEEN DULY ELECTED AND QUALIFIED; AND

WHEREAS, THE TOWN HAS ACTED PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION (TABOR), TITLE 37, ARTICLE 45.1, COLORADO REVISED STATUTES (THE "ENTERPRISE ACT") AND RESOLUTION 2018-6 (THE "ENTERPRISE RESOLUTION") DULY ENACTED BY THE BOARD, TO CREATE THE "TOWN OF PALMER LAKE WATER ENTERPRISE" (THE "ENTERPRISE") TO OPERATE THE MUNICIPAL WATER SYSTEM SERVING THE INHABITANTS OF THE TOWN (THE "SYSTEM"); AND

WHEREAS, UNDER THE ENTERPRISE RESOLUTION, THE BOARD ACTS AS THE GOVERNING BODY OF THE ENTERPRISE; AND

WHEREAS, THE ENTERPRISE PRESENTLY QUALIFIES AS AN "ENTERPRISE" FOR PURPOSES OF TABOR; AND

WHEREAS, THE BOARD, ACTING BY AND THROUGH THE ENTERPRISE, HAS HERETOFORE DETERMINED THE NEED TO INSTALL A NEW UNDERGROUND WATER STORAGE TANK TO PROVIDE SYSTEM REDUNDANCY, BACK UP WATER SUPPLY, AND SUPPORT EMERGENCY OPERATIONS (AS

FURTHER DESCRIBED AND DEFINED IN THE LOAN AGREEMENT (DEFINED HEREIN), THE "PROJECT"); AND

WHEREAS, THE TOWN HAS MADE APPLICATION TO THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY (THE "CWRPDA"), A BODY CORPORATE AND POLITICAL SUBDIVISION OF THE STATE OF COLORADO, FOR A LOAN TO FINANCE ALL OR A PORTION OF THE COST OF THE PROJECT; AND

WHEREAS, THE BOARD HAS DETERMINED THAT IN ORDER TO FINANCE ALL OR A PORTION OF THE COST OF THE PROJECT, IT IS NECESSARY AND ADVISABLE AND IN THE BEST INTERESTS OF THE TOWN (I) TO ENTER INTO A LOAN AGREEMENT WITH CWRPDA (THE "LOAN AGREEMENT"), PURSUANT TO WHICH CWRPDA SHALL LOAN THE TOWN AN AMOUNT OF NOT TO EXCEED \$1,100,000 (THE "LOAN") FOR SUCH PURPOSES, AND (II) TO ISSUE A GOVERNMENTAL AGENCY BOND (THE "LOAN BOND") TO CWRPDA TO EVIDENCE THE TOWN'S REPAYMENT OBLIGATIONS UNDER THE LOAN AGREEMENT; AND

WHEREAS, TABOR REQUIRES AN ELECTION TO INCUR ANY MULTIPLE FISCAL YEAR OBLIGATION UNLESS SUCH OBLIGATION IS INCURRED FOR AN ENTERPRISE; AND

WHEREAS, UNDER TABOR, THE ENTERPRISE IS A GOVERNMENT-OWNED BUSINESS AUTHORIZED TO ISSUE ITS OWN REVENUE LOAN BOND AND RECEIVING UNDER 10% OF ANNUAL REVENUE IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED; AND

WHEREAS, IN 2017, THE ENTERPRISE RECEIVED GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED WHICH WERE LESS THAN 10% OF THE ANNUAL REVENUE OF THE SYSTEM; AND

WHEREAS, THERE HAVE BEEN PRESENTED TO THE BOARD THE FORMS OF THE LOAN AGREEMENT AND THE LOAN BOND (COLLECTIVELY, THE "FINANCING DOCUMENTS"); AND

WHEREAS, THE FINANCING DOCUMENTS SHALL CONSTITUTE REVENUE OBLIGATIONS OF THE TOWN, PAYABLE FROM THE NET REVENUES OF THE SYSTEM (AS DEFINED IN THE LOAN AGREEMENT); AND

WHEREAS, THE TOWN HAS HERETOFORE ISSUED A GOVERNMENTAL AGENCY BOND TO THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO EVIDENCE A LOAN (THE "2009 LOAN") MADE PURSUANT TO A LOAN AGREEMENT DATED AS OF JULY 22, 2009 (THE "2009 LOAN AGREEMENT"), AND HAS ISSUED TO THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY A GOVERNMENTAL AGENCY BOND (THE "2009 BOND") TO EVIDENCE SUCH 2009 LOAN, WHICH 2009 BOND IS SECURED BY A PLEDGE OF THE NET REVENUES OF THE SYSTEM; AND

WHEREAS, EXCEPT FOR THE 2009 LOAN AND 2009 BOND, THE TOWN HAS NOT PLEDGED NOR HYPOTHECATED THE NET REVENUES DERIVED OR TO BE DERIVED FROM THE OPERATION OF THE SYSTEM, OR ANY PART THEREOF, TO THE PAYMENT OF ANY BONDS OR FOR ANY OTHER PURPOSE, WITH THE RESULT THAT THE NET REVENUE MAY NOW BE PLEDGED LAWFULLY AND IRREVOCABLY TO THE PAYMENT OF THE LOAN BOND; AND

WHEREAS, THE TOWN IS NOT DELINQUENT IN THE PAYMENT OF ANY PRINCIPAL OR INTEREST REQUIREMENTS UNDER THE 2009 LOAN OR THE 2009 BOND; AND

WHEREAS, PURSUANT TO TITLE 31, ARTICLE 35, PART 4, C.R.S. (THE "SEWER AND WATER SYSTEMS ACT") AND THE ENTERPRISE ACT, THE FINANCING DOCUMENTS MAY BE APPROVED BY THE BOARD WITHOUT AN ELECTION; AND

WHEREAS, THE FORMS OF THE FINANCING DOCUMENTS ARE ON FILE WITH THE ACTING TOWN CLERK; AND

WHEREAS, THE BOARD DESIRES TO APPROVE THE FORM OF THE FINANCING DOCUMENTS AND OTHER DOCUMENTS REFERENCED THEREIN, AUTHORIZE THE EXECUTION OF THE LOAN AGREEMENT, AND AUTHORIZE THE EXECUTION AND DELIVERY OF THE BOND; AND

WHEREAS, PURSUANT TO SECTION 31-16-105, C.R.S., BECAUSE OF THE URGENT NEED FOR THE FINANCING OF THE PROJECT AND THE LIMITED AVAILABILITY OF LOW OR NO INTEREST LOAN, THE BOARD HAS DETERMINED THAT AN EMERGENCY EXISTS AND THAT ADOPTION OF THIS ORDINANCE AS AN EMERGENCY MEASURE ON FIRST AND FINAL READING IS NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE.

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE TOWN OF PALMER LAKE, COLORADO, ORDAINS:

Section 1. **Recitals Incorporated.** The foregoing recitals are made a part of this Ordinance.

Section 2. **Determinations.** The Board hereby finds and determines that the Enterprise constitutes an enterprise under TABOR.

Section 3. **Approvals, Authorizations, and Amendments.** The forms of the Financing Documents presented at this meeting are incorporated herein by reference and are hereby approved. The Town shall enter into and perform its obligations under the Financing

Documents in the forms of such documents, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor of the Town (the "Mayor") or the Town Administrator. The Mayor and the Town Administrator and the Acting Town Clerk are hereby authorized and directed to execute the Financing Documents and to affix the seal of the Town thereto, and further to execute and authenticate such other documents or certificates as are deemed necessary or desirable in connection therewith. The Financing Documents shall be executed in substantially the forms approved at this meeting.

The execution of any instrument or certificate or other document in connection with the matters referred to herein by the Mayor, the Town Administrator, and Town Clerk or by other appropriate officers of the Town, shall be conclusive evidence of the approval by the Town of such instrument.

Section 4. Election to Apply the Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Act") provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Town hereby elects to apply all of the provisions of the Supplemental Act to the Financing Documents.

Section 5. Delegation.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the Town hereby delegates to the Mayor or the Town Administrator the independent authority to make the following determinations relating to and contained in the Loan Agreement and the Loan Bond, subject to the restrictions contained in paragraph (b) of this Section 4:

- i. The interest rate on the Loan;
- ii. The principal amount of the Loan;
- iii. The amount of principal of the Loan maturing in any given year and the final maturity of the Loan;
- iv. The dates on which the principal of and interest on the Loan are paid; and
- v. The existence and amount of reserve funds for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 4 shall be subject to the following parameters and restrictions:

- i. The interest rate on the Loan shall not exceed 2%;

- ii. The principal amount of the Loan shall not exceed \$1,100,000; and
- iii. The final maturity of the Loan shall not be later December 31, 2048.

Section 6. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Loan Bond and the Loan Agreement shall contain recitals that the Loan Bond is issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Loan Bond after its delivery for value.

Section 7. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and members of the Board, not inconsistent with the provisions of this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 8. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Loan Bond and the Loan Agreement provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The amounts pledged to the payment of the Loan Bond and the Loan Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described in the Loan Agreement. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Town irrespective of whether such persons have notice of such liens.

Section 9. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the Financing Documents shall be commenced more than thirty days after the issuance of the Loan Bond.

Section 10. Limited Obligation; Special Obligation. The Loan Agreement and Loan Bond are payable solely from the Pledged Property (as defined in the Loan Agreement), and the Loan Agreement and Loan Bond do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

No elected or appointed officers or agents of the Town shall be subject to any pecuniary liability in connection with any agreement, covenant, or undertaking by the Town, or

by them, contained in any document executed in connection with the authorization, execution, and delivery of the Financing Documents or this Ordinance or with respect to any action taken or omitted to be taken in good faith with reference thereto.

Section 11. Approval of Project; Disposition and Investment of Loan Proceeds.

The Board of Trustees authorizes the completion of the Project and the proceeds of the Loan shall be applied to pay the costs and expenses of acquiring, constructing and equipping the Project, including costs related thereto and, to the extent permitted under federal tax laws, reimbursement to the Town for capital expenditures heretofore incurred and paid from Town funds in anticipation of the incurrence of long-term financing therefor, and all other costs and expenses incident thereto, including without limitation the costs of obtaining the Loan. Neither CWRPDA nor any subsequent owner(s) of the Loan Agreement shall be responsible for the application or disposal by the Town or any of its officers of the funds derived from the Loan. In the event that all of the proceeds of the Loan are not required to pay such costs and expenses, any remaining amount shall be used for the purpose of paying the principal amount of the Loan and the interest thereon, as applicable.

Section 12. Town Representative.

Pursuant to Exhibits B of the Loan Agreement, the Mayor and the Town Administrator are hereby designated as the Authorized Officers (as defined in the Loan Agreement) for the purpose of performing any act or executing any document relating to the Loan, the Town, or the Financing Documents. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 13. Estimated Life of Improvements.

It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan is not less than the final maturity of the Loan.

Section 14. Direction to Take Authorizing Action.

The appropriate officers of the Town and members of the Board are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to such certificates and affidavits as may reasonably be required by CWRPDA.

Section 15. Severability.

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, the intent being that the same are severable.

Section 16. Repealer. All orders, resolutions, bylaws, ordinances or regulations of the Town, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 17. Ordinance Irrepealable. After the Loan Bond is issued, this Ordinance shall constitute an irrevocable contract between the Town and CWRPDA, and shall be and remain irrepealable until the Loan Bond and the interest thereon, as applicable, shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, charter, ordinance, resolution or other measure enacted after the issuance of the Loan Bond shall in any manner be construed as impairing the obligations of the Town to keep and perform the covenants contained in this Ordinance.

Section 18. Recordation. A true copy of this Ordinance, as adopted by the Board, shall be numbered and recorded on the official records of the Town and its adoption and publication shall be authenticated by the signatures of the Mayor and the Town Clerk, and by a certification of publication.

Section 19. Declaration of Emergency. By reason of the Town's need to improve its System to provide for the health and welfare of its citizens and the further need to acquire additional financing to improve such System, and the limited availability of such low interest financing through the CWRPDA, the Board declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety, and this Ordinance shall be in full force and effect immediately upon final passage on first reading and adoption upon Board approval.

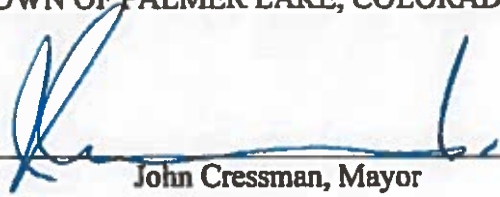
Section 20. Publication and Effective Date. This Ordinance after its passage on first and final reading shall be numbered, recorded, published and posted and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and the Town Clerk. This Ordinance shall become effective immediately.

[Remainder of page left blank intentionally]

INTRODUCED, READ BY TITLE, PASSED ON FIRST AND FINAL
READING AS AN EMERGENCY ORDINANCE, AND ORDERED PUBLISHED BY TITLE
ONLY THIS 22nd DAY OF FEBRUARY, 2018.




TOWN OF PALMER LAKE, COLORADO



John Cressman, Mayor

ATTEST:



Cathy Green, Acting Town Clerk

STATE OF COLORADO)
)
 COUNTY OF EL PASO) SS.
)
 TOWN OF PALMER LAKE)

I, Cathy Green, the duly appointed, qualified and Acting Town Clerk of the Town of Palmer Lake, Colorado (the "Town") do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the Board of Trustees of the Town (the "Board") of the Town as an emergency ordinance at a special meeting of the Board held at the Town Hall on February 22, 2018, by an affirmative vote of three fourths (3/4) of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
John Cressman, Mayor	X			
Rich Kuehster, Mayor Pro-Tem	X			
Mitchell Davis, Trustee	X			
Bob Mutu, Trustee	X			
Glant Havenar, Trustee	X			
Mark Schuler, Trustee	X			
Paul Banta, Trustee	X			

2. That notice of the special meeting on February 22, 2018, in the form attached hereto as **Exhibit A**, was posted in a designated public place within the boundaries of the Town no less than twenty-four hours prior to the meeting as required by law.

3. That the ordinance was published in *The Gazette*, a newspaper of general circulation in the Town, after its adoption, in accordance with the laws of the State. The affidavit of publication is attached hereto as **Exhibit B**.

11. Town Council Comments and Reports

12. Executive sessions

1. Executive session pursuant to C.R.S. 24-6-402(4)(b) to receive legal advice from counsel regarding threatened claim related to employment matter.
2. Executive session pursuant to C.R.S. 24-6-402(4)(b) to receive legal advice from counsel regarding legal issues surrounding departmental reorganizations.

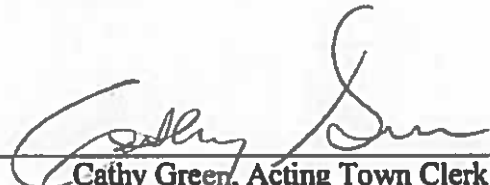
Suggested motion:

“I move to go into two executive sessions pursuant to C.R.S. 24-6-402(4)(b), one immediately following the other, the first to receive legal advice from counsel regarding a threatened claim related to an employment matter, followed by an executive session to receive legal advice from counsel regarding legal issues with departmental reorganizations.”

13. Adjourn

Please note: If you have a disability and need auxiliary aids or services, please notify the Town of Palmer Lake (719-481-2953) at least 48 hours in advance of when services are needed. The Town of Palmer Lake will make every effort to accommodate the needs of the public.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said Town this 22 day of February, 2018.


Cathy Green, Acting Town Clerk

(SEAL)



EX A.



NOTICE OF SPECIAL MEETING

This special meeting was called by the Mayor and two trustees at the last regular meeting of the Board of Trustees held on February 8, 2018.

Town Council Special Meeting
Thursday, February 22, 2018, 7:00PM
Palmer Lake Town Hall – 28 Valley Crescent
This agenda is subject to revision

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda
5. Approval of Minutes (February 8, 2018)

6. Unscheduled Public Comments

Reserved for members of the public to make a presentation to Council on items or issues that are not scheduled on the agenda. As a general practice, the Council will not discuss/debate these items, nor will Council make any decisions on items presented during this time, rather will refer the items to staff for follow up. Comments are limited to three (3) minutes per speaker. Time will be limited to 30 minutes.

Resolutions: (No public hearing, audience comments at Mayor's discretion)

7. Resolution No. 6 of 2018: A Resolution of the Board of Trustees of the Town of Palmer Lake, Colorado, amending Resolution 2 of 2018 to provide that the April 3, 2018, regular town election shall be conducted as a mail ballot election governed by Part 9 of Article 10 of Title 31 of the Colorado Revised Statutes.

Ordinances: (roll call vote, public hearing required)

8. Ordinance No. 3 of 2018: An Ordinance approving a loan from the Colorado Water Resources and Power Development Authority ("CWRPDA") in the aggregate principal amount not to exceed \$1,100,000; authorizing the forms and execution of the loan agreement and governmental agency bond to evidence such loan; authorizing the construction of a project; prescribing other details in connection therewith; and declaring an emergency

Council Discussions:

9. Winterfest update

10. Unscheduled Public Comments

Reserved for members of the public to make a presentation to Council on items or issues that are not scheduled on the agenda. As a general practice, the Council will not discuss/debate these items, nor will Council make any decisions on items presented during this time, rather will refer the items to staff for follow up. Comments are limited to three (3) minutes per speaker. Time will be limited to 30 minutes.



EXHIBIT A

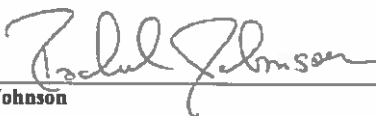
(Attach Meeting Notice)

AFFIDAVIT OF PUBLICATION

STATE OF COLORADO
COUNTY OF El Paso

I, Rachel Johnson, being first duly sworn, deposes and says that she is the Legal Sales Representative of The Colorado Springs Gazette, LLC., a corporation, the publishers of a daily/weekly public newspapers, which is printed and published daily/weekly in whole at the city of Colorado Springs in the County of El Paso, and the State of Colorado, and which is called Colorado Springs Gazette; that a notice of which the annexed is an exact copy, cut from said newspaper, was published in the regular and entire editions of said newspaper 1 time(s) to wit 03/04/2018

That said newspaper has been published continuously and uninterruptedly in said County of El Paso for a period of at least six consecutive months next prior to the first issue thereof containing this notice; that said newspaper has a general circulation and that it has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879 and any amendment thereof, and is a newspaper duly qualified for the printing of legal notices and advertisement within the meaning of the laws of the State of Colorado.



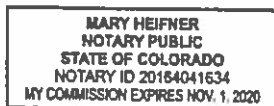
Rachel Johnson
Sales Center Agent

Subscribed and sworn to me this 03/05/2018, at said City of Colorado Springs, El Paso County, Colorado.

My commission expires November 1, 2020.



Mary Helfner
Notary Public
The Gazette



Ordinance no. 1 of 2018
An Ordinance of the Board of Trustees of the Town of Palmer Lake amending Chapter 1.50 of the municipal code governing elections to conform to State Statute and declaring an emergency

Ordinance no. 2 of 2018
Ordinance vacating all that part of that public right of way lying between lot 12, block 23 and lot 22 block 33, Gen Park, Town of Palmer Lake, El Paso County, Colorado

Ordinance 3 of 2018
An Ordinance approving a loan from the Colorado Water Resources and Power Development Authority ("CWRPDA") in the aggregate principal amount not to exceed \$1,100,000; authorizing the forms and execution of the loan agreement and governmental agency bond to evidence such loan; authorizing the construction of a project; prescribing other details in connection therewith; and declaring an emergency

Published In Colorado Springs Gazette
March 4, 2018



EXHIBIT B
(Attach Affidavit of Publication)

Ad ID: 23030

Cost: \$55.30

Start: 03/04/18

Stop: 03/10/18

Class: 910, Legal Notices

Ordinance no. 1 of 2018

An Ordinance of the Board of Trustees of the Town of Palmer Lake amending Chapter 1.50 of the municipal code governing elections to conform to State Statute and declaring an emergency

Ordinance no. 2 of 2018

Ordinance vacating all that part of that public right of way lying between lot 12, block 23 and lot 22 block 33, Glen Park, Town of Palmer Lake, El Paso County, Colorado

Ordinance 3 of 2018

An Ordinance approving a loan from the Colorado Water Resources and Power Development Authority ("CWRPDA") in the aggregate principal amount not to exceed \$1,100,000; authorizing the forms and execution of the loan agreement and governmental agency bond to evidence such loan; authorizing the construction of a project; prescribing other details in connection therewith; and declaring an emergency

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March 4, 2018