

Town of Edgewood

Agenda

Regular Meeting

Tuesday, May 9, 2023 @ 6:00 PM

Townhall of Edgewood Commission Chambers - 171A State
Rd. 344

This meeting will be in person; however, we welcome members of the public to listen in and participate by joining online at: [Welcome to Edgewood, NM \(edgewood-nm.gov\)](https://www.facebook.com/TownOfEdgewoodNM). The meeting will also be live streamed on the Town of Edgewood Facebook Page at: <https://www.facebook.com/TownOfEdgewoodNM>.

If you are an individual with a disability who needs a reader; amplifier; qualified sign language interpreter; or any other form of auxiliary aid or service to attend or participate in the hearing or meeting; please contact the Clerk at the Town Offices located at 171 A State Rd. 344 at least three (3) days prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Town Clerk at (505) 286-4518 or by e-mail at clerk@edgewood-nm.gov if a summary or other type of accessible format is needed. The complete Commission packet may be viewed on the web, visit <https://www.edgewood-nm.gov/index.php> and click on Government, then Agendas and Minutes.

Page

I. WELCOME, INTRODUCTION, & ROLL CALL

- A. Invocation
- B. Pledge of Allegiance
- C. NM Flag Salute
"I salute the flag of the state of New Mexico, the Zia symbol of perfect friendship among united cultures."

II. AGENDA APPROVAL

III. PUBLIC COMMENTS ON AGENDA ITEMS

IV. CONSENT AGENDA

- A. Approve/Amend/Disapprove Minutes
 - i. February 28, 2023. 4 - 13
[Regular Meeting - 28 Feb 2023 - Minutes\[15829\] \(1\)](#)
 - ii. March 14, 2023. 14 - 29
[Regular Meeting - 14 Mar 2023 - Minutes \(1\)](#)
 - iii. March 28, 2023. 30 - 44
[Regular Meeting - 28 Mar 2023 - Minutes](#)
 - iv. April 4, 2023. 45 - 60
[Workshop - 04 Apr 2023 - Minutes](#)
 - v. April 11, 2023. 61 - 73
[Regular Meeting - 11 Apr 2023 - Minutes](#)

[Regular Meeting - 25 Apr 2023 - Minutes](#)

V. MATTERS FROM THE COMMISSIONERS

- A. Audrey Jaramillo, Mayor
- B. Jerry Powers, Mayor Pro Tem
- C. Phil Anaya
- D. Ken Brennan
- E. Sterling Donner

VI. MATTERS FROM THE CLERK

- A. Professional Clerk Week First Week of May.

VII. MATTERS FROM THE TREASURER

VIII. MATTER FROM THE CHIEF OF POLICE

IX. MATTERS FROM THE TOWN MANAGER

X. DISCUSSION AND ACTION ITEMS

- A. Planning and Zoning Enforcement of Ordinances. (Planning and Zoning Manager Brad Hill).
- B. Edgewood Wastewater Treatment Plant PER Amendment proposal. Presented by Ege (Manager Perry) 94 - 119
[Edgewood WWTP PER Amend Contract, Scope, and Fee 04.18.2023](#)
- C. Edgewood Water Quality PER Scope and Fee Proposal. Presented by Ege. (Manager Perry and Mayor Jaramillo) 120 - 145
[Edgewood Water Quality PER Contract, Scope, and Fee 04.21.2023](#)
- D. Selection Committee for Echo Ridge Bid Award. (Parks and Recreation Manager Ben Wiltbank).
- E. Approval of Parks and Recreation Manager Position as Full Time Employment. (Manager Perry).
- F. Approve Ben Wiltbank as Temporary Employee for Project Manager. (Mayor Jaramillo).
- G. Approval for Procurement on Road Equipment. (Commissioner Powers)
- H. Opt-out of County Run Election. (Mayor Jaramillo). 146 - 156
[Election information](#)
[2023 Election Code \(PDF\) Local Election](#)
- I. Call for Public Hearing on Ordinance for Regulation of ATV. (Commissioner Powers)
- J. Revision Resolution 2005-24 Public Improvement District Guidelines. (Commissioner Powers). 157 - 174
[PID Edgewood Resolution REDLINE of 2005-24 \(002\)](#)

- K. Assign Specific Legal Issues and Cases to Specific Law Firms. (Commissioner Brennan).

XI. PUBLIC COMMENTS

XII. FUTURE MEETINGS

- A. Regular Commission Meeting May 23rd, 2023 @ 6:00pm in the Edgewood Commission Chambers.
- B. Regular Commission Meeting June 13th, 2023 @ 6:00pm in the Edgewood Commission Chambers.

XIII. FUTURE EVENTS

- A. Memorial Day Event May 29th, 2023.
- B. YES! Summer Program June 5th-July 28th, 2023.
- C. JR. Police Academy: Session 1 June 13-15 (10-12 years old), Session 2 June 20-22 (13-17 years old).

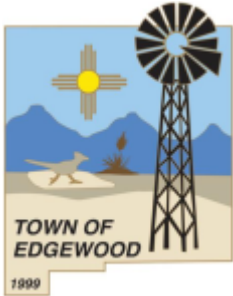
XIV. CLOSED SESSION

- A. As per motion and roll call pursuant to NMSA 1978 Section 10-15-1(H) ((7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant; Specifically, ACLU, Attorney General and Open Meetings Act. (Commissioner Powers).
- B. As per motion and roll call pursuant to NMSA 1978 Section 10-15-1(H)(2) discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; Specifically, Town Clerk Contract. (Commissioner Powers) and Town Treasurer Contract (Mayor Jaramillo)

XV. DISCUSSION AND ACTION ITEMS

- A. Action Regarding Closed Session Items Specified Above.

XVI. ADJOURN



Town of Edgewood
Regular Meeting Minutes
Tuesday, February 28, 2023, 6:30pm

I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo called the meeting to order at 6:44 pm and welcomed everyone.

Roll Call:

Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers

Absent:

II. AGENDA APPROVAL

Commissioner Filandro Anaya moved to approve agenda for the last day of the month February 28, 2023.

Commission Anaya motioned to amend the agenda for Discussion and Action Item XI. B to just under consent agenda. Commissioner Powers seconded.

Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya *Aye*

Commissioner Jerry Powers *Aye*

Commissioner Kenneth Brennan *Aye*

Commissioner Sterling Donner *Aye*

Commissioner Audrey Jaramillo *Aye*

The Motion Carried 5 to 0.

III. STATE OF THE TOWN ADDRESS

A. Mayor Jaramillo called for a 10–15-minute break at 8:06PM

Mayor Jaramillo called meeting back to order at 8:28PM

IV. PUBLIC COMMENTS ON AGENDA ITEMS

Due to the length and time public comment to 2 minutes.

A. *Cheryl Huppertz*- Election and Legislative spending and length of agenda- Thank you Jerrett Perry for your comment on Church St. I also want to address the opt in/out election act. I encourage us to use that and not hold special election. Lower down items on agenda.

Former Superintendent Tom Sullivan- A slide from the presentation, the S. Bldg. demolition. I don't know about tax funding; the district doesn't use local tax dollars. The school has not evicted anyone from the bldg.

Former Councilor Chuck Ring- I saw the Town of Edgewood when it was just the Edgewood Community Homeowners. It came to be Town of Edgewood, after incorporated. Larry King (?) stuck to it and got it done. Larry King (?)

Krytal Martinez- I wanted to say I'm happy to be here and this is the first meeting I've ever attended. What you have planned and what you are doing it amazing. You touched on the animal welfare, we are asking to instate TNR, Trap neuter and release, for cats in this area. Our need for protecting the local cats and that they are out there. Not all are feral some are just dumped. We want to protect the citizens and animals. We are willing to fund raise for the program. We can do adoptions and want to help the community any way possible.

Julie- We are willing to do what we need to to get funding for the program TNR, I am personally taking care of 6 cats at my property. We just want to stand up and say please help us.

Former Councilor Linda Hollie- To address that were said during the State of Town. I want to set the lies straight, Feb 2023, Courts, we find no merit on the appeal, default judgement, we reverse districts decision on John Bassett. The court had no right to remove John Bassett from office.

Eric Vigil NM Renaissance Festival, we held at the Viking bash at Wildlife West. Thank you to the city for letting us hold the events here. It helps the town. We bring in entertainers from all over the world and they bring people from all over to Edgewood. We are getting ready to of March 24, 25, 26, hopefully the Commission will approve, we are looking for horse panels (12) will rent, pay or sponsors, and bales of straw. They will be used for the horses for jousting. This event raised 10k for Wildlife West.

Evelyn Degrotto- I am speaking on item O, the Election, I have been the presiding Judge for the last two major elections. I have bumped into most of you while I was here. Kathryn Clark had mentioned that this location may not be available coming up. I have some data from SOS, it is for the 10 precincts, 55.57% of the registered voters. We have no complaints from the voters regarding the location. Perfect temperature, parking, ADA access. We can't find any other place to accommodate voters.

V. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

- i. January 24, 2023
- ii. February 7, 2023

B. Department and Advisory Board Reports

- i. Police
- ii. Animal Control
- iii. Municipal Court
- iv. Roads
- v. Library
- vi. Parks and Recreation
- vii. Maintenance
- viii. Wastewater
- ix. IT Technology
- x. Planning & Zoning
- xi. Finance

**Commissioner Filandro Anaya moved to approve the consent agenda as submitted.
Commissioner Kenneth Brennan seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

VI. MATTERS FROM THE COMMISSIONERS

- A. Audrey Jaramillo, Mayor**
- B. Jerry Powers, Mayor Pro Tem**
- C. Ken Brennan**

D. Phil Anaya

E. Sterling Donner

VII. MATTERS FROM THE CLERK

VIII. MATTERS FROM THE TREASURER

A. Pay Date changes are in the middle of changing from Wednesday to Friday.

IX. MATTER FROM THE CHIEF OF POLICE

A. Planning events, looking for grants.

X. MATTERS FROM THE TOWN MANAGER

XI. DISCUSSION AND ACTION ITEMS

- A. Operation According to Commissioner/Manager Form of Government.
- B. Morarity Edgewood School District Presentation by Todd Bibiano and the Director of the Boys and Girls Club.
- C. Chief's Commendation of Officer James Walker
- D. Recognition of Lieutenant David Lovato for 10 years of service.
- E. Library Advisory Board Appointment of Ann Marie Beall.

Commissioner Sterling Donner moved I would like to appointment Anne Marie Beale to the Library Advisory Board.

Commissioner Jerry Powers seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

F. Special Use Alcohol Permit- Renaissance Celtic Festival

Commissioner Kenneth Brennan moved approve the special use alcohol permit Renaissance Celtic Festival.

Commissioner Jerry Powers seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

G. Lodger's Tax Use Request from Wildlife West.

**Commissioner Sterling Donner moved to approve lodger's tax use request from Wildlife West.
Commissioner Filandro Anaya seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 0.

H. House Bill 68 Fund Contract for Temporary Pay Increase for Edgewood Police Department Officers.

Commissioner Sterling Donner moved approve the contract for temporary pay increase in line with House Bill 68.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

- I. Town of Edgewood CWSRF 087 Amendments to lower interest rate to 0.01% annually.
- J. Dissolution of the Emergency Operations Center.

**Commissioner Sterling Donner moved to dissolve the emergency operations center.
Commissioner Jerry Powers seconded the motion.**

Commissioner Powers calls the question. Commissioner Donner seconded.

Commissioner Anaya requests that the call for the question is recognized.

Commissioner Donner amended motion to indefinite suspension of EOC. Commissioner Powers friendly amendment with no resources or funding. Commissioner Powers and Commissioner Donner accepted.

Commissioner Brennan requests that there is an EOC liaison with Santa Fe County EOC.
Commissioner Anaya we already have someone on staff that does this, the Chief of Police.

Mayor Jaramillo called for a 10-minute break at 11:00PM. Came back into session at 11:11PM.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Nay</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>
<i>Commissioner Ken Brennan</i>	<i>Abstained</i>

The Motion Carried 3 to 1.

- K. Replacement appointments to boards and committees due to Commissioner Jaramillo's resignation from said boards and committees.
- Economic Development Advisory Board
 - Parks & Rec Advisory Board
 - Middle Region Government Alternate

Commissioner Sterling Donner moved to appoint Commissioner Brennan to Economic Development Advisory Board. Commissioner Powers Seconded. All Aye.

Commissioner Sterling Donner moved to appoint Commissioner Donner moved to appoint Commissioner Donner to Parks and Rec Advisory Board. Jaramillo Seconded. All Aye.

Commissioner Sterling Donner moved to appoint Commissioner Filandro Anaya to Middle Region Government Alternate. Commissioner Powers Seconded. All Aye

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

L. Discussion of Resignation of Signatory Authority.

M. Carbon Monoxide Alert Monitors Program and Funding.

look into program and funding for carbon monoxide.

N. Opting In/Out of the Local Election Act.

**Commissioner Audrey Jaramillo moved to send Nina to election school.
Commissioner Sterling Donner seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

O. Location for 2023 Election.

**Commissioner Audrey Jaramillo moved The Town Manager to reach out to the school district about use of the gym and availability.
Commissioner Jerry Powers seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

XII. PUBLIC COMMENTS

A. *Debbie Brennan-* Thinks carbon monoxide detectors is great, who would able to get one, if they are given to the schools what about the elderly? those boys were playing in the garage and I don't believe you can put a CO2 monitor in a garage.

XIII. FUTURE MEETINGS

- A. Regular Commission Meeting, March 14th, 2023 @ 6:30pm, Edgewood Commission Chambers
- B. Public Hearing on Ordinance 2022-01 Procurement March 14th, 2023 @ 6:30pm Edgewood Commission Chambers.
AD- Santa Fe New Mexican 2/24/2023.
- C. Regular Commission Meeting March 28th, 2023 @ 6:30pm, Edgewood Commission Chambers.

XIV. CLOSED SESSION

- A. Pursuant to NMSA 10-15-1 (H 8) the discussion of the purchase, acquisition or disposal of real property or water rights by the public body. Specifically, Open Land.
- B. As per motion and roll call vote pursuant to NMSA 1978,: Section 10-15- 1(H)(7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant, Specifically, McGill et. al. v. John Bassett et. al A-1-CA-39388.
- C. Pursuant to NMSA Section 10-15-1(H) 2: limited personnel matters; the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee. Specifically, Contract Amendments for the Chief of Police.

Commissioner Kenneth Brennan moved to closed session at 11:55PM

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

Commissioner Kenneth Brennan moved to come back into session at 12:14AM. Commissioner Sterling Donner seconded the motion.

Mayor Jaramillo- We did not discuss item A. Only those items in B and C were discussed and no decisions were made.

All Affirm.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

XV. DISCUSSION AND ACTION ITEMS

A. Action Regarding Closed Session Items specified above.

Commissioner Jerry Powers moved to approve the contract for the Chief of Police presented by the Town Manager.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

XVI. ADJOURN

A. **Commissioner Jerry Powers to adjourn. Commissioner Filandro Anaya seconded.**

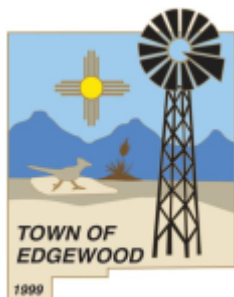
Mayor Jaramillo adjourned the meeting at 12:16AM.

Passed, approved and adopted this 11th day of April 2023.

ATTEST:

Audrey J. Jaramillo, CMO, Mayor

Nina R. McCracken, Clerk



Town of Edgewood
Regular Meeting **Minutes**
Tuesday, March 14, 2023, 6:30PM

I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo called the meeting to order at 6:30 pm and welcomed everyone.

Roll Call:

Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers

Absent:

II. AGENDA APPROVAL

A. Approval Agenda

Mayor Jaramillo- Regarding long agendas: If there are not time sensitive matters, we can remove them until another time. One item: public hearing- Procurement Ordinance.

Commissioner Filandro Anaya moved to remove Y from Section X, considering the item will be very lengthy one with staff and legal involvement and also like to remove item XI A Procurement Ordinance.

Commissioner Jerry Powers seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Nay</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Nay</i>
<i>Commissioner Jerry Powers</i>	<i>Nay</i>

The Motion DEFEATED. 2 to 3.

Commissioner Sterling Donner moved to move section XI A to another meeting and approve the agenda as is.

Commissioner Audrey Jaramillo seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Nay</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>

Commissioner Sterling Donner Aye
Commissioner Audrey Jaramillo Aye
Commissioner Jerry Powers Aye

The Motion Carried 4 to 1.

III. PUBLIC COMMENTS ON AGENDA ITEMS

A. *Clinton Nicely- Legislative update-* Thank you for having us. Risk Services NMML, Legislative, 1st item is what has been proposed for the last few years, green amendment to the NM Constitution, article 2 an individual right to helpful qualities. Would create a liability to the fund. Tabled twice by Senate rules. Attempts to fight for rights clean air, clean water; died in House Committee. Redesignated of Municipal (76), 138 and 139 (combined into 139) repeal 35 (?) section 1 and 11. House Bill 2, back fills those ideas and go through AOC instead of Municipal Fund. Would take effect July 1st. 252 (Senate Bill 19) LE Bill. House Bill 24 (3-49-4) charge property owners for sidewalk, changes to Municipalities to be charged. 369 and 455, concerned some fee structure changes for workman's compensation. HB 265, state park would increase 1 dollar, cities that are budding to the parks could benefit (rolled/tabled).

X C and D- Clinton Nicely Risk Services Director for NMML- Leadership asked me to speak on this issue, Section 3-14-10. Not your attorney, giving my own opinion, you have a City Attorney for this issue. There is little flexibility with the law; Court of First impression. This is a first. Read 3-14-10, it is as narrow as it gets and prescribes what the group can do after an election, 1st meeting post-election. I do not believe this is the first meeting after election, I counted 55 meetings. Second clause of the sentence is 2 years or until an event happens. There is an open question that it only modifies the sentence before the clause. Pretend, if last clause modifies before it, we have three possibilities death, resignation, both are self-explanatory. Removal can be looked at in statute.

B. *Chuck Ring-* I request the Commissioners and Mayor refrain from changing in the middle of the stream after 3-4 years of issues. We have a Mayor, Mayor Pro Tem and 3 additional Commissioners. There is no reason to remove an individual when we have an election coming up this year. All will have the opportunity to attend the
How many attorneys do we have?
Commissioner Powers-

C. *Tom Sullivan-* Representatives 22-014 I believe in fact that you have defamed me. Consider this my demand letter to retract the resolution regarding the EES (Edgewood Elementary School). You have 15 days.

D. *Ralph Hill-* I fully agree with Chuck Ring, that this new government is already facing a disorderly Keaty had resigned due to trying to start a government like you have. You have come over so many discrepancies. Including bringing all the ordinances up to date. I feel sorry that this has come upon you. I appreciate you Ken, I wouldn't want to be you.

E. *Evelyn Degratto-* I appreciate the chance to speak, I speak X C and X D, for naming

replacements for Mayor Pro Tem, Mayor; link only takes you to description of Mayor duties. The fight and treatment of women from the Commissioners. This commissions wants to take action to take away the Mayor,. live up to the promise that was made when you were elected. Do not live up to the atomicity and anger as the past administration.

- F. *Cheryl Huppertz*- I am a little thrown off by the Mayor stuff. I don't think we need to have any more turmoil in our town. I do support the Cannabis being put towards cleaning up the town. I am glad that we put down the EOC as I think that is a waste of money. I am curious about the prioritization of roads, as there are roads that I haven't seen. Planning and Zoning would bring a list of roads and I haven't seen that done since you have been in office. I do think, as we talk about Venus Road (E or W) but the middle school really needs it. I would like to address the Yes! Program, I think it's great that we had it last year, but the school is offering it now, but I am not sure why we aren't participating. Remember people like to go with free. I also wanted to ask about the Admin. Assistant, is it additional.
- G. *Tim Miller*- I agree with Chuck Ring and everyone else, I think you are all doing a fine job but no reason to remove the horses during the race. Second issue I want to bring up is that we have been unable to get a meeting. We are having problems with failure to follow our own ordinances with our animal control. I would like our Town Manager to set up a meeting. According to our ordinances all strays will be picked up. I would like to get it reworked, but we are not following our current.
- H. *Dana Sterley*- I have sent an emails to meet with the Town Manager and the Commissioner [Powers]. Chief Jimenez did return the calls and always gives me his time. After seeing everything with the Mayor I can see where I stand, as a female. You set the bar just like Bassett. If you think that was a disaster.

Commissioner Power- The board's job to advise the Commission, and have you done that? I would advise you to put all your concerns in a letter and deliver to all the Commission.

- I. Anyone on Zoom.

Linda Burke- On the Yes! Program when Boys and Girls Club and MESD, I called Colby and wanted to know more about what the program would entail. I started the Yes! Program initially. I really wanted to understand what they had to offer. That academic element was a National Program and would be age appropriate. The character program is age appropriate. The field trips are unsure about what is availability. It is a program seen in cities for latch key kids. There is no familiarity with our community. I don't know if Edgewood fits their program.

Ray Seagers- Echo Ridge Item- The design for the clearing area, the berm and horse trailers, room for 9 trailers is based on a 2 horse trailers. Not a lot of people have 2 horse trailers out here. The handout has a sketch that looks like it is from BLM. We had a sketch that had trailers on the outside and had room for 6 horse trailers. I do know how you can get anything in there with the way it is designed, not for a 4, 6 or trailer with a live in area. I think it is impractical.

IV. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

- i. July 19, 2022
- ii. December 13, 2022
- iii. February 24, 2023
- iv. February 28, 2023

**Commissioner Sterling Donner moved pull for work.
Commissioner Audrey Jaramillo seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

V. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

- i. For go for time.

B. Jerry Powers, Mayor Pro Tem

- i. EOC SF County.

C. Phil Anaya

- i. It was an eye-opening experience to go down there and see everything that Santa Fe County has for us. It is a large warehouse. Semi equipped with all the start of the art equipment. Huge white command rig: don't know what you would call that thing. It was rather amazing. The EOC did a mock training in La Cienega by La Bada. The news said it was very successful. They are going to do the same thing for us, a mock evacuation. The Commissioner we have now is extremely knowledgeable and helpful. We need to stop and realize that we are a community and are a part of Santa Fe County. People live here and work for Santa Fe County and have children in the school district. To say Santa Fe County doesn't care about us, I am here to tell you that is not true.

D. Ken Brennan

- i. Thank you to the Edgewood Police Department for the rapid response to SME.

E. Sterling Donner

- i. Last week got a little heated. There were things that needed to be addressed as a whole commission. I may have lost my composure a little bit. There are things that need to be addressed and cannot be done outside of here. The only way we can express that is by doing it in a meeting. Anyone who knows me, or the men up here are a long way off calling us sexist. I do implore you to listen to the agenda items and it is not personal.

VI. MATTERS FROM THE CLERK

- A. Legislative update: HB 232, SB 43 and HB 4.
Clerk workshop and Spring meeting
HR update: lost two employees, have offer for one, two new hires.
IPRA- 7 currently and should be finished this week.

VII. MATTERS FROM THE TREASURER

- A. Only item is that the Audit for FY22 has been released and Chris Gardner will be here the next meeting to present the audit as required by law.

VIII. MATTER FROM THE CHIEF OF POLICE

- A. Only item is that we are looking to add a chaplain to our department. The hardest thing we deal with is death notification.

IX. MATTERS FROM THE TOWN MANAGER

- A. We have a great staff. I have a rule, no drama in the office. I appreciate that no one brings it in. Come with a solution not just a problem.
One large issue is the wastewater treatment plant. We have an item tonight, sludge removal, thank you to business and finance for getting our PO. It was downgraded and goes back to water quality and day to day operation.
We've had great progress. When need data before we can make decisions. (Get name) will be taking samples to identify the problems. We have a mechanical sampler at the wastewater treatment plant that will help.
We are ready to move forward with Appaloosa.
He will save the Town of Edgewood \$100,000 by being the project manager. We are lucky to have an electric engineer on staff.
We have asked for funds.
I won't stop on Church St until it is done. It's great that we have plans but we need to have some serious conversations.
We need to design a strategic road plan. We are just in this cycle, I propose that we look at ARPA money, excise tax, and reimbursements.
Items needed for roads need to be built in the budget with a 5-year plan.

X. DISCUSSION AND ACTION ITEMS

- A. Operation According to Commissioner/Manager Form of Government.
- B. Commissioners Should Not Edit Meeting Minutes Outside of Commission Meetings.
- C. Naming a Successor to the Mayor Pro Tem appointment Per New Mexico Statutes Chapter 3 - Municipalities Article 14 - Commission-Manager Form of Government; Section 3-14-10.

Motions withdrew. No motion.

Four Legal opinions delivered to Commissioners from Nann Winters of Stelzner, Winter, Warburton, Flores & Dawes, Clinton Nicely of The New Mexico Municipal League, Frank Coppler of Coppler Law Firm, and Ron VanAmberg of VanAmberg, Rogers, Yepa, Abeita, Gomez and Wilkinson.

Nann Winter and Clinton Nicely agree state statute is clear on Mayor term length and when Mayor position is changed.

Frank Coppler and Ron VanAmberg take stance that Mayor term length is not 2 years and can be shortened.

Commission discussed the attorneys to work together on a professional opinion to be presented to the Attorney General.

- D. Naming a Successor to the Mayor appointment Per New Mexico Statutes Chapter 3 - Municipalities Article 14 - Commission-Manager Form of Government; Municipalities Over 1,000 Section 3-14-10 - Commission-manager; selection of mayor; duties.

Break at 9:40pm, back into session at 9:50pm

Commissioner Jerry Powers moved to post pone indefinitely and send the attorney opinions to the Attorney General.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

Commissioner Kenneth Brennan moved Set the date as Tuesday March 21, 2022, for the lawyers to come to together.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Nay</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 1.

E. Restructuring the Police Department.

Chief of Police- \$20,000-dollar budget impact each year. Time frame is dependent on Commission approval.

Treasurer- with the Police Department Budget it is do able.

Manager Perry- This would create more jobs and a huge advocate of this restructure.

[ORG CHART](#)

Commissioner Sterling Donner moved to approve the new organizational chart effective March 20, 2023.

Commissioner Audrey Jaramillo seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

F. Appointment of Rachel Martinez to the Edgewood Library Advisory Board.

Commissioner Audrey Jaramillo moved to appoint Rachel Martinez to Library board.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>

Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

- G. Appointment of Brian McMurtrey, Glenn Sellers and a two-year extension of Dianna Boyd to the Park's and Recreation Advisory Board

Commissioner Sterling Donner moved to appoint Brian McMurtrey, Glenn Sellers and the two-year extension of Dianna Boyd to the Park's and Recreation Advisory Board.

Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

- H. Town of Edgewood Position Classification and Salary Plan Update.

Mr. Vincent Yermal presented the Position Classification and Salary Plan Update.

Commissioner Filandro Anaya moved approve Item H Edgewood Position Classification and Salary Plan Update.

Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

- I. Resolution 2023-008 Police PERA Pick Up

Commissioner Sterling Donner moved pass Resolution 2023-008 Police PERA Pick Up.

Commissioner Audrey Jaramillo seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

J. Finance is requesting permission to close the following Funds:

- Fund 226 Veterans Memorial Fund, \$250
- Fund 227 Buy a Brick/Playground Equipment, \$5,600

Move to another meeting.

K. FY2022 Audit Report, Finding 2022-002 (2021-003) corrective action.

Commissioner Filandro Anaya moved to approve FY 2022 Audit Finding, make a correction suggested by Treasurer Steininger with the previous pay amounts posted as a starting point. Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

L. Finance is requesting permission to amend certain aspects of processing payroll.

Commissioner Audrey Jaramillo moved to give finance permission to amend certain aspects of processing payroll to put all on biweekly cycle that does not interfere with Federal and State Laws.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>

Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

M. Resolution 2023-004 Bar #3

Commissioner Filandro Anaya moved to approve Resolution 2023-004 Bar #3.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

N. Approval of procurement for Appaloosa Road.

Commissioner Filandro Anaya moved to approve to have the Manager get procurement for Appaloosa Road.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

O. YES! Program and Funding.

Commissioner Audrey Jaramillo moved to approve Yes! Program and Funding.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*

Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

- P. Approve the proposal from Enviroworks to proceed with construction for Echo Ridge.
Q. Approval of Task Order #6 for Bachelor Draw Trestle Pedestrian Bridge and RFI.

Commissioner Filandro Anaya moved for Task number 6 Bachelor Draw Pedestrian Bridge to be approved.

Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

- R. Road's Department Equipment Funding.

Commissioner Audrey Jaramillo moved to approve pursuit of funding for Road's Department Equipment.

Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

- S. Revised Resolution 2023-006A approving application to NMDOT Municipal Arterial Fund for 2023/2024 2023 MAP Application.

Commissioner Jerry Powers moved to approve Revised Resolution 2023-006A.

Commissioner Filandro Anaya seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

T. Resolution 2023-009 Creating a Blight Abatement Fund With Cannabis Excise Tax.

Commissioner Kenneth Brennan moved approve Resolution 2023-009 Creating a Blight Abatement Fund with Cannabis Excise Tax. Commissioner Filandro Anaya seconded the motion.

Commissioner Powers Friendly Amendment Blight Abatement Fund will go and terminate after a period of 3-years. Commissioner Brennan accepted.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

Mayor Jaramillo stated that to restrict tax revenue that an ordinance needs to be presented.

Brad Hill stated he had a meeting with Nann Winters and can discuss this but have an ordinance similar to Belen's being created.

U. Approval of Resolution 2023-010 Authorizing the Submittal of an Application for the 2023-2024 New Mexico Department of Transportation Cooperative Funds for Street and Drainage Improvements within Edgewood

Commissioner Anaya motioned to adjourn for the night. Died for lack of second.

Commissioner Kenneth Brennan moved approve Resolution 2023-010 Authorizing the Submittal of an Application for the 2023-2024 New Mexico Department of Transportation Cooperative Funds for Street and Drainage Improvements within Edgewood. Commissioner Jerry Powers seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

- V. Approval for Clerk Nina McCracken to attend the NMML Clerk's Association Workshop and Spring Conference April 18-21, 2023, in Albuquerque, NM.

Commissioner Audrey Jaramillo moved to approve Clerk Nina McCracken to attend the NMML Clerk's Association Workshop and Spring Conference April 18-21, the cost would be \$275.00 with ancillary fees and travel and per diem.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

- W. Approval of Administrative Planning Assistant Job Description.

Commissioner Sterling Donner moved to approve Administrative Planning Assistant Job Description.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

- X. Appointment of Chief Roger Jimenez, succeeding Robert Burger, as Emergency

Manager, Emergency Management Coordinator & Liaison to the Santa Fe County
Office of Emergency Management for All Hazard Emergency Management purposes.

**Commissioner Jerry Powers moved Appointment Chief Roger Jimenez as Emergency
Management Coordinator to the Santa Fe County Office of Emergency Management for All
Hazard Emergency Management purposes.**

Commissioner Filandro Anaya seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Nay</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 1.

**Commissioner Sterling Donner moved to remove Bob Berger as emergency manager and point
of contact for Santa Fe County Office of Emergency Management for all Hazard Emergency
Management purposes. Commissioner Jerry Powers seconded the motion.**

Commissioner Powers Friendly Amendment to remove Robert Berger as emergency manager or
emergency coordinator for the Town of Edgewood for Santa Fe County and all purposes.
Commissioner Donner accepted.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Nay</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 1.

Y. Call for a Public Hearing on Abortion Business Ordinance.

Requested Public Hearing 14 days post Workshop April 4th 6:30PM.
Public Hearing April 25th 6:30PM

Commissioner Anaya left the meeting at 11:29pm.

Commissioner Brennan requested a workshop before Public Hearing.

Commissioner Sterling Donner moved for a call for a public hearing on Abortion Business Ordinance.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Nay</i>

The Motion Carried 3 to 1.

Z. Call for Public Hearing on small brewer off-site liquor license for Tap Room.

April 11th.

Commissioner Kenneth Brennan moved have a public hearing 11th of April.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

XI. PUBLIC HEARING

A. Ordinance 2022-01 Procurement
Removed for future meeting.

XII. PUBLIC COMMENTS

A. *Scott Jaramillo*- Directed to Commissioners, Manager and towards Commissioner Donner. Leadership issues exist and wanted to thank you for the apology. Great leadership example.

XIII. FUTURE MEETINGS

A. Regular Commission Meeting- March 28th, 2023 @ 6:30pm, Edgewood Commission Chambers

B. Regular Commission Meeting- April 11th, 2023 @ 6:30pm, Edgewood Commission

Chambers.

C. Regular Commission Meeting- April 25th, 2023 @ 6:30pm Edgewood Commission Chambers.

D. Set up 2 Day retreat via Survey Monkey by Clerk McCracken.

XIV. FUTURE EVENTS

XV. CLOSED SESSION

A. Pursuant to NMSA 1978 Section 10-15-1(H)(7), for confidential discussion regarding pending litigation McGill et. al. v. John Bassett et. al.

move to closed session at

to come back into session at

XVI. ADJOURN

Commissioner Brennan motioned to adjourned. Commissioner Donner seconded.

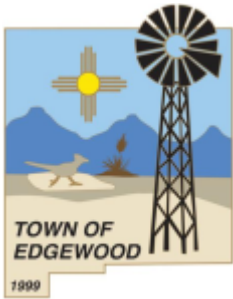
Mayor Jaramillo adjourned at 11:59pm.

Passed, approved and accepted on the 11th of April 2023

ATTEST:

Audrey J. Jaramillo, CMO, Mayor

Nina R. McCracken, Clerk



Town of Edgewood
Regular Meeting **Minutes**
Tuesday, March 28, 2023, 6:30 PM

I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Pro Tem Powers called the meeting to order at 6:33 pm and welcomed everyone.

Roll Call:

Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo (Zoom), and Commissioner Jerry Powers

Absent:

II. AGENDA APPROVAL

Commissioner Anaya motioned to approve the agenda for tonight. Commissioner Brennan seconded.

III. PUBLIC COMMENTS ON AGENDA ITEMS

IV. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

- i. July 19, 2022
- ii. December 13, 2023
- iii. February 24, 2022
- iv. February 28, 2023
- v. March 14, 2023

B. Department and Advisory Board Reports

- i. Police
- ii. Animal Control
- iii. Municipal Court
- iv. Roads
- v. Library
- vi. Parks and Recreation

K.R. Scott, Parks and Recreation Advisory Board, updated Commission on Teen Advisory Council (handout) and Project 4/25 Outline (handed out).

Commissioner Anaya- Is the Park and Recreation in charge of the Yes! Program?

Kr. Scott- Yes. Discussed on agenda.

[ParksandRec handout](#)

- vii. Maintenance
- viii. Wastewater
- ix. IT Technology
- x. Planning & Zoning
- xi. Finance

Commissioner Filandro Anaya moved to approve agenda and remove March 14th for corrections. Commissioner Audrey Jaramillo seconded the motion.

Friendly Amendment- Mayor Pro Tem Powers- Wants to remove all minutes and have brought back with redline changes to be approved in a public meeting. Commissioner Anaya accepts.

Mayor Jaramillo- There were quite a few changes made before they were uploaded to the packet, but the packet should be the corrected version.

Mayor Pro Tem Powers- So the version you did Nina, was edited after you did it?

In audible.

Mayor Jaramillo- That has been our common procedure. Not after they are approved, but when the minutes are being prepared for the packet, yes, they are edited.

Mayor Pro Tem Powers- According to the Clerk Handbook the edits should be done in an open meeting. So, I would like to have a redline in a meeting so we can vote on the changes.

Mayor Jaramillo- Just for clarification the minutes in the packet can be edited in an open meeting. The drafts go through several edits before they go into the packet.

*Commissioner Brennan-*What I understand is the minutes here are different then what was available online on Friday?

Mayor Pro Tem Powers- From what I understand is the minutes in the packet were edited from the original draft.

Commissioner Filandro Anaya *Aye*

Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

**Commissioner Filandro Anaya moved to remove Items A and C section 12. These items will break the law under house bill 7 passed by House and Senate and signed by the governor. (Will wait until later)
seconded the motion.**

xii. *Mayor Jaramillo-* Do we have any advisory boards to report to us?

Mayor Pro Tem Powers- KR. Scott is here from the Parks and Rec Board.

Mayor Jaramillo- A few things on department reports. I was curious if we have seen anything on Wastewater. Are we getting a monthly report?

Mayor Pro Tem Powers- The Wastewater Operator is out here now from Utah doing a special cleaning on the plant that takes place every seven(7) years, and is working on compiling the report. We should have the report next meeting.

Mayor Jaramillo- Asked about Parks and Recreation report (Ben) and Animal Control report, not sure who we'd be getting those reports from would that be the tech? The Police Chief and Manager can decide how the animal control report can be done. The Treasurer Report spend a little more time on, the last few months have been busy, but would like to bring back GRT graph and trends that will be helpful with budget. The check runs we normally get with our monthly reports as well, and hopefully can get caught up on those.

V. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

- i. In DC lobbying for the Town and New Mexico with the League of Cities. Reiterated to everyone (delegates, senators, representatives) our needs for the state and the Town of Edgewood. They seem to be slow getting the funding out to the agencies. Very positive for levels of funding.

B. Jerry Powers, Mayor Pro Tem

Forego my comments tonight.

C. Phil Anaya

Has a concern about where the Town is heading. We had a very heavy meeting that lasted until midnight. I don't want to see us going through meetings like that again, where we are constantly at each other's throats. Everyone has a passion, but we need to start our meetings much earlier. I personally cannot last until midnight without my medication. Under future meetings we are discussing abortion, and a bill was passed in the House and Senate and signed by the Governor. It is clear. We took an oath to uphold the laws of New Mexico. We do not need to spend any more money on lawyers. If we go down this path we will lose and costs us money that we don't have.

D. Ken Brennan

- i. Getting questions on dumpster days. When will we have them? Hopefully starting in May.

E. Sterling Donner

- i. I think we should listen to the people about the abortion issue and let them decide what we do. I have had numerous phone calls in support of this. It is not about politics; it is about morals and protecting the lives of unborn children. I don't know why this State has gone down the way it has and taken on issues that are immoral and Fil I am disappointed in you man, claim to be this high moral individual that has biblical values, but I don't see it in this issue. We can talk about it next week at the meeting.

VI. MATTERS FROM THE CLERK

- A. Have hired Bradyn Burke as Librarian Operations Manager. Have librarian position internally and will post externally this week. and Planning and Zoning Administrative Assistant posted. Have received numerous applications for Planning and Zoning Assistant and will work with Manager and Planning and Zoning Manager to schedule interviews.
Will be going to Albuquerque for an Open Enrollment Benefit meeting April 11th.

VII. MATTERS FROM THE TREASURER

- A. The budget cycle is about to begin, what is the Town's history number of or frequency of public hearings, meetings and process. What has been the practice in the past?

Mayor Jaramillo- The Town historically done in the past has had at a minimum one budget workshop and there was a rocky time when minutes weren't taken and was not publicized enough. The pattern going forward, the last two years, have it accessible to the public and recorded, to have the minutes taken and placed on agendas. It will probably take two workshops, a public hearing for sure, on the agenda quite a few times and it was interrelated with the ICIP discussions. ICIP can wait until June or July. The inter-budget piece, need department heads to submit their wish lists and had

them present a PowerPoint at a workshop. Time Frame- Sooner then later. It would be great to get it done in one workshop but probably will take two.

Treasurer Steininger- Department Heads have been given their initial draft [budget] and are due back this Friday. We have already received major impact areas. As soon as the rest are received I will create a comprehensive list and I will get with the Manager on dates for workshop.

Department of Finance Administration has rolled out a test budget module and I have volunteered Edgewood to be the test pilot to find the flaws in it.

VIII. MATTER FROM THE CHIEF OF POLICE

- A. To answer the Mayor's question on the Animal Control Report, I will coordinate with Ms. Piazza to start putting the AC report on there. I will make sure that is a routine we do every month.
- We are doing the Easter Egg hunt this Saturday with the hunt starting at 10:15. Last year there was some confusion.
- Bring out the training that we are doing this month. April 6th we are doing mental health training with all the surrounding agencies. We are doing that at the Police Department (PD). We have sent some EPD officers to the BCSO (Bernalillo County Sheriff's Office) training. This is important for law enforcement to get the mental health they need. May 1st-2nd will be another Police Officer training in the Town Hall Chambers.
- May 11th 2pm-4pm Town Hall Chambers- Narcan Training from the Department of Health for all Town Hall Staff, Volunteers, or anyone that would like to come by. It is important to have this training.

IX. MATTERS FROM THE TOWN MANAGER

- A. Wastewater treatment plant seems to be in constant crisis for years and years, but we are getting it. Thanks Commissioner Powers for all he has done to guide the project. Josh Jantz, Road Crew Supervisor, helped clean with Mike Garcia at the wastewater treatment plant. The process began at 2am and doesn't stop until they are done.
- A great synergy at Town Hall. The community comes in much more frequently to Town Hall to ask questions and help problem solve and offer to help with historical knowledge, which is greatly appreciated. The public knows things that we don't, or I don't, know.

X. DISCUSSION AND ACTION ITEMS

- A. Santa Fe County Deputy Treasurer Patrick Varela regarding tax outreach.
- April 18th and May 3rd 10:30-1 at Edgewood Satellite Office on Capital RD (Quail Trail) for Tax Outreach. Have handouts to place in Town Hall. Santa Fe County Treasurer and Assessor aware of Edgewood Soil and Water Conservation Tax Issues.

SFC Treasurer's Office

B. 2022 Audit and Resolution

Chris Gardner presented. Provided 2022 Audit Results.

[PBH handout](#)

C. Nomination for appointment of Ryan Evans to the Economic Development Advisory Board.

Commissioner Filandro Anaya moved to approve Ryan Evans on the Economic Development Advisory Board.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

D. Approval for Planning and Zoning Commissioners and Planning and Zoning Department to attend NMLZO Semi-Annual Meeting/Workshop.

Brad Hill- This year's program focuses on Commissioners and Quai-Judicial proceedings.

Mayor Jaramillo- Do this need to be a BAR or do we have budget?

Brad Hill- I believe I have enough in my dues and that I am under budget.

Treasurer Steininger- Planning and Zoning(PandZ) still has \$1500 dollars. They have only expended 48%. of their budget.

Commissioner Audrey Jaramillo moved to approve Planning and Zoning Commissioners and Planning and Zoning Department to attend NMLZO Semi-Annual Meeting and Workshop and approve a bar.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
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Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

E. TPF Application Priority List: Nugent, Venus, Horton.

Mayor Pro Tem Powers recused self from this item due to owning land in the airport and has access from Venus.

Manager Perry- Questioned why Nugent has not been on ICIP in the past. Has included due to feedback from Road Supervisor Josh Jantz.

Josh Jantz- Monthly must call 811 for line spot. Daily, morning and evening, having to check on Nugent. Cannot cut road lower than 4 inches due to lines.

Brad Hill- From land use perspective we only have one road that is main, 344. Only other road is Horton but Nugent to Frost is impassable, if you go down Nugent. We are seeing a lot of development.

Commissioner Donner- what is the order that we want to see for this?

Manager Perry- E. Venus. I did talk to DEC and we do not need to rank the roads, we can do three applications. My number 1 priority would be E. Venus. Wants Commission's guidance on which to prioritize.

Mayor Jaramillo- we have always done west because of the middle school and the fugitive dust.

Manager Perry- Lets do both.

Brad Hill- E. Venus is where development is happening. Had request for 3600 home development.

Commissioner Anaya- What is the length of Nugent?

Brad Hill- 1 mile.

Commissioner Filandro Anaya moved to approve TPF application to add Venus 1, Horton 2, and Nugent 3.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>

The Motion Carried 4 to 0.

F. Approval to go out for procurement for Comp Plan.

Commissioner Sterling Donner moved to approve procurement for Comp Plan and giving Manager and Brad permission to do so.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

G. Social Security Vote for Police Department.

Table until next meeting.

H. Lodger's Tax Board Items:

Approval to get bids for directional signage and approval to get proposals for video creation of the Town of Edgewood.

Commissioner Jerry Powers moved to approve going out for bids for directional signage and approval to get proposals for video creation of the Town of Edgewood.

Friendly amendment Commissioner Anaya- with approval of NMDOT.

Commissioner Filandro Anaya seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>

Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

I. Approval of MOU with the Bureau of Alcohol, Tobacco, and Firearms.

Commissioner Kenneth Brennan moved that we approve the MOU with the Bureau of Alcohol, Tobacco, and Firearms.

Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

J. Approval for Manager to proceed with exploring possible utility franchise tax.

Commissioner Filandro Anaya moved to approve the Manager to proceed with exploring possible utility franchise tax.

Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

K. Call for a Public Hearing for Abandoned and Foreclosed Housing Registry Ordinance.

Commissioner Sterling Donner moved to approve the call for a public hearing for Abandoned and Foreclosed Housing Registry Ordinance.

Commissioner Filandro Anaya seconded the motion.

<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 0.

Commissioner Sterling Donner moved to approve the call for a public hearing for Abandoned and Foreclosed Housing Registry Ordinance on April 25th, 2023.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 0.

L. Call for Public Hearing for Revision of Grading and Drainage Ordinance 2002-001.

Commissioner Anaya requested 18in Culvert.

Josh Jantz- 12 in is enough, due to phone lines and power lines.

Commissioner Sterling Donner moved to approve the call for public hearing for revision of Grading and Drainage Ordinance 2022-001 on April 25th, 2023.

Commissioner Filandro Anaya seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

M. Yes! Program Funding.

Mayor Jaramillo- Due to State Appropriations (\$50k) not coming through asking Commissioners to pull from operational fund and split between fiscal years. \$25,000 for this fiscal year and \$25,000 for next fiscal year so we can have money to prepare

for planning, but we also have the \$30,000 from the County [Santa Fe].

Commissioner Anaya- Have you secured the \$30,000 from the County [Santa Fe].

Mayor Jaramillo- Yes.

Commissioner Anaya- When did you do that?

Mayor Jaramillo- As soon as I found out it was in question. Yes, I have confirmation that the County [Santa Fe] will continue funding us for the 30.

Mayor Pro Tem Powers- Will this require a budget adjustment?

Mayor Jaramillo- I believe it will for Fiscal Year 23, it will not require a budget adjustment for 24 necessarily as we have not done the budget.

Commissioner Audrey Jaramillo moved for fiscal year 23 the Town do a BAR for youth programming under Parks and Recreation for \$25,000 and approve \$25,000 for Yes! Program Funding for Fiscal Year 24 budget.

Commissioner Sterling Donner seconded the motion.

Commissioner Anaya- Did you get confirmation or approval from the Commission on the 30,000?

Mayor Jaramillo- No we have never done that.

Commissioner Anaya- So they just send us a check?

Mayor Jaramillo- It is something we have to apply for reimbursement for.

Commissioner Anaya- So it is not guaranteed right now?

Mayor Jaramillo- It is guaranteed right now.

Commissioner Anaya- But we don't have that in writing.

Mayor Jaramillo- If you need to I can look for the text or voicemail.

Commissioner Filandro Anaya *Aye*

Commissioner Kenneth Brennan *Aye*

Commissioner Sterling Donner *Aye*

Commissioner Audrey Jaramillo *Aye*

Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

N. Request to purchase a police vehicle.

Commissioner Anaya- Are we trading in a vehicle for the same mileage?

Chief Jimenez- No we are not. This was only to show Kelly Blue Book Value.

Mayor Jaramillo- Questioned procurement procedure and budget availability.

Treasurer Steininger- There are concerns on purchasing a used vehicle. If we go sole source, we have to post for 30 days before we can accept the bid. Better for three quotes of comparable vehicle.

5-minute break at 9:05pm back at 9:08pm.

Commissioner Jerry Powers moved to approve procurement for police vehicle and all equipment needed over \$20,000 and go out for procurement.

Commissioner Audrey Jaramillo seconded the motion.

Commissioner Kenneth Brennan *Aye*

Commissioner Sterling Donner *Aye*

Commissioner Audrey Jaramillo *Aye*

Commissioner Jerry Powers *Aye*

The Motion Carried 4 to 0.

O. Incode 10

Commissioner Audrey Jaramillo moved to approve the administration to go out for procurement on Incode 10.

Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya *Aye*

Commissioner Kenneth Brennan *Aye*

Commissioner Sterling Donner *Aye*

Commissioner Audrey Jaramillo *Aye*

Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

XI. PUBLIC COMMENTS

Cheryl Huppertz 49 E Hill Ranch RD- Commented on two lawyers that were here last time. Going off Karen Kiser's comment, it seems like a lot of money to spend. Make a decision on one year or two years for Mayor/Mayor Pro Tem that starts in January for consistency. The town seems to be proceeding with the legal fees on the Basset Case when it's filed by individuals (Tom McGill and Adrian Terry; Powers dropped off). The Town should not be paying the fees.

John Terry- Jules Montgomery, basketball player Oversees Pro, he runs the RISE basketball School. I ran Knights Basketball School. We can do more together. No real programs or public facilities for kids in the East Mountains. Everyone here is very territorial about what they own. We've created a business plan to have two gym floors with a track around it, with a floor for volleyball, baseball and lacrosse. We have a property on 4th and Menaul. We are limited we do not have gym space. Talked to the Economic Development people in Santa Fe and if we have land, we can get funding. Spoke to Edgewood and found there is NM trust land available, and we can build an event center. Could conduct tournaments. 501 C3 non-profit is for underserved populations, the East Mountains is underserved. Would like the Town to explore the possibility of a partnership to build an event center.

Commissioner Anaya left meeting at 9:31pm for an emergency.

Linda Burke- The Chamber is hosting the Country and Living Expo at EVCA(Estancia Valley Classical Academy) on May 6th 9am-2pm. Would like to see the Town come out and promote events.

Martha Eden- nonpolitical public interest statement one of our sons. Stuart Seagers is running for the district 1 position for Central New Mexico Electric Coop (NMEC). Election Day is April 22nd at the Estancia High School Gym anyone with an account at NMEC can vote.

Mayor Jaramillo- clarify election is from 8:00AM until noon at Estancia.

XII. FUTURE MEETINGS

- A. Workshop on Abortion Business Ordinance, April 4th, 2023, at 6:30PM
- B. Regular Commission Meeting on April 11th, 2023 @ 6:30pm Edgewood Commission Chambers.
Public Hearing for Tap Room Off-site Liquor License.
- C. Regular Commission Meeting on April 25th, 2023 @ 6:30 PM Edgewood Commission Chambers.
Public Hearing on Abortion Business Ordinance.

XIII. FUTURE EVENTS

- A. Easter Hunt April 1st, 2023, 10:00AM-1:00PM at Venus Park.

XIV. FUTURE AGENDA ITEMS

XV. CLOSED SESSION

- A. Pursuant to NMSA 1978 10-15-1 (H) (7) pertaining to threatened or pending litigation in which the public body is or may become a participant; Relating to misuse of Public Funds (2020-2021).

Commissioner Kenneth Brennan moved to go into closed session Pursuant to NMSA 1978 10-15-1 (H) (7) pertaining to threatened or pending litigation in which the public body is or may become a participant; Relating to misuse of Public Funds (2020-2021) at 9:49pm
Commissioner Sterling Donner seconded the motion.

<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 0.

Commissioner Sterling Donner moved that we come back into open session.
Commissioner Kenneth Brennan seconded the motion.

Mayor Pro Tem Powers open session at 10:08pm.

Mayor Pro Tem Powers affirms only the items on the agenda were discussed and no decisions were made.

All Affirmed.

<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 0.

XVI. DISCUSSION AND ACTION ITEMS

- A. Action Regarding Closed Session Items specified above.

None.

XVII. ADJOURN

**Commissioner Sterling Donner moved to adjourn.
Commissioner Kenneth Brennan seconded the motion.**

<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 0.

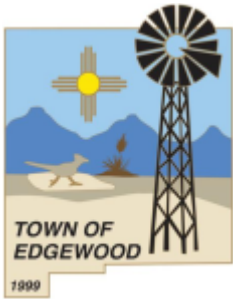
Mayor Pro Tem Powers Adjourned the meeting at 10:10pm.

Passed, Approved and Adopted on the 11th of

Audrey J. Jaramillo, CMO, Mayor

ATTEST:

Nina McCracken, Clerk



Town of Edgewood
Workshop Minutes
Tuesday, April 4, 2023, 6:30

I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo apologized for the delay due to technical difficulties and trolls on Zoom and called the meeting to order at 6:48 pm and welcomed everyone.

Roll Call:

Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers

Absent:

II. AGENDA APPROVAL

Commissioner Brennan motioned to approve agenda. Commissioner Donner seconded.

All Aye.

III. DISCUSSION AND ACTION ITEMS

A. *Mayor Jaramillo-* The Commission will accept public input, review recommendations and discuss the proposed Abortion Business Ordinance No. 2023-002. The public is invited for input and discussion. No final decisions will be made at this workshop.

Commissioner Donner stated that multiple letters from attorneys are here.

Pause 6:52pm for technical difficulties on Zoom. Resume at 7:07pm Clerk McCracken retrieved recorder.

Commissioner Donner- This is not a political issue; this is an individual issue. A man that stands for nothing, falls for anything- Malcom X. New Mexico Constitution states no one will be deprived of life. US Constitution- nor any state deny life. This is not political this is principal what our country was founded on. It can be debated when life begins, Princeton states it starts at fertilization. This is not political this is a moral issue. That is what we are here to fight for.

Tony Ortiz- Thanks to everyone for coming out. I do representation for the town on a number of issues. I was asked to come out to provide feedback for the Commission for some concerns. I will start by being very clear, I am not here to talk about my principals, and I am not here to convince you of yours. I was asked to talk about the proposed ordinance that limits the mail for abortions pills and equipment across state

lines. That proposed ordinance does a few things it forces federal law for crossing state lines, aiding and bedding. Can we do this? Should we do this? I am not here to argue your principals, my only job is to take care of this municipality and fiscal responsibility. I gave them an ACP (Attorney Client Privilege) letter, but they said that I can speak on it to everyone, and it can be public. House Bill 7 is there. Enforcement and provisions, if this is passed what are we looking at. 1st- I am worried about the enforceability of this ordinance. Here in New Mexico the validity of that statute doesn't hold. Assume Fed law is ok, the minute that the council adopts a law that we are enforcing here in Edgewood. We are making this our own law, and the minute you do that it becomes subject to what the legislature has said what the Council can do and cannot do. Edgewood Law is subject to being attacked by State Law and Legislators. There is a state constitution law municipalities cannot act on items that give private right. Suing anyone as stated in ordinance would not hold up in court of law.

I am not challenging anyone's principals. You have to make practical decisions on what you want to spend your tax dollars on. My concern is that you will draw an immediate court challenge. The AG [Attorney General] would, with Governors urging, will be on you the day after you passed it. The NM Supreme Court has placed a stay, that means that it is temporary no one will enforce these laws until they figure it out. You will be included in the stay.

Practical suggestion, let other people pay your bills. Some other communities have already gotten into the fray. The Supreme court will decide. See what others do and what they can do. Let others be the test case. When there is a new law people tend to sue each other to see what the rules are. A year after that fight you will find out what the rules are and find out by other communities.

Other concern here is, dollars spent, attorneys are expensive. When municipalities are sued, they have insurance but not on this. The town will have to hire a lawyer.

What can do, could pass a resolution, a declaration of what we believe. Planting our flag, won't get sued. Can do that why other community's fight. Think back to the mask mandate, many people sued. Schools passed resolutions, spent money lobbying and sending money to others fighting the fight.

The council can do what it wants. They can pass this, but I am a big believer of having eyes wide with no surprise. Be aware that this is taxpayers money that could be used elsewhere.

Commissioner Powers- how long do you think this stay will be?

Mr. Ortiz- Short answer- 6 months to a year. Expect this one to be fast with the TRO. I think this one will move fast due to interest.

Commissioner Powers- If Supreme Court decides against this what is next?

Mr. Ortiz- Litigant can appeal to federal courts if they don't like the outcome, if it is a federal question. New Mexico Supreme Court oversees state law. I think they will uphold HB7 and do not expect another outcome.

Mayor Jaramillo- Is there any objections from Commissioners for one question from the public.

Public member- Can anyone sue?

Mr. Ortiz- Anyone can as an organization.

- B. *Mr. Coppler-* I received a different Ordinance, sets out that would require medical services or drugs to get a license from the town. Clarified that earlier draft was changed.

Mayor Jaramillo- we will take some public feedback while you can review the correct version.

- C. *Commissioner Anaya-* Would like to make a statement before this workshop. Madam Chair, Commissioners, Public, Audience, Staff, we are all here to hear a very topic that is at the utmost very toxic. You know when I ran for this position and the Manager, said it best, all we wanted to do was build roads and do services for our community. I didn't want to tell everyone that the law is the law. As Commissioners we took an oath to defend the State Constitution and laws. I do not want to go home to my three daughters and tell them.

*Audience asked why not? *

Commissioner Anaya- Why not? because I am not a doctor. A couple of weeks ago I was accused of not having any morals. I bet 3/4 of the audience have no idea what I have been through, medically, morally and mentally. I have had a heart transplant, I have seen things many hope to see and pray to see. I do not see a reason to take up an ordinance like this knowing we are breaking the law. I am here to listen to the facts, and I heard one attorney, and going to hear another. I believe everyone in this audience has a voice and a statement to make. I believe every woman has a right here. All Justices have a right to write what they wrote, thank God for America. I know many of you will say I do not have any morals; I have way more morals. Thank God for opinions, Thank God for Freedom. I hope that you all would respect mine and other women's opinion. I am here for a reason, and I am here to vote on building roads and I hope they are in your neighborhood.

Chief of Police warned audience at 7:37pm to be mindful and respectful of one another.

- D. *Commissioner Donner-* We speak about fiscal responsibility; we talk about not fighting with those in the fight. We should be standing with them to fight. This subject is not about us. We are taking it away. If we don't fight now, when do we stand. We talk about the taxpayer's money what about the 10 million of the 75% of abortions that were funding by Government money.
- E. *Mr. Coppler-* It established a private right for damages for conveying certain devices

Workshop
April 4, 2023

and drugs. I agree with Mr. Ortiz, that is precisely what it does. I am not here as an advocate for abortion or freedom to choose. I am here on behalf of the Commission on if the ordinance is enforceable, I look to NMSA 10 section 6, I was 16 when it was presented to the 1969 Constitutional Convention, Pete Domenici was Republican and Catholic, He felt that we should have a home rule provision. He felt that municipalities should be allowed to create laws, and not enforced by the State. We should be able to look to the charter of the city and not prohibited by stated we should be able to do it. We went to the 1969 Constitutional Convention, we were able to convince the Constitutional Convention to put it on the ballot, struck down in 1970 and brought back and accepted.

Municipalities that adopts a charter, I am the messenger. HB7 is a specific denial, that is the facts, you can adopt an ordinance, but it will not be enforceable which creates two problems. Those who are in favor and antiabortion, the judge will quickly and expeditiously, will be upset that you thought your Commissioners were doing something. Those against will be upset at the get-go. That has been my experience if this thing should go on. If the lawyers who and draft an intricate ordinance that gets around state law, like the license, must get a license, must give their name, address and map where it is operated. I am from Bloomfield, I mention, I address the Bloomfield Council for ACLU complaining about it suggested to take it down. It cost Bloomfield 2 million and laid off Police. If people would picket and block medical facilities and a woman were to miscarry and she sues the town it will cost all the money in NM.

Read House Bill 7- Governing Body, Chief O Police, Town Clerk, Manager. Does have private action. Turning the other way could get all. Their assets are subject to lawsuits. It's an exercise in futility.

Commissioner Anaya- Don't worry about them shooting at you, they'll shoot at me.

Mr. Coppler stated he is much older and will stand in front.

Mayor Jaramillo- What is reproductive right?

Mr. Coppler- I am not a doctor, but between a man and woman.

Mayor Jaramillo- I was define reproductive as producing a child.

Mr. Coppler- I am not a doctor.

Commissioner Donner- Does Fed Law

F.

Mike Seibel- Attorney, here in NM Senior Council for Abortion and Malpractice- Keesha Atkins who was referred to abortion clinic by UNM. The abortion industry is unregulated and unsafe. They are coming from Texas and there are not a lot of Towns between here and Texas. The pill is causing sterilizations, sepsis. Mental distress to woman. What do I do with the baby after they abort the baby. Commissioner Anaya

Workshop
April 4, 2023

you can still protect your daughters. Southwest Abortions stopped their 3rd trimester due to malpractice issues. I have not found a way to sue the state, but I would love too. We have the right to assemble on sidewalks as long as we do not violate any laws. 22 Attorney Generals have tried to enforce this. Walgreens and CVS have refused to carry the pill. This law and ordinances could lead to the banning of abortion (Zeagler, prochoice law from California). You could be liable for an attorney and 10k fine, if ACLU sues. That is what the risk is. I do not think this is the Bloomfield risk, but there are risks. When you have 10mil sent to Las Cruces of state funding for abortion clinics, malpractice suits against UNM for an unregulated industry. You have more responsibility than to build roads, you have a responsibility to protect children. For women who have lost their uterus or like Keesha Atkins, lost her life. My understanding is Mitchell will represent the town for free, I know this as I am working with him on Hobbs. Why not take this chance to stand up to the Governor and her abortion agenda. It is evident by our numbers, we are in line with South Dakota, instead we are a back door for the states that have outlawed. We must stop the hurting of women. Not in my backyard. I have all my faith in Mitchell in this case, he has been to the supreme court. We have the best of the best defending you.

Commissioner Anaya- Sir, do women have rights?

Mr. Seibel- Yes, sure they have rights, they have right to health care.

Commissioner Anaya- This is a right to health care, so if they don't have a right health care. I am talking about women's right. They have rights just like men. You have mentioned that Mitchell pro bono, is he willing to pay for everything we lose.

Mr. Seibel- Health care isn't 12-year-old girls in a Howard Johnson doped up on Fentanyl.

Commissioner Anaya- That is not health care, I am talking about doctors and nurses.

8:10PM Mayor Jaramillo stated to be respectful.

Commissioners Donner- please be respectful. Commissioner Anaya floor is yours.

Commissioner Anaya turned the floor to Mr. Ortiz.

Mr. Ortiz- in NM 10th circuit, it is called into question. The statue is not in the 5th. I am emphasizing the cost. It could be 10k per instances. you are flirting with easy 1 mil bucks and jousting. Take it to the legislature and fight it there, take it to the fed court. I am good with everything you do and pick your fights.

G.

8:15PM New Mexico State Representative Stefani Lord called point of order.

Jonathan Mitchell- I heard the concern about attorney fees. If the Town Council could pass the ordinance with wording that it won't take effect until Supreme Court Decision. This is not a ban on Abortion. This is a ban on mailing abortion pills and supplies. Comstock law, there is a federal law that could stop the shipment. This ordinance has

Workshop
April 4, 2023

been drafted so that it does not violate HB7. You can set date until the ruling and the Comstock. Immunize the towns and the officials from Attorney General or citizens.

Commissioner Anaya- Where do you practice law?

Mr. Mitchell- My office is in Austin, Texas.

Mayor Jaramillo- I do have a letter from you with a commitment to cover the cost for the Town of Edgewood for this ordinance. I really appreciate that.

Mr. Mitchell- I do not see the Town being sued, but the Town suing the AGs.

Commissioner Powers- You were talking about the enforceability of the Comstock.

Mr. Mitchell- I am hoping to get as many cases involved to get the Supreme Court involved to challenge Comstock laws. It does not ban abortion just complies with Comstock laws.

Commissioner Powers- if you, as suggest, that we put it into effect on the Comstock Law ruling from the Supreme Court.

Mr. Mitchell- Comstock law needs to go to New Mexico Supreme Court, then to Federal Supreme Court, goal is US Supreme Court. There will be states with different understanding of Comstock, with various understanding, US Supreme Court would have to step in.

Commissioner Donner- Mr. Mitchell thank you for joining us here. You're based out Austin, how do you practice in NM.

Mr. Mitchell- I bring in Seibel, to practice on behalf of my office. Just like other issues, I have reps in different states.

Commissioner Brennan- Mr. Mitchel thank you for being here with us today, The way you talk about this it does not ban abortion, it does allow for a clinic to operate but not receive the supplies?

Mr. Mitchell- Yes, that is what it said. We will add the stipulation, but this would still prevent an abortion clinic. There will not be an explicit ban.

Commissioner Brennan- Brought up the fact if they would want to start the licensing process, we would have to write up how that licenses processing would go.

Mr. Mitchell- I would rather not have license requirement until we have the Court rule on the Comstock law and what it means. The long game would have licensing

Workshop
April 4, 2023

requirements for clinics. With the private right of action for the Attorney General to sue, this ordinance having stipulation would prevent this.

Commissioner Anaya- Mr. Mitchell, why is it that we are going through all of this then, if it will take years and years down the road and is not going to affect the laws in the State of New Mexico. Why did you put all of us through this tonight?

Audience making comments.

Mayor Jaramillo- Asked audience to hold comments and stated Commissioner Anaya has the floor.

Mr. Mitchell- I didn't mean to put you through anything, just a proposal. It just happens to be that Edgewood is in a liberal state that has passed HB7. You have a hostile State Court and hostile legislation. I would not pass a ban in a state of NM. I would enact an ordinance like the one proposed.

Commissioner Anaya- How many times has Comstock laws been revised.

Mr. Mitchell It has been dormant since Roe vs. Wade. There are two versions the Biden Administration and Comstock.

Commissioner Anaya- questioned why is a lawyer from Texas drafting an Ordinance in New Mexico?

Commissioner Donner- answered. *Mayor Jaramillo* clarified that Commissioner Anaya has the floor and question directed at Mr. Mitchell.

Mr. Mitchell- I had a client ask me to draft this ordinance, which is normal. It is difficult to navigate with New Mexico laws. What a client does with the ordinance is up to them.

*Commissioner Anaya-*Is this a cookie cutter ordinance for Texas?

Mr. Mitchell- No. This is not a cookie cutter. The situation in Texas is different than New Mexico. This was the first to be created after HB7. I think this ordinance should still have revisions due to HB7 and legal issues.

Commissioner Donner- what other states have you drafted legislation for?

Mr. Mitchell- TX, OK, Drafted Sanctuary Cities for VA, IL. TX, NV, NM, SC. I have had other states IA, SD.

Mr. Mitchell- Argued 5 times at the Supreme Court, 30 in Federal Appeals. Worked on

Texas Heartbeat Act in 2021. Draft legislation that protects municipalities. ACLU and other rights groups sue intimidate law makers and to force agenda. I always want to make sure that my clients aren't sued and offer to represent them for free if they are sued.

H. *Mayor Jaramillo*- You can unmute and speak if you'd like Mr. Dickson.

Markley Dickson- Director and founder of Sanctuary Cities of the Unborn Initiative- Has worked on this initiative since June 2019. Been involved in ordinances being passed in 65 cities and 2 counties. Right now across US working with places like VA, NV, IL, with ordinances that are moving forward with their councils and I have worked with Jonathan Mitchell and I trust him. I was sued on the Texas Heartbeat Act and Jonathan represented me. This ordinance does not ban abortion but enforces federal statutes. It is a de facto abortion ban; if it has that effect great but does not state a ban.

Commissioner Powers- I have two more questions for Mr. Mitchell. This issue was brought up, that a municipality cannot create a private right of action and that is in this draft ordinance, will that be removed as well?

Mr. Mitchell- Through his research did not see any prohibition in New Mexico State Law. We can remove it and if such a prohibition exists, we will take it out.

Commissioner Powers- What is the benefit of taking action and waiting out the court?

Mr. Mitchell- I am proposing the delay so that you are not sued. Need this to get it to the Supreme Court. Creating the ordinance can be taken to the Attorney General.

Commissioner Donner- It took me a while to find this video. Video will be played and is graphic. If you have a weak stomach or children in the audience, I would turn away.

Mayor Jaramillo- Stated Commissioner Donner has the floor.

Commissioner Anaya- Refused to allow that video played here or to anyone else..

Mayor Jaramillo- I think every individual has been warned and the content is graphic and not appropriate for children. If you'd like to leave the room that is your prerogative.

Commissioner Anaya- Why is this not on the agenda?

Mayor Jaramillo- This is apart of the workshop and Commissioner Donner has the right as an elected official to bring content to the workshop.

Commissioner Anaya- I disagree.

Mayor Jaramillo- Once again the video is extremely graphic.

Commissioner Anaya- Requested to speak to the attorneys.

Discuss with Attorney regarding video 8:48pm

Commissioner Powers- I am concerned about children accessing the video on Facebook. I am concerned about the impact on them. We have taken issue with the schools over issues like this. We can screen it here and decide if it is appropriate for Facebook. Do we need a motion and a vote?

Mayor Jaramillo- I do not think so. Issues with sharing the screen. Moved forward with the residents of Edgewood to speak first in order of the sign up.

I. Public Comment-

We will take residents of Edgewood first, then non-resident. All will speak for 2 minutes. no cussing, no personal attacks. Be respectful, be gracious. Everyone has an opinion but want input from everyone.

Russel Wilson- Abortion is not the problem the big problem is the miseducation of the issue. The propaganda. Misrepresentation of abortion procedures by certain representative and parents demanding abstinence only education for their children. Adoption is not the answer and has bias and favoritism to certain individuals. No body has a right to stop the abortion. Abortion has benefits to the pregnant person and fetus and prevents unnecessary harm to parent and potential fetus. If the potential fetus is born into poverty to a world that honestly doesn't care about children and does not get the love and care it needs, I guarantee you that developing life would opt out of life. (Mayor Jaramillo warned audience and stated allow him to speak). Insemination, it is immoral and unethical to force anyone to bring a life into this world that will not be cared for, loved and given the best medical treatment. Please take all this into consideration.

Phil Archuleta- I know I don't look like much, maybe weird. I grew up in politics. I can spot a politician a mile away. I've met George Bush and Pete Domenici. I would like to say that growing up in this state I never even thought that there would have to be a sanctuary for unborn babies. the female body is amazing can hold two people in one body. The baby has rights, like this video. If you haven't seen a baby being. To all the officers I back the blue. No one is going to start trouble here. If you hurt a child, you might as well tie a stone around your neck and throw yourself into the sea.

Commissioner Donner we will play the video now. 9:01pm for audience. Stopped Facebook Streaming. Commissioner Anaya left during video.

Continue with public comment:

Cheryl Huppertz- 49 Hill Ranch Rd- Thank you Sterling Donner for bringing this forth. I support this with the changes made by Mr. Mitchell's suggestion. I would like to see us not in any more legal fees. I am pro-life and appreciate.

Myke Pearson- The lawyer asked if this is the right form; Santa Fe didn't listen to us the past 3 months. We had 1 million signatures, and they didn't listen to us. We are not swinging at windmills we are swinging at dragons. I am in support of this ordinance. That is an accurate purposeful premeditated murder of a human being. It is often argued that it is a women's right, Had called Commissioner Anaya- when is a baby a human. he responded he is not a dr.

Casey Pearson- As my wife said she had spoken to Commissioner Anaya and was unwilling to answer the question, Asking when is a baby a human? he did respond he is not a dr. I am guessing he is not a biologist either, so he doesn't know what a woman is. Discussed how a baby is aborted. You can argue this but we should discuss it. Thank you for bringin this forward and continue this battle.

Linda Burke- I am looking at this more as a position for what is in the interest of the town. I do not want to talk about prolife or prochoice but pro town. The potential divide on these issues for the town is difficult due to the past, and here we are being divided. Mr. Mitchell talks about his interest in getting cases but not his interest in Edgewood. Loyalty runs out and we should not be relying on promises. Until the Supreme Court ruling, we are jumping in. What type of risk is it worth to lose funding. I know this is an emotional issue.

Ryan Penfold- Sang "Passing Through" by Cisco Houston.

Ralph Hill- East Mt. Cowboy Church- I loved that the attorneys emphasized the home rule. What the founders and the State intended. We are heading in a direction we don't want to go. George Soros money is going through the County Clerks. Family came here in the 50s and it was a quite little town with churches on every corner. I would like to say Fil, not only did he campaign on building roads, but we also campaign doing the will of the people, transparency. We do not want the abortion here. New Mexico recently the Satanic Temple to put an abortion deal there.

Curt Miller- Pastor of East Mt. Cowboy Church- Wanted to apologize to Commissioner Anaya for interrupting. I need to speak to all the men. I hope this gets conveyed to him [Fil Anaya]- the comment that wives and mother raise children and men don't is wrong. I raised both my daughters. I took them to get their first bra, hair done, talk about boys and the ones that didn't come back and got them prom dresses. I am highly offended by Mr. Anaya. I take issue with the abortion; it is a moral issue. It has become a political issue due to evil politicians. 65% of women had abortion were done having children, couldn't afford children. 0.01% was inbred, serious health issues. This makes up 95.5% in Florida - 21.3% social economic reasons and 74.2% just didn't

Workshop
April 4, 2023

want a baby. Politicians have made this political it is a moral issue.

Romans 13- The government as long as it protects the people and the good of the people, that's what the government is for. When the government is a terror to the people the believers have to take a stand. My hats in and I say we go for it. I will encourage my church but cannot enforce it.

Mayor Jaramillo- Added that God's law is higher than Man's Law.

Barbara Barrett - I would like to thank you for 6 Pinto Court- What I am understanding is that this does not stop abortion but stops the tools. I am for anything that stops the devil taking our children from us. I am all for it.

Kelsey Herrera- and Brent- My family and I moved to this area due to the restrictions of the city. We want this to be a safe place for our children and unborn children. Santa Fe and Albuquerque does not represent the values of human life. We want Edgewood to be a sanctuary for children.

Non-Residents of Edgewood Comments:

Representative Stefani Lord- I was wishing Mr. Anaya was still here. Did he leave? He left he is subject to recall. I was supposed to be an abortion. The abortion doctor raised me. My mom just left me there. I know what it is like to see the spirit of a woman to leave them. At the round house stuff gets passed all the time. They do not care. They will say just sue and are violations of the constitution. HB7 is wrong. It is violation of a right not just morality. There are people like me who will open up their checks books to support lawyers. Fight this and do not back down.

Joshua James Lawrence- From Alb. Constitutional gov runner- when it comes to legislation, and I was up there as well and let them know the laws as well. Our 1st amendment was violated, as it is here with the 2 minutes. The constitution is our law. If I was governor I would enforce the constitution . As these laws pass we are allowing it to happen. We are offered only the laws that the constitution. Your duty to protect the people, this law takes away the rights of the parents and giving it to the legislators. It is up to us to put away the tyrants.

Former Candidate for Governor Ethel Maharg- I am the Ex. Direct to the right to life, I also served as the Mayor of Cuba. to Commissioner Anaya that was irresponsible for him to not hear this. Our job was to protect the citizens of Cuba. A women has rights but no one has the right to take a child's life. It is an attack on our children and our community. Every baby that dies is a direct attack on God. Pressuring people to make this decision, no one was pressured everyone came on their own.

HB51 we defeated it. We all came together. 98% of calls came in for the right to life. They [legislative] do not listen.

Commissioner Anaya returned to meeting at 9:35pm.

Zoom:

Evelyn Lorgetto- I had to google Mr. Mitchell, he didn't introduce himself or I didn't hear him. He is a private attorney that is involved in many political situations. Looking at the court documents what legal experts; they want to report judicial rebuke. You do not want your courts to lose their power. Abortion rights appear to be a testing ground for his judicial rebuke thwarting. Be careful of political agenda and what he is doing.

Back to list:

Sharon Dib- All of you are my next-door dib. I am here on behalf of 3 people that were not born. I can't tell you if they were boys or girls, but I would've been their aunt. I am infertile and I would have adopted them. My sister had abortion and later shot herself. One of my nephews just had a baby. I have been prolife and fought outside of Planned Parenthood. I do want to say I am in Sandia Park. Edgewood is giving hope for standing up against the state.

Logan Brown- Handed out books (How Can We Rescue Those Being Taken Away to Death, The Role of Civil Government.). Read quote. Are we going to be faithful or are we going to write about the faithful. Asked the room to stand if they are in support of this ordinance. Look around at your constituents. Democratic oath is do no harm. Abortion is harm. Edgewood can get in the fight or get out. We are called to pray and love on you.

Eric Welsh- Clovis NM- We just had this fight. Every argument you are looking at against was done at Clovis. Your Mayor sat up there and said God's law is king. I wish more Mayors had the backbone to stand up. Science proves that it is human life. I am speaking to believers, if you pledge allegiance to, not the state or the Us but to Jesus if you sit by and do nothing. We talk about money the God of Mammon. Edgewood you are blessed.

Michael Seible- I stand on my comments before. Taking back NM starts here.

Pastor Tim Carter- Thank you commissioners. There is not much I can add to the details and statistics. We are fighting a moral issue, this is not a political issues, not a right issues. Gods' laws have been talked about and we could talk so much more about that. The most sacred thing we have is life. If we don't dare to stand and protect the most sacred thing, we have then we have nothing. I ring the bell and I am proud of this commission and this city. We stand up for something we know that is right. Representing Legacy Church and Pastor Steve. We are not afraid to fight. our 15,000 members are willing to protect what is sacred and that is life.

Last Call for Public Comment 9:53pm

Workshop
April 4, 2023

Evelyn Tucker- I like 472- I want to address an area that I have not heard talked about, women's health. If you have ever held a woman that has had an abortion, that she was terrified. If she didn't have loving arms around her that she could pour into she would've committed suicide. Society is not giving them the right to mourn the life gone. If you miscarry you are given the privilege to mourn and bury your baby in the cemetery. If you have an abortion they are not given the right to mourn. It hurts so bad. These women are hurt and if we can help a little that is scared. We need to do what we can.

Carmalie Hamilton- few points- our entire family, 40 years have been prolife. I found out about it in a round about way, by losing 5 children, due to autoimmune di, 5 lived. I have been able to help guide 3000 women, only one had an abortion. I used an alias name is Kitty. she told me Kitty you did not lie. A couple had a baby that was deformed from the medication a doctor gave them. Not one person was sorry they kept the baby. Commissioner Anaya you should apologize many men raised children.

Keith Sandy- High meadow loop- About 18 years ago my wife had difficulty having him and didn't think there we could have anymore. We went through adoption and it took 3 years. There are children that some may not want, but there are those of us that want the children that would be aborted. I am thankful my adopted daughter's mom chose life. Abortion is not the answer, adoption is the answer.

Joshua Love- Moriarty- close enough for medical care. My family will support how ever we can to do this. Real men help raise the kids.

Archuleta- I want to talk about the video. You see the spinal cord and the brain, and you can see it is a person. It is difficult for anyone to see that and that is a good thing. It was a living being. It could have a great life.

Lyndsey Donner- I stand with the commission and proud of the ordinance that was brought forward. I do not believe murder is a right.

Tapa Tate- I am here with my husband and a worker from Carenet. and we are here to support women who wants answers. We are hear to show that God loves them. those who have spoken on how it effects women, I have seen that. The one person who said it, my mother had 3 abortions. My mother was a wreck after that and committed suicide with a knife into the heart. We show love and support for this women. we have a baby boutique. SO many just need us to love and support them and give them what they need. We have seen abortion minded women who change their mind and send pictures. I am so glad to see a sanctuary city, I know Moriarty tried but hope we can all stand to abolish abortion.

Anthony Maxwell- Horton Rd. FBI agency- 20 year w/FBI, 10 with LE. I worked forensic abduction for children. The government will come after you if they get the chance. Who is entitled to protection under the constitution? Human Beings. Human

Workshop
April 4, 2023

beings are to be protected to a degree. All LE protect life because they are human beings. In Venezuela, how do you think they started out? They started with abortion and then went to killing 70 people a night. Are we going to protect those that we need too.

Name not stated- When I moved from Radical California to NM I was really hoping to see the spiritual. I was disappointed to see what has happened. 47% in NM support Abortion. This was the city of faith. I am disappointed about this issue coming up. I love this community, but we do have voice here, the support is here. I didn't expect this much. Let's not destroy this community. Let's keep it protected and make a voice for NM, Make this

Mary Engram- I am from ABQ. 45 years ago I had an abortion as an UNM student and nearly died from infection and almost bled to death. I carried this burden with me, but then found Jesus Christ. After that I had 12 miscarriages. I don't know if it was related but know I have 12 babies in heaven. There are people ready to stop abortions in NM but we need 1800 signatures to stop. Referendum process.

J. *Commissioner Donner-* James 2:17 If we are going to have faith, we have to back it up. It's time to be warriors.

Commissioner Brennan- A child is a precious gift. I lost my son when he was 5 months when he had 4 months to go. We still had a funeral. I do not see why anyone would want to destroy it. I have a brother that couldn't have children and adopted. I have a niece with a great niece that knew the heart was part missing but they chose to have her and still fight. It bothers me to see that politicians are willing to throw that away.

Commissioner Powers- I would like to thank everyone for their experiences and spilling their hearts. I will not go into my own experience but I had that taken away from me. I do not know how to handle this. I am about win wins. I want to do this in a way that does not jeopardize the town. I believe in government by the people. We do have the process of referendum to hear the voice of the people.

Commissioner Anaya- I would like to thank everyone being here tonight. It is a contentious topic throughout the world. Please understand that I love children with all my heart. I would do anything to help people that can't afford or raise a child because they are in poverty. It has nothing to do with their faith as do I. I have faith. To chastise myself without knowing what I stand for. I had a hard time getting heart transplant because that meant someone had to die for me. that is pretty rough. I have been through what you guys have been through. Life is not always fair, trust me. There are plenty of people that are not being served in Edgewood. It is an issue depending on what they can believe that they can afford. There are so many who do not have people to talk too, they don't know how to get advice or help. Someone has to step up and help them too.

Mayor Jaramillo- I appreciate the member of the public who brought us up these

Workshop
April 4, 2023

books. When I was getting my juris (liberty university) so I had Christian foundation in law. We have been hearing all night this is an issue of right or wrong. I have been through these situations and there is a lot of deceit within it all. It does need to come to light. I heard on next door and from Commissioner Anaya is that women need help, I think that Edgewood needs to bring more services to women. We have brought back more resources for women, for those that are hurting or need help. I appreciate what we have heard about adoption. we need to make adoption more accessible. All our contact information is on the website. Our role as Governing Officials is to do what is right. I heard about the issue of divided Edgewood but I don't see that here tonight. I won't share my experience but just a piece of it. Close to 50 years my mom chose life when she was 15 years old. She had a lot of pressure to give me up for adoption. I was born at a Catholic hospital and the nuns whisked me away to potential adoptive parents. God does not make mistakes.

Commissioner Brennan- It came up is that financial issues is why the girls chose, Why not spend the 10 mil on a life factory.

IV. FUTURE MEETINGS

- A. Note: this is not a Public Hearing. The Public Hearing where the Commission will make decisions is scheduled for the Regular Commission Meeting on Tuesday, April 25th, 2023, at 6:30 PM.

**Commissioner Sterling Donner moved to adjourn.
Commissioner Jerry Powers seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

V. ADJOURN

Mayor Jaramillo adjourned the meeting at 10:34pm

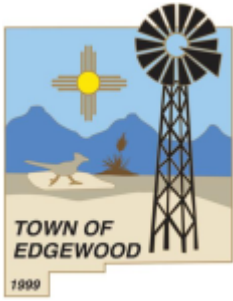
Passed, Approved and Adopted on , 2023

Audrey J. Jaramillo, CMO, Mayor

ATTEST:

Nina McCracken, Clerk

DRAFT 4.13.23



Town of Edgewood
Regular Minutes
Tuesday, April 11, 2023, 6:30

I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo called the meeting to order at 6:33 pm and welcomed everyone.

Roll Call:

Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers

Absent:

II. AGENDA APPROVAL

A.

**Commissioner Kenneth Brennan moved to approve the agenda for tonight April 11th.
Commissioner Jerry Powers seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

III. PUBLIC COMMENTS ON AGENDA ITEMS

IV. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

- i. July 19, 2023
- ii. December 13, 2023
- iii. February 24, 2023
- iv. February 28, 2023
- v. March 14, 2023
- vi. March 28, 2023

Commissioner Audrey Jaramillo moved that March 14th, March 28th, and Feb. 28th pulled for work and approve the rest of the consent agenda.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

V. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

- i. Passed on comments.

B. Jerry Powers, Mayor Pro Tem

- i. Congratulated the Chief for his appointment by the Santa Fe County Commission to the EOC Task Force.

C. Phil Anaya

- i. Passed on comments.

D. Ken Brennan

- i. Commissioner Donner and I will be out at training next week. Commissioner Anaya will need to attend RTPO meeting next week. Commissioner Anaya acknowledged and agreed.

E. Sterling Donner

- i. Passed on comments.

VI. MATTERS FROM THE CLERK

- A. Spring Conference April 18th-21st, 2023- send questions that can be taken to Clerk Institute.
Jobs posted: Wastewater II Operator, Heavy Equipment Operator, Librarian, YES! Program, P and Z Administrator. Have applications for Librarian, YES! Program and P and Z admin has interviews on Thursday.
Public Hearing Posted for 4/25 today in the SFNM.
Lodger's Tax Board- Looking for 2 members and interested in events that bring in individuals to stay the night, heads in beds.
Friday April 14th, Career Day at Edgewood Middle School 8:30-11:30am.

CABQ Benefit meeting for health benefits tomorrow.

Mayor Jaramillo- Asked about Wastewater II operator, position is contracted out. We can discuss operations later.

Commissioner Powers- When is the Career Day? Interested in talking about Home Builders.

VII. MATTERS FROM THE TREASURER

- A. Passed on comments.

VIII. MATTERS FROM THE CHIEF OF POLICE

- A. We are getting a lot of calls to Town Hall and Police Department to request officers. The public should call dispatch at 505-428-3700 and not the administrative offices. We will put something on Facebook as well. We have requested help from other agencies for April 25th.

IX. MATTERS FROM THE TOWN MANAGER

- A. Celebrate HB 505, we have received 2.5 million dollars for Venus Park.
Wastewater Treatment Plant- spending a lot of time. Identifying high value parts and inventory and making progress. Working with Agie to make an operations checklist. Once we are on top of the day-to-day operations we will see improvements.
Appaloosa Road- Still getting quotes.
YES! Programs, PSA released and jobs posted.
Thanks to Michael Steininger and his team to getting our reimbursements for our high-ticket projects.

X. DISCUSSION AND ACTION ITEMS

- A. Approval of Route 66 Art Alliance Invoice for Saturday Arts Camp Feb. 4th and 11th, 2023

**Commissioner Jerry Powers moved to approve Route 66 Art Alliance Revised Invoice.
Commissioner Audrey Jaramillo seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

- B. Route 66 Arts Alliance Programs and Budget for FY 24

Sandra Holzman- Discussed programs, how Arts Alliance works, programs and events that are planned. Discussed working with Linda on YES! Program and discussed Lodger's Tax Grant and wanting the overnight events. Waiting to hear back from Ben and Linda on programs. You will not find a better program for the price. Would like to keep program with Edgewood.

Mayor Jaramillo- You recognize that things were not done correctly in the past. The way we have to do this is to get quotes from entities, may be the only one in the area. We are necessarily not allowed to give Lodger's Tax because of the heads and beds. We are refining the process at this point. Have administration come up with a scope of what they are looking for and get quotes. YES! Program, possibly having arts camp separated from YES! and a different time frame, but something to discuss with Parks and Rec.

Sandra Holzman- We are on a timeline and need to get our registration forms up and ready. How would your recommendation effect the approval of the programs.

Mayor Jaramillo- Since it is under the threshold, Commission does not have to approve but we do need to get quotes for compliance.

Commissioner Powers- Sounds like there is a timeline looming.

Sandra Holzman- Need to have applications up by May 1st.

Mayor Jaramillo- It is more what the Town wants for its youth and art programs.

Sandra Holzman- We already have our teachers reserved and planned this in February. If we change dates and programs, we will lose everything. If the Town of Edgewood wants to design a program do that next year, just let us do our program for this year.

Commissioner Powers-

Treasurer Steininger- This is for July and need an indication that they can go ahead with the programs, as the budget will be too late. Similar to what we did for the YES! Program.

Mayor Jaramillo- The difference is YES! is a Town program with Town employees, not with a vendor. Need to be careful of anti-donation. We should do our due diligence for getting quote.

Treasurer Steininger- Perspective was YES! and Route 66 Alliance was the same program. Did not realize until last week that YES! was a separate program.

Commissioner Powers- If it is under \$20,000, we do not need commission and if it is over \$3,000, we need 3 quotes, or attempt to get quotes.

Commissioner Anaya- Aren't all these programs (YES!, Arts) all runs under Parks and Recreation.

Treasurer Steininger- Yes, they do run under those funds.

Commissioner Anaya- Are they in charge of coordinating these programs.

Treasurer Steininger- I am not comfortable speaking on who runs the programs. I only look at the funds.

Commissioner Anaya- What is the shorted time frame for requesting bids, proposals, and quotes.

Treasurer Steininger- Quotes can be done almost instantaneously.

Commissioner Anaya- Can we follow this program for a scope of work and put that out for quotes.

Treasurer Steininger- Town's Policy requires quotes over \$3,000. Would need to contact to see if anyone has quotes. Anyone can write a scope of work.

Mayor Jaramillo- There is procurement code that vendor cannot write scope of work. My recommendation to separate out the Arts Alliance from the YES! Program and keep their autonomy. From feedback received from the YES! Program this would be best.

Sandra Holzman- I need to know tomorrow that we can go forward.

Commissioner Donner- Would if the YES! Program absorbed the activity. In would be in partnership and the YES! Program would run it. We don't have the funding for this.

Sandra Holzman- Skilled teachers, professional teacher to teach art. This is their only art program. You don't get this program without teachers. We don't want to babysit that what the YES! Program is for.

Commissioner Donner- This will be a hard one for us to pass. We have to follow our own code.

Manager Perry- The Arts Alliance has a great reputation but does go back to procurement, and it was overlooked in the pass. The YES! Program is already solidified and gone out and it would be difficult to work the schedule. this program is \$10,000. My suggestion is issuing a \$3,000 purchase order. It will take time to get 3 quotes.

Linda Burke- There are a couple differences between the programs. Arts Alliance does great for events. The Arts Alliance come in for one day, kids 5-11. Having as many

activities is a little much for some of the kids and they need more outdoor time. The YES! Program does one field trip a week. The YES! Program has a rotation 4 times of 3 groups throughout the day for 4 days when the kids are present at Town Hall.

Linda Burke- Are the 4 classes rotations? YES! considers one of the 4 lunches.

Commissioner Donner- Who does the liability fall on if they are two different programs.

Sandra Holzman- It would be the Towns since it's a Town building.

Mayor Jaramillo-

Commissioner Powers- Question for Linda Burke, does the YES! Program calendar include the Route 66 Arts Alliance? Is it a conflict?

Linda Burke- Yes, the parents might be upset about giving up science or sports. There is the field trip day that many look forward too.

Commissioner Jerry Powers moved allow procurement to go forward and see if the programs can work together.

Commissioner Audrey Jaramillo seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

C. Resolution 2023-003 Operating

Commissioner Powers- Will be updated to 2023-016 if passed.

Commissioner Brennan- Is there a way to have public comments after general business? Closed sessions can be at the beginning of the meeting.

Mayor Jaramillo- It is difficult to get here at 5:30 for those that have to commute and want to get something to eat.

Commissioner Donner- Agree with the long meetings. Difficulty getting here at

Regular
April 11, 2023

5:30pm.

Commissioner Powers- We could start at 6pm.

Commissioner Donner- We could have a cut off time. Add in at 10pm or 1030pm we can vote on the meeting.

Mayor Jaramillo- I can do 6.

Commissioner Jerry Powers moved to accept the redline copy 2023-003 to 2023-016 with one change meeting times from 6:30pm to 5:30pm.

Commissioner Donner- Friendly Amendment to 6pm. Commissioner Powers Accepted. Commissioner Anaya accepted.

***Mayor Jaramillo-* Change sponsor to individual(s) instead of Sponsor/Commissioner. Commissioner Powers Accepted. Commissioner Anaya accepted. Commissioner Filandro Anaya seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

D. Resolution 2023-012 Acceptance and Approval of the Fiscal Year 2022 Audit

Commissioner Kenneth Brennan moved approve resolution 2023-012 Acceptance and Approval of the Fiscal Year 2022 Audit.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

E. Social Security Vote

**Commissioner Jerry Powers moved approve Resolution 2023-014 for referendum for a majority vote on or before May 15th, and Manager Perry is appointed as Agent on behalf of the town.
Commissioner Kenneth Brennan seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

**Commissioner Jerry Powers moved Approve Resolution 2023-015 Social Security for Referendum on or before May 15th and Manager Perry is appointed as Agency for the Town.
Commissioner Sterling Donner seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

F. Community Center: Locations, fees and scheduling.

**Commissioner Audrey Jaramillo moved for Administration to utilize Old Town Hall for events and what it would require.
Commissioner Jerry Powers seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

G. Approval of Police Department Explorer Upfit

Regular
April 11, 2023

**Commissioner Sterling Donner moved for approval of police cruiser outfit.
Commissioner Kenneth Brennan seconded the motion.**

Commissioner Powers- Is the Blue-Sky Outfitter who you are recommending.

Chief Jimenez- We try to use local business and need to be done quicker.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

H. Retroactive Approval for Police Department's disposal and Sales of Guns Last Fall.

Mayor Jaramillo- Question on Heather purchasing.

Treasurer Steininger- Verified only receipt was filled out to Heather but confirmed check had both her and Officer's name.

Commissioner Kenneth Brennan moved approve the retroactive approval for police department's disposal and sales of guns last fall.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

I. Incode 10 Purchase Approval.

Steininger- Incode 10 would be better to start fresh. Could clear up a few audit points.

Noah- Windows 11 will not be an issue with Incode 10 (web based). Anyone operating system can use the web based option.

Regular
April 11, 2023

Commissioner Sterling Donner moved approve purchase of incode 10
Commissioner Jerry Powers seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

Break at 8:37pm returned at 8:47pm

J. Bar #4 Budget Adjustment

Commissioner Sterling Donner moved pass Resolution 2023-013 Bar #4
Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

K. Approval to go out for RFP or review other agency Benefit Plan.

Commissioner Sterling Donner moved approve Clerk McCracken to go out for RFI to review other benefit plans.
Commissioner Jerry Powers seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

XI. PUBLIC HEARING
Taproom Off-site liquor License.

- A. Santa Fe New Mexican AD ID 52281
- B. Begin 8:51pm

Clerk McCracken presented Small Brewer and Off-site location Application for Replay LLC DBA Juno at 1913 US Route 66, Edgewood, NM 87015 by Jason Marks from NMRLD.

Mayor Jaramillo- Any public comment.

Jason Marks- Applicant- Was here 13 months ago requesting an liquor license. Asking again for approval.

Commissioner Anaya- State his name address for record.

Jason Marks business address is 1501 1st SW Albuquerque, NM 87102, address is

Manager Perry- Recommend acceptance.

close public hearing at 9:01pm

**Commissioner Kenneth Brennan moved approve off-sit liquor license.
Commissioner Jerry Powers seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

XII. PUBLIC COMMENTS

- A. William Bassett- I keep hearing Appaloosa to get paved, young road. Park and Pinion and Church get a lot of traffic. We need to focus on roads that need help. Park and Pinion, our 30 years older. We don't got the order of the roads understood. What is so important on Appaloosa? Appaloosa is small and only has a few houses. Lets get the sewer completed. When will it go down 344. There is nothing going on South 344 or north 344. Walmart is the business 100s of cars go down Church. Why Square H? It is a young road. Why not Church.

Manager Perry- Church is important. It was overly designed and when you over design with limited funds it creates problems. Appaloosa was on the ICIP list and were able to move forward. 15 roads are on the ICIP list. The only one I haven't seen it Pinion. Let's fund them ourselves. Lets build roads, design roads and not Taj Mahal Roads.

Mayor Jaramillo- A big problem is the drainage.

XIII. FUTURE MEETINGS

- A. Regular Commission Meeting April 25, 2023 @ 5:00pm Edgewood Commission Chambers
Public Hearings: 2023-002 Abortion Business Ordinance, 2002-01 Grading and Drainage Ordinance, and 2023-003 Abandoned and Foreclosed Housing Registry Ordinance.
- B. Regular Commission Meeting May 9, 2023 @ 6:30pm Edgewood Commission Chambers
- C. Regular Commission Meeting May 23, 2023 @ 6:30pm Edgewood Commission Chambers

XIV. FUTURE EVENTS

XV. FUTURE AGENDA ITEMS

- A. Resolution for Motorcycle Awareness Month in May

XVI. CLOSED SESSION

- A. Pursuant to NMSA 1978 10-15-1 (H) (7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant; Specifically, relating to misuse of Public Funds (2020-2021), McGill et. al. v. John Bassett et. al. A-1-CA-39388., and The Town of Edgewood, v. The Moriarty-Edgewood School District D-101-CV-2023-00310.

Commissioner Kenneth Brennan moved to closed session Pursuant to NMSA 1978 10-15-1 (H) (7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant; Specifically, relating to misuse of Public Funds (2020-2021), McGill et. al. v. John Bassett et. al. A-1-CA-39388., and The Town of Edgewood, v. The Moriarty-Edgewood School District D-101-CV-2023-00310.

at 9:11pm

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

Regular
April 11, 2023

**Commissioner Sterling Donner moved to come back into session at 9:46pm.
Commissioner Kenneth Brennan seconded the motion.**

Mayor Jaramillo Affirmed only those items on the agenda were discussed and no actions were taken. All aye.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0

**Commissioner Kenneth Brennan moved to adjourn.
Commissioner Sterling Donner seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0

XVII. ADJOURN

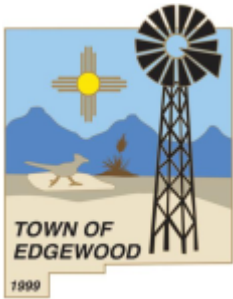
A. Adjourned at 9:47pm

Passed, approved and adopted on the 25th of April 2023.

ATTEST:

Audrey J. Jaramillo, CMO, Mayor

Nina McCracken, Clerk



Town of Edgewood
Regular Minutes
Tuesday, April 25, 2023, 5:00

The Town of Edgewood Commission met in regular session on Tuesday, April 25, 2023, at 5:00 in the Townhall of Edgewood Commission Chambers - 171A State Rd. 344.

I.

II. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo called the meeting to order at 5:03 pm and welcomed everyone.

Roll Call:

Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers

Absent:

III. AGENDA APPROVAL

Move to approve tonight agenda. Commissioner Brennan. Commissioner Donner seconds.

Friendly amendments- Commissioner Powers- request to adjourn at a time certain at 10:00.

Commissioner Brennan- We have had long meetings in the past and need to see this until the end. Commissioner Donner agrees.

Friendly Amendment- Remove V Consent Agenda. Mayor Jaramillo.

All accepted.

All Aye.

IV. PUBLIC COMMENTS ON AGENDA ITEMS

(OTHER THAN THE PUBLIC HEARINGS BELOW)

- A. Linda Burke- Discussion and Action #11- Edgewood resident- I do want to say it is discerning that we are at the center of this issue. I see the issue of accepting Jonathan Mitchell to represent the town. He practices in Texas, not New Mexico. The item to use this as a public vote divides our town. I hate to see neighbors turn against neighbor. Keep the town and finances in mind.

V. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

- i. February 28, 2023
- ii. March 14, 2023
- iii. March 28, 2023
- iv. April 4, 2023
- v. April 11, 2023

B. Department and Advisory Board Reports

- i. Police and Animal Control
- ii. Municipal Court
- iii. Roads
- iv. Library
- v. Parks and Recreation
- vi. Maintenance
- vii. IT Technology
- viii. Planning & Zoning

VI. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

- i. Action Item: Proclamation May Motorcycle Awareness Month (Mayor Jaramillo)

Commissioner Audrey Jaramillo moved to approve to approve Proclamation May Motorcycle Awareness Month.

Commissioner Jerry Powers seconded the motion.

All Aye.

The Motion Carried

B. Jerry Powers, Mayor Pro Tem

- i. Appreciate all being here. Slide shown Thomas Jefferson- Fav. Founder. Brilliant. Designer of democracy. People can be trusted with their government, Public Officer is to educate. How many knew that this was not able to enforce? few hands. How many knew this is in litigation? Almost all.

C. Phil Anaya

- i. Thank you for coming tonight. Ask that we be civil with each other tonight and we are all neighbors and friends, we will do the same. The month of April is donate life month. For those who have not put the heart on your license, please do. It saves lives, such as myself.

D. Ken Brennan

- i. Biggest issue since the beginning of Edgewood. Be kind, be courteous and stick together to get through this.

E. Sterling Donner

- i. Appreciate everyone coming out and we want to hear everyone. Whether you disagree or agree. Let's be civil.

VII. MATTERS FROM THE CLERK

VIII. MATTERS FROM THE TREASURER

- A. Pass

IX. MATTERS FROM THE CHIEF OF POLICE

- A. Pass

X. MATTERS FROM THE TOWN MANAGER

XI. DISCUSSION AND ACTION ITEMS

- A. Obtaining Information and Opinions from Johnathan Mitchell in Executive Closed Sessions to follow. (Commissioner Powers)

Commissioner Jerry Powers moved approve to obtain information and opinions from Johnathan Mitchell in Executive Closed session to follow.

Commissioner Audrey Jaramillo seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

- B. Acceptance of Legal Counsel Representation from Johnathan Mitchell.

(Commissioner Donner)

Commissioner Sterling Donner moved Accept legal Counsel Representation from Johnathan Mitchell.

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Nay</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Nay</i>

The Motion Carried 3 to 2.

**Commissioner Jerry Powers moved to postpone indefinitely.
Commissioner Filandro Anaya seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Nay</i>
<i>Commissioner Sterling Donner</i>	<i>Nay</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Nay</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion DEFEATED. 2 to 3.

C. Discussion, Consideration and Action on Ordinance 2023-002 as proposed or amended; to put the adoption of the ordinance up to a vote of the people of Edgewood by special election or ballot question pursuant to the Local Election Act NMSA 1978 1-22-3or 1-24-2 (Commissioner Powers)

Commissioner Jerry Powers moved if ordinance 2023-002 is adopted in any form as proposed or adopted it will be put up to a vote for the people of Edgewood by special election.

Friendly Amendment Commissioner Brennan to postpone item C until after a decision has been made on ordinance 2023-002. Commissioner Powers did not accept, suggested to after executive session.

Commissioner Brennan moved to postpone to XIII C. Withdrew motion.

Commissioner Powers postpone to XII A.

Commissioner Filandro Anaya seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Nay</i>
<i>Commissioner Sterling Donner</i>	<i>Nay</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 3 to 2.

XII. EXECUTIVE SESSION

A. As per motion and roll call vote pursuant to NMSA 1978,: Section 10-15- 1(H)(7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant, specifically pertaining to the Office of the Attorney General.

Commissioner Kenneth Brennan moved to go into executive session As per motion and roll call vote pursuant to NMSA 1978,: Section 10-15- 1(H)(7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant, specifically pertaining to the Office of the Attorney General.

Commissioner Anaya moved to bring someone into closed sessions.

Commissioner Donner moved to bring someone into closed sessions.

Mayor Jaramillo it is permissible to do so.

Commissioner Jerry Powers seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

Went into closed session at 5:51pm.

Commissioner Kenneth Brennan moved to come back in open session at 8:06pm.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>

Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

Mayor Jaramillo affirmed only those items on the agenda were discussed and no decisions were made.
All Firm.

**Commissioner Jerry Powers moved to put the ordinance amended or adopted up to vote via special election.
move/postpone to item VIII C in conjunction with.**

Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

XIII. PUBLIC HEARINGS & ACTION

A. Revision to Ordinance 2002-01 Grading and Draining. (Planning and Zoning Manager Brad Hill, Commissioner Anaya)

Brad Hill- Land use item before you. Purpose: If a resident or business seeks to create a new driveway that access a town-maintained road would need to get a driveway permit to see if they need a culvert. A determination can be made if the culvert is needed. Does not change what anyone currently has, unless the town paves a road. Creates a protocol and a permit.

Mayor Jaramillo- Isn't this past practice? We buy culverts now?

Brad Hill- No. This has not been done in the past.

Mayor Jaramillo- The road crew supervisor mentioned this, was it informal?

Brad Hill- Yes it was informal.

There are some typos, for expediency, allow the clerk to fix typos.

Regular
April 25, 2023

Commissioner Brennan- If we pave the road and the culvert is deemed not proper and a new one is needed is that at the cost of the home owner or the town?

Brad Hill- Homeowner would buy the culvert, road crew would install it.

Mayor Jaramillo- This has to do with the anti-donation as we cannot benefit one individual.

Commissioner Brennan- Cost of culvert?

Brad Hill-

Closed public comment 8:19pm

Commissioner Filandro Anaya moved Approval of revision to Ordinance 2002-001 Grading and Drainage.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

- B. Ordinance repealing section 36 of ordinance no. 2022-07; adopting public nuisance abatement process; requiring vacant or foreclosed properties to register with the town; and authorizing use of cannabis regulation act/nuisance abatement fund. (Planning and Zoning Manager Brad Hill, Commissioner Anaya)

Open Public Hearing at 8:20pm

Commissioner Anaya turned over to Brad Hill.

This to revise the 2022-07 ordinance, that repeals part of 36 and adopting public nuisance. Santa Fe County and Clovis are adopting similar ordinances. We don't have good tools to deal with this. We have created a revision that gives us the ability to cite violation to a hearing officer, instead of the municipal court. It gives us the ability to clean and lean, encourages residents to rectify the issues. Our goal is to clean up dead properties, owner out of state, older, abandoned. We can coordinate with tax and rev to make these properties abate and no longer nuisance. Clean up the community, offer affordable housing. Recent resolution allows for cannabis tax to assist.

We did change some language issues. Changed longer sentences to three shorts

sentences. I have copies if anyone wants to look through them.

Mayor Jaramillo- Can this be brought up on the screen? Or you can bring the handouts up.

Asked if Commissioner Anaya had anything to say; Asked Manager Perry is he had any comment. Both stated no.

Brad Hill- Read paragraph.

Discussion

Commissioner Anaya- The Cannabis Funds were chosen to knock down old buildings and clean up old buildings. The funds that have been coming in from the cannabis has been really nice. Commissioners chose to use the money for this and really appreciate it.

Mayor Jaramillo- I am very pleased with PandZ and Code Enforcement for listening to the people on wanting to clean up the town. This puts us in a positive direction with positive action and making it a safer place. The buildings are not in the best interest of the town and puts citizens in danger. I am glad we have a funding source.

Public Comment:

Ira Maxwell - People complain about the smell of the cannabis from the dispensary. Question is who do we contact, is it you Mr. Hill?

Brad Hill- This is a better conversation offline and would be happy to talk to you about the cannabis ordinance.

Public comment closed at 8:33pm

Public Hearing closed at 8:33pm.

Commissioner Filandro Anaya moved to approve Ordinance repealing section 36 of ordinance no. 2022-07; adopting public nuisance abatement process; requiring vacant or foreclosed properties to register with the town; and authorizing use of cannabis regulation act/nuisance abatement fund (Planning and Zoning Manager Brad Hill)

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

- C. Ordinance 2023-002 Requiring Abortion Providers in the Town of Edgewood, New Mexico to Comply with Federal Law. (Commissioner Donner)

Action will be taken as needed including, but not limited to:

MOTION/SECOND
DISCUSSION/AMENDMENTS

EDGEWOOD RESIDENTS' PUBLIC COMMENTS
NON-RESIDENT/OTHER PUBLIC COMMENTS

EXECUTIVE SESSION

As per motion and roll call vote pursuant to NMSA 1978, Section 10-15-1(H)(7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant, specifically pertaining to the Office of the Attorney General. (Commissioner Powers)

(CONTINUED) Ordinance 2023-002 Requiring Abortion Providers in the Town of Edgewood, New Mexico to Comply with Federal Law. (Commissioner Donner)

(CONTINUED) DISCUSSION/AMENDMENTS

ROLL CALL VOTE ON ORDINANCE

Mayor Jaramillo- Any comments from staff?

Manager Perry refer to Commissioner Donner.

Public Comment

- 1.
2. Kimberly-
3. Linda Burke-
4. Marcy Smith- I am new resident of Edgewood. This is shocking. Many do not know about the ordinance. Surprising that one of your commissioner says that this is the most important when it is not enforceable. When you were seeking election you made promises to the people, you took an oath to uphold the constitution of NM. I do not need to tell you about the state and laws that have come forward. You know that if you vote yes you are in violation of your oath and are subject to recall. The site for arguing abortion is not Edgewood it is the supreme court and the state. the town needs roads, library, water support.
5. Carla Anaya- Thank you for your time. Long time community member attended MHS. Attended many things over the years. I was raised three doors down from Mayor Kaulking. I think this is an ill equipped time and ill equipped commission to make

decision for women of childbearing age. Asked Commissioner Donner what was the intention of brining this forward. Is there any abortion clinics in Edgewood, No I didn't think. We should be focusing on the children of Edgewood and doing better for them. The medium age of Edgewood is 40 years old. (Commissioner Anaya clarified no relation)

6. Joyce Johnson- Main thought is that everybody knows a beating heart is stopped every single time an abortion is made. think would you like to be aborted at birth. Beth - The last meeting I attended I was able to say something and didn't. I do not want the blood of the innocent on my hands for not saying anything. Proverbs. 6:16 the hands that shed innocent blood. Issaih 49:7, Psalms 29:41, Deut. 27:25, Psalm 139:13-14, Jeremiah 1:5.

Name ?- I wanted to stand for the sake of the women who cannot stand, cannot speak out, one of the victims of abortion is the women. Commit suicide, depression. I have held a crying girl who was scared and did not want to make that choice and felt forced into that choice. They won't allow her to back out. Become hurt physically, emotionally, spiritually. They need to know someone cares. By not standing for the children, we are not standing for the women.

Linda Scott- I assume you are medical doctors, researchers, Women should have the right to health care. For women who are having miscarriage, they need the help. Abortion is legal in this state, taking away that right is what the commission is doing. Do you want to limit all other medications by email, you'd have to prove what is being sent. We do not need to go back in time. NM has a physician shortage what message are you sending? This is decided by the women, the drs. not the commission.

Steven Muro- 5 Ladero- I won't repeat scriptures, so beautifully said, at the end of the day though concern about lawyers, government, tyranny, our fore fathers fought against. They fought for was right. Hannah prayed and rejoiced in the lord, (look up scripture) doesn't matter if we lose we do it in the name of God. We elected you and we want this.

Barbara Fleming 37 Camino Estrada- I realized I did not have the most current version- the first four paragraphs seem to enforce 61 and 62 if abortion is illegal. There is no reason to even enforce. Seems like there is so much, if the whole point is to enforce that it is not very long or complicated has nothing to do with federal law. the idea of pitting neighbor against neighbor, can not give authority to force what is being mailed. Any private individual. Just looking at the 05:00:00 PM

Lauren Austin- 2 Thompson Ln, I wanted to address what several others have, abortion isn't illegal in NM. I do not understand why a small town is trying to make it illegal. We have other issues to deal with. No one is forcing anyone to have an abortion, Most arguments I am hearing about religious based. I do not think my religion should legislate others and their health care. We have the right to happiness. If we care about babies why don't we have the right to free health care, child care,

Sarah Garlic- Edward could not stay to take care of our 18 month old. I am a new mom and a 1st time home owner. We moved for the quality of life, cost of living, and schools. We did not expect Edgewood to tell us how to govern reproduction rights. I did not expect my first commission meeting to be this.

Lyndsey Donner- Resident of Edgewood. Thank the Commissioners who are prolife. Can not sit by as babies are murdered. No one has the right to murder. Life is a gift, death is a punishment. The most innocent deserve the right to life. We must stand up

Regular
April 25, 2023

against the tyranny in Santa Fe. Regardless of this intimidation tactics we won't have our freedoms stepped on. Edgewood

Evelyn- Thank you. 35 year resident, our community needs commissioners who are focused on roads, culverts as i heard today, library, abandoned homes, heard today. Listed promises. You chose to take the bait from out of town and out of state. You said you got it from an out of state influencer. They are using new and inexperienced towns. I hope we pick our future leaders on the needs of this community

Bill Ranivich- By considering this ordinance you know you are taking illegal action. I do not get it. I worked and was paid by the state, I could never taken an action that I knew was against the law. The impact on budget with police and other services. Army medical care with women who died from sepsis Women need health care.

Mary Hall- You are supposed to uphold the laws of NM. You are supposed to be holding our laws. You are going against your oath.

Ralph Hill- Our freedoms are constantly being taken away. We had covid shut downs that were necessarily, we had the marijuana law dumped on us. The founders did not intend for us to not have communities that weren't allowed to govern self. We haven't gone through the supreme court so how are we in violation of the law. The abortion hurts men not only men. My wife and I have talked about who they could've been. I would rather have xrays in clinics then abortion clinics here.

Online residents:

Aidan Sorge- AG letter, note from NMSIF Numbers 5 11-31.

Rachel Fey- 6 Yorks RD- noticed a lack of concern of the reproductive rights of women who want to give birth. This abortion pill if made easy to get could be dropped into a water or coffee cup without a women's consent. I urge you to pass this ordinance. Mother's to be also have reproductive rights.

Edward Peck- 26 Brayden Ct. My wife spoke earlier. We've been contemplating expanding our family. Methos is used for miscarriages. My wife's age is 1-3 for a miscarriage. We would not be able to take care of this at home. 2 minutes is not enough.

Teresa Benton- Quote- we took an oath to uphold. Do not waste money on lawyers. Per Comm. Anaya on March th. How much money have we spent on lawyers? We have spent more then double our budget. 4th manager, 4th treasurer. Please do your job.

Kr. Scott- 3 points to make. As an Army officers I took an oath to protect the constitution. We I left I took a job as a government teacher in public schools. the 1st amendment. it protects those who think differently. I married my wife I married in front of God. I did not marry her in front of commission or state of NM. She has never once told me how to run her body, and I have never told her how to run her body. The best government is the government that governs least.

Other Town of Edgewood Residents:

Miguel Hernandez- 11 Zuni trail- Abortion is wrong. it is murder. We should try as best as we can to make illegal. This does not solve all our problems. This isn't about legislating righteousness. the problem is sin not just abortion. it is bigger then that. We will all be judged by God. Each of us will be judge. Every commissioner will be judge

Regular
April 25, 2023

by God Almighty. We will all be judged including me. I do not say this in pride or arrogance but out of humility. Please I warn you to turn from your sin, not some but all. Believe in him this is my plea.

Susan Hill- 19 Cajun Court- I am much in favor of this ordinance and would like to see this voted on by the Town's people. I use to work in health care. Abortion is not health care. Our declaration says we have rights, life, liberty and happiness. This opinion, ordinance has nothing to do with separation of church and state. this has to do with morals. You can have morals and not be a Christian.

Deborah Brennan- Support this, my new calling in life. I support my commissioners.

Tony Jaramillo JR. bigger problem is killing babies. I am here to be a defender of babies. Jeramiah 1:5, John 16:21. Mark 36-37

David Garcia- Integrity means have strong moral. Doing the right thing even behind closed doors. I am asking you to search hearts, We know there are some legal ramifications, but you took your oath and put your hand on the bible. What was the point of that if you are not going to do what the bible says. I know you want to build roads. There are many good people. we have a right to make our own decisions. You must decide who you will serve. God or the Governor.

Kurt Miller- 9 Burgs Rd- Pastor of EMCC- I am amazed at the hypocrisy of people supporting abortion. We have a state that says you can have a full term abortion. The mother that gives birth to the child. D

John McCully- Park Rd. - People talk about the legality of following federal law. Sanctuary cities are different subjects, and we can do that with this. Women have rights but not the right to take a life of a child.

Erika Anderson- High Meadow Loop- It is unnerving to see such a dividing ordinance separating our neighbors. Set aside your personal bias's . Your role is to uphold the communities best interest. Set aside your own convictions, set aside your wanting to make a stand. Grew up here (EES, EMS, MHS) I choose to bring my family back to this community. Be fiscally responsible.

Tama Tate- Juniper Hills- I grew up in SW ABQ in a time when it was very wholesome. We didn't see strip clubs, weed or abortion clinics. We want to keep the wholesomeness of this community and city. I didn't know we had a dispensary but I guess we do so it is starting. I want to challenge you all we are all living and breathing. It is our opportunity we are just living. To turn around and say that baby doesn't have a right to live. We want to keep this community wholesome and abortion free. We have pulled together.

Isaac Parks- Bethany Court.- it has been stated that we should not divide our community but it is already divided. We all have opinion. We have to chose life or

Regular
April 25, 2023

death. God told children of Israeli to choose life. I am concerned with the government in SF that my voice will not be heard. I am concerned that the voices in this room will not be heard. I know this will require sacrifice but when it comes to protecting life. We have police officers out here that are willing to sacrifice their lives. We have tiny babies in the womb that are wanting protection. Those that are most vulnerable.

Cheryl Huppertz- 49 Hill Ranch Rd- I have expressed my opinion, but just want to know how this will be past.

Luell 28 Tijeras- I am for life. I do hope you past this ordinance. I am really want this to past. I do not believe in abortion.

Nicholas Jaramillo- (read in by Mayor Jaramillo)

Elected Officials- 5 minutes

Rep. Stefanie Lord- You have two reps, too bad one of them didn't stay. I am your conservative rep. the other is your radical progress. Read bill. Leaves out the rural voice. You cannot say anything about abortion. It was frustrating that McQueen didn't know what the bill stated. You can not say anything about your own morals. We are a majority in the east mountains and we are conservative. You are now silenced and are not heard in Santa Fe. People are tied of the radical progressives pushing their agendas on us. Where do you draw the line. Next legislation they will come for your gun rights. Draw the line and stand up for the rights of the people in the east mountain. I have no voice and I try so hard for you guys but they kick sand in my face.

Rep Andrea Romero- Grew up in Cedar Crest- represents 4 pueblos, one city and rural areas. I want to stand in solidarity with those who want to stand with the laws and have access to their health care. We are a body and elected officials. we should not be making those decisions for those. As NM we can respect that ind. can make health decisions for themselves. This ordinance is identical to what was proposed in Euince. When we past HB 7, NM cannot deny or discriminate against abortion or gender health care. Checker board across the state and we want to stand united. Thank you for being so inviting.

Rep. John Block- House District 51- lend a hand of support of your ordinance. Extremist HB 7 that was rammed through. Sponsored first ever heartbeat bill. The radicals don't listen to you and would want to abort up to the date of birth instead of listening. We pushed a resolution and received opposition from the deepest darkest groups. Make sure women are not harmed in your community.

Sen. Schmiddies- It is clear that the ppl of Edgewood has elected officials who value life. (read in on behalf Sentor Schmiddies)

Sen. David Gallegos- Thank you for enduring the first 5 hours District 41 (Eunice), they take away your freedom each time. I filed a lawsuit against the governor. She did

not get it done. That is how HB 7 came into existence. They realized that this would stop the abortion. Gov. wants to be the abortion destination of the world. We will say yes to sanc. to illegal, but won't for the unborn. After we announced our lawsuit against the AG and Governor was announced in Wash. DC during discussion.

Former Mayor Ethel - Dispel. Supreme Court, Comm. Powers why do we wait. example took over a year. No one is making them a poster child. They want to end abortion in this state. We went from 2k abortions in our state to 8-10k and are coming from other states. They are looking for other places and Edgewood is a bedroom city to ABQ. This is not between a dr and women, This is not health care. When a child is swift away to an abortion clinic by a teacher with no help from family. SF is not listening. This is paid money to kill the baby. Most are done on healthy women, not for rape, medical or other issues. This is not health care. A women can do whatever they want to do with their body. That baby is not her body. Mental trauma, a man said 48 years ago he had an abortion and wonders what the baby could be now. a lady would not stop sobbing after 5 years of having an abortion. Markley Dickson came and helped on the corner. I thank you so much and support you 100%.

Recess at 10:23pm come back at 10:33pm

Non Resident

Kastrel Hinsley- Tijeras NM I am one of your neighbors. ER nurse and Military Vet. The other uses of mifepristone. It is used for miscarriage bleeding. We do use it in ER situation. Hypoglycemia prolonged steroid use. For certain uterine cancers. I don't want to see what will happen if we take that away. I get a lot of medications mailed to me. I would hate to have someone mistake what was sent to me. Those are my concerns. I don't want to see an increase.

Bill Hinsley- Wife Sandra and I moved out for the small communities. I have 4 points to make, others have made, This is a national and state issue, people can join to support. The issue belongs with the state. The legal issues

Casey Peterson- most of what I want to say has been said. decentralizing government. I appreciate you guys. urge to vote yes.

Mic Peterson- also in support of the bill. Mike Siebel great abortion lawyer.

Marcy May Sant city is important for those who do not agree with abortion. HB 7 is unconstitutional. Thank you guys for creating a sanctuary city. I encourage the civil disobedience.

Wayne Apoloski- I am a former health care worker. Abortion as health care does not resonate with me. I went to protect and save life not end life. I worry about this medication being administered in a home and not in a hospital. The distance from health care. About the division in the community where was everyone when we were

Regular
April 25, 2023

forced from our families during covid, Mr. Anaya was right about giving life and donating life but how do we do that.

Daniel Myhoffer 34 Taft Rd Sandia Park- This email will sound familiar to you. I support the ordinance. I support the unborn sanctuary. (look for email?)

Vincent - Thank you for inviting me here. I agree with the concept that the gov does not have control of the church. When the gov makes bad decision, we fight against it. I am a gardener. If I yank out the seed I planted that kills that the plant. If a women has a seed and that kills. I ask are you going to vote for good or evil.

John Walkins. Rio Rancho- Over the mountain an hour away. I come as a man of faith. We presented a similar ordinance to our Mayor and Councilors. They didn't have the courage to do it and shot it down.

Tim Carter- Simple questions, if it is about my body my choice, if I am forced to wear a seatbelt and cited, why am I paying for their choice. They are already threatening us. Why not fight.

Elaine Harrington- Santa Fe- If you ask Mr.Dickson he has never had Elaine Harrington show up to his meetings. I am a pharmD. I can show you the structure of mifepristone. I have heard a lot of misinformation. Raped in own bed at 11 years old. That was before Roe. In TX these bans

Tonya Walkins- Rio Rancho- I too admire our forefather Thomas Jefferson. In his passion for his people and country and wanted to unite us one nation under God.

Juan Pena- Cedar Crest- Thank you for brining this. I support and hope this passes. It is not happening at a state level. Proud of you guys,

Austin Campbell - Parents live in Edgewood- Teacher- This is grand standing. Made points regarding misinformation. You and only you have the right to chose what you do with your body.

Logan Brown- What role does God play in civil governments. The citizens of Hobbs and Clovis seized the opportunity. The state is not listening.

Erick Welch- From Clovis NM. 1) clutching of the pearls. Live not by lies. The are making this an abortion destination. Church vs state lets be the first

Jodi Hendriz- With NM Family Action Movement- We should be protecting the life. Thank you for being willing to put it out there. We strongly support you in this, We believe this can stand. We are excited to see the TOE make a difference.

Sherri Dib- Sandia Park- I am a radical pro lifer. everyone in this room and everyone not in this room. Once born, once conceived it will never come again. You are one.

You are special and there is a reason. I thank everyone of you commissioners for considering this very important issues.

Christina Garza- adoptive mother. We are on the front lines at the abortion clinics in ABQ and see the ambulances going to pick women up. Please stand for life.

Carol Young- would violate the gender and freedom act. Open litigation. abortion rights are up to the states and legal in NM. Federal laws superseding State Law, fed law does not stop mailing for drugs. Just last week the SC ruled and the mifepristone is protect. Is Edgewood ready for the cost that will come? Does Edgewood have the right to tell women what to do with their bodies. The town council should focus

Larry Marker- Roswell- I do support this ordinance. HB7 was passed, not effective until mid June. Costing TOE money is not relevant. Mid June is 90 days past legislation. It is not currently against any state law. Could repeal the ordinance if the law goes into effect. Do what you want you're in good shape.

Markley Dickson- Longbeaut TX, Walgreens already said that they will obey all state laws and all local laws.

Commissioner Sterling Donner moved to approve Ordinance 2023-002 Requiring Abortion Providers in the Town of Edgewood, New Mexico to Comply with Federal Law Version 2.

**Com. Donner called the question. Com. Brennan Seconds.
D Aye, B Aye, J Aye, A Aye, P N, withdrew**

**Com. Donner called the question. Com. Brennan Seconds.
4 Aye, Anaya Nay.**

Commissioner Kenneth Brennan seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Nay</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 4 to 1.

Commissioner Jerry Powers moved to amend section 8 of version 2.

**Commissioner Powers withdrew
Commissioner Filandro Anaya seconded the motion.**

The Motion Carried

**Commissioner Sterling Donner moved to closed session at 11:32pm
Commissioner Kenneth Brennan seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

Commissioner Kenneth Brennan moved to come out of closed session.

Out of closed session at 12:17AM

Mayor Jaramillo affirms that only the items on the agenda were discussed and no decisions were made.

All Affirm.

Commissioner Jerry Powers seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

Commissioner Jerry Powers moved to a date certain.

Withdraw

Commissioner Filandro Anaya seconded the motion.

The Motion Carried

D. Commissioner Powers read into the record Section 8

**Commissioner Jerry Powers moved to add amendment to section 8 for delayed
Commissioner Filandro Anaya seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Nay</i>
<i>Commissioner Sterling Donner</i>	<i>Nay</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Nay</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion DEFEATED. 2 to 3.

E. Call for recess at 12:36AM (10 or 15 minutes) returned at 12:57AM

**Commissioner Sterling Donner moved call for the question
Commissioner Jerry Powers seconded the motion.**

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

**Commissioner Jerry Powers moved to approve version 2 with a special election approximately
with in 90 days.**

Commissioner Filandro Anaya seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Nay</i>
<i>Commissioner Sterling Donner</i>	<i>Nay</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Nay</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion DEFEATED. 2 to 3.

XIV. DISCUSSION AND ACTION ITEMS

A. Research and Fund Edgewood Sponsorship(s) or Grant(s) for Supporting Women's & Babies' Healthcare. (Mayor Jaramillo)

Commissioner Audrey Jaramillo moved Town Admin to research options for us to support women and babies.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

B. Research and Fund Edgewood Support for Adoption Programs. (Mayor Jaramillo)

Commissioner Audrey Jaramillo moved Town Admin research and fund Edgewood support for adoption programs.

Commissioner Sterling Donner seconded the motion.

<i>Commissioner Filandro Anaya</i>	<i>Aye</i>
<i>Commissioner Kenneth Brennan</i>	<i>Aye</i>
<i>Commissioner Sterling Donner</i>	<i>Aye</i>
<i>Commissioner Audrey Jaramillo</i>	<i>Aye</i>
<i>Commissioner Jerry Powers</i>	<i>Aye</i>

The Motion Carried 5 to 0.

XV. PUBLIC COMMENTS (GENERAL)

A. Melissa- Thank you for what you have done and remind me what the founding fathers have done.

XVI. FUTURE MEETINGS

A. Regular Commission Meeting May 9, 2023 @ 6:00 PM Edgewood Commission Chambers. **NOTE** > Regular meetings are now at 6 pm instead of 6:30 pm.

B. Regular Commission Meeting May 23, 2023 @ 6:00 PM Edgewood Commission Chambers. **NOTE** > Regular meetings are now at 6 pm instead of 6:30 pm.

XVII. FUTURE EVENTS

A. April 23rd - 29th Library Week.

B. April 28th and 29th Dumpster Days.

C. July 8th - 9th Commission Strategic Planning Workshop.

XVIII. ADJOURN

A. Commissioner Brennan motioned to adjourn. Donner seconds. All Aye.

Mayor Jaramillo adjourned meeting at 1:44AM

ATTEST:

Audrey J. Jaramillo, CMO, Mayor

Nina McCracken, Clerk

**AGREEMENTS FOR ENGINEERING SERVICES
(Publicly Funded Project)**

THIS Agreement, made this _____ day of _____ 2023 (effective date) by and between the Town of Edgewood hereinafter referred to as the OWNER, and CDM Smith, Inc. hereinafter referred to as the ENGINEER. This contract expires on 3 years from the date on the contract.

The OWNER intends to construct a Project consisting of Wastewater Treatment Plant Preliminary Engineering Report (PER) Addendum

in Santa Fe County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any subagreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

CONTENTS

SECTION A - GENERAL PROVISIONS

1. General
2. Approvals
3. Responsibilities of the ENGINEER
4. Responsibilities of the OWNER
5. Changes
6. Termination of Contract
7. Payment
8. Time
9. Project Design
10. Audits and Access to Records
11. Subcontracts
12. Insurance
13. Environmental Conditions of Site
14. Mutual Waiver
15. Independent Contractor
16. Equal Employment Opportunity
17. Gratuities
18. Covenants Against Contingent Fees
19. Cost and Pricing Data on Federally
Funded Projects
20. Remedies
21. Assurance Against Debarment

SECTION B - ENGINEERING SERVICES

Engineer Services During the Planning Phase
Engineering Services During the Design Phase
Engineering Services During the Construction Phase
Engineering Services During the Operation Phase

SECTION C - SPECIAL PROVISIONS OR MODIFICATIONS

ATTACHMENTS

- ☒ Attachment I – Insurance - required
- ☒ Attachment II - Engineering Services During the Planning Phase
Authorization to proceed date: This _____ day of _____, 2023
Contract Time shall be 275 calendar days from Authorization to proceed date. This
phase expires on _____.
- ☐ Attachment III - Engineering Services During the Design Phase
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This
phase expires on _____.

- ☐ Attachment IV - Engineering Services During the Construction Phase
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ Attachment V - Engineering Services During the Operation Phase
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ Attachment VI – Amendments to Agreements for Engineering Services
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ _____

SECTION A – GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event, any provisions of this Agreement or any subsequent amendment shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) The OWNER and the ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of the OWNER and the ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the Agreement. Neither the OWNER nor the ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by the OWNER or the ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them; and

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the OWNER to confirm all Funding Agency requirements are met.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, at which representatives of the Funding Agency and interested parties will also be in attendance, and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

2. Approvals

(a) This Agreement shall not become effective until reviewed and approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is

for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER shall, promptly and without additional compensation, correct or revise errors or omissions in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be, and shall remain, liable to the proportionate extent, in accordance with applicable law, for damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) The ENGINEER'S opinions of probable Construction Cost are to be made on the basis of the ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since the ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, the ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost and project schedules will not vary from opinions of probable Construction Cost prepared by the ENGINEER. If the OWNER wishes greater assurance as to probable Construction Cost, the OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over the Contractor's work, nor shall the ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of the Contractor to

comply with Laws and Regulations applicable to the Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by the ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. The ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with the ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the OWNER

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) The OWNER shall be responsible for, and the ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the OWNER to the ENGINEER pursuant to this Agreement. The ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of the OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of documents for information and reference in connection with use on the Project by the OWNER. Such documents are not intended or represented to be suitable for reuse by the OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by the ENGINEER will be at the OWNER's sole risk and without liability or legal exposure to the ENGINEER. Any verification or adaptation as stated above, will entitle the ENGINEER to further compensation at rates to be agreed upon by the OWNER and the ENGINEER.

5. Changes

(a) The OWNER and the ENGINEER may, at any time, with prior approval of the Funding Agency, make changes within the general scope of this Agreement in the services or work to be performed. Any such change must be in writing and approved by both parties to this Agreement. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

(c) All changes to the scope, cost or time of this Agreement and services described in the Attachments must be in writing and documented in Attachment VI – Amendment to Agreements for Engineering Services.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party. Any termination must be in writing. No such termination may be effected unless the other party is given: 1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and 2) an opportunity to cure the default with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given: 1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate; and 2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement shall be made, but: 1) no amount shall be allowed for anticipated profit on unperformed services or other work; and 2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall: 1) promptly discontinue all affected work (unless the notice directs otherwise); and 2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 6(c) of this clause.

7. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed

in the Attachments.

(b) The OWNER shall pay the ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate Attachment. The amounts payable to the ENGINEER for reimbursable expenses will be the project-related internal expenses, such as reproduction, and all invoiced external reimbursable expenses allocatable to the project, including consultants, multiplied by a factor of 1.1 (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Mileage and per diem will not be multiplied by a factor. Reimbursable expenses shall not exceed the estimate in the Attachments without prior written approval of the OWNER, with Funding Agency concurrence. Copies of invoices from consultants, mileage logs, and receipts for which the ENGINEER is requesting reimbursement must accompany the ENGINEER'S invoice.

(c) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If the OWNER contests an invoice, the OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(d) Final Payment under this Agreement, or settlement upon termination of this Agreement, shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(e) If the OWNER fails to make any payment due to the ENGINEER within forty-five (45) calendar days after the OWNER's receipt of the ENGINEER's invoice, the amount due to the ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. Any payment of interest under this contract is not reimbursable from grant or loan funds. In addition, after ten (10) calendar days' prior written notice, the ENGINEER may suspend services under this Agreement until the ENGINEER is paid in full. The OWNER waives any and all claims against the ENGINEER for any such suspension.

8. Time

(a) PROGRESS AND COMPLETION

1. The ENGINEER has prepared and the OWNER has approved a schedule for the performance of the ENGINEER's services. This schedule is reflected in the contract time(s) as detailed in the Attachment(s) and represents reasonable times in which to complete the services. The schedule includes reasonable times required for the OWNER and other applicable parties to the agreement to provide necessary information, provide any applicable services not included in the ENGINEER's Scope of Work and make decisions necessary for completion of the work. The schedule also includes reasonable allowances for review and approval times required by the OWNER and by public authorities having jurisdiction over the Project. The schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by the OWNER, or for delays or other causes beyond the ENGINEER's reasonable control.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated

schedule regardless of the reason.

4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or negligence of the OWNER, changes in the Work as agreed upon by the OWNER and the ENGINEER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended per Section 5 of this Agreement. Extensions of time not associated with modifications or changes to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages, as found in Subsection (b) of this Section.
5. The ENGINEER shall promptly notify the OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. The OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will provide for completion within the Contract Time. It is expressly understood and agreed, by and between the ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. The ENGINEER agrees to promptly notify the OWNER of delays in completing the services under this Agreement that are beyond ENGINEER's control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails, or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the amount specified in the Attachments, not as a penalty, but as liquidated damages.
2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly payments due to the ENGINEER, or from other monies being withheld from the ENGINEER, when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of liquidated damages shall be determined at completion and the ENGINEER shall be liable for any liquidated damages over and above unpaid balances held by the OWNER.
4. The OWNER and the ENGINEER agree that reasonable liquidated damages for delay (but not as a penalty) due from the ENGINEER to the OWNER are \$100 (minimum one-hundred dollars [\$100.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. The OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

10. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof. and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, the OWNER, and the State water pollution control agency, or their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies) and the General Accounting Office.

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to agreements (except formally advertised, competitively awarded, fixed price agreements) and agreement amendments regardless of the type of agreement. In addition, this right of access applies to records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants but will not dictate whom the ENGINEER must hire.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due to the ENGINEER and detailed in the Attachments without prior written approval of the OWNER and funding agency.

12. Insurance

The ENGINEER agrees to obtain and maintain, at their expense, such insurance as specified in Attachment I.

13. Environmental Condition of Site

(a) The OWNER has disclosed to the ENGINEER in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) The OWNER represents to the ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to the ENGINEER, exist at the Site.

(c) If the ENGINEER encounters an undisclosed Constituent of Concern, then the ENGINEER shall notify: 1) the OWNER; and 2) appropriate governmental officials if the ENGINEER reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that the ENGINEER'S scope of services does not include any services related to Constituents of Concern. If the ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then the ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until the OWNER: 1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and 2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of the ENGINEER'S services under this Agreement, then the ENGINEER shall have the option of: 1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or 2) terminating this Agreement for cause on 30 calendar days' notice.

(f) Owner acknowledges that the ENGINEER is performing professional services for the OWNER and that the ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with the ENGINEER'S activities under this Agreement.

14. Mutual Waiver

To the fullest extent permitted by law, the OWNER and the ENGINEER waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

15. Independent Contractor

The ENGINEER will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by the ENGINEER'S performance of the Services.

16. Equal Employment Opportunity

The ENGINEER shall comply with U.S. Executive Order 11246, entitled "Equal Employment Opportunity", as amended by U.S. Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

17. Gratuities

(a) If the OWNER find that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the Funding Agency in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in Subsection (a) of this Section, the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

18. Covenant Against Contingent Fees

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)

The ENGINEER and its subcontractor(s) confirm that cost and pricing data submitted for

evaluation with respect to negotiation of prices for negotiated agreements, lower tier subagreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

20. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

21. Assurance Against Debarment

The ENGINEER confirms that it and its subcontractors have not been suspended or debarred by EPA, USDA, or the State of New Mexico.

SECTION B –ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

1. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment II – Engineering Services During the Planning Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
2. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment III – Engineering Services During the Design Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
3. ENGINEER shall complete the ENGINEER SERVICES described in Attachment IV – Engineering Services During the Construction Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
4. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment V – Engineering Services During the Operation Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

SECTION C – SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Mark those that apply or describe, attach or indicate “None”)

☒ None

☐ For Planning Grant Funds from NMFA Insert the note: For Preliminary Engineering Reports or other documents paid for using NMFA Planning Grant Funds, the community can only submit one reimbursement request. This request for payment must be based on a final invoice and can only occur after the document is approved by the pertinent reviewing agency. Interim payments to the engineer will be at the discretion of the community as agreed upon in this contract.

☐ The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the OWNER may immediately terminate this Agreement by giving the ENGINEER written notice of such termination. The OWNER’s decision as to whether sufficient appropriations are available shall be accepted by the ENGINEER and shall be final. The ENGINEER hereby waives any rights to assert an impairment of contract claim against the OWNER or NMED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the OWNER or the Department

☐ This contract is funded in whole or in part by funds made available under a NMED Grant Agreement. Should the NMED early terminate the grant agreement, the OWNER may early terminate this contract by providing the ENGINEER written notice of such termination. In the event of termination pursuant to this paragraph, the OWNER’s only liability shall be to pay the ENGINEER or vendor for acceptable goods delivered and services rendered before the termination date.

☐ MODEL CONTRACT CLAUSE FOR ENGINEERING AGREEMENTS
used for Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) projects.

1. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

2. CHANGES

1. The OWNER may at any time, by written order make changes within the general scope of this contract in the services to be performed. If such changes cause an increase or decrease in the ENGINEER’S cost or time required to perform any services under this contract, whether or

not changed by any order, the OWNER shall make an equitable adjustment and modify this contract in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the OWNER'S notification of change, unless the OWNER grants additional time before the date of final payment.

2. No claim by the ENGINEER for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

3. TERMINATION

a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

b. This contract may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given: 1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and; 2) an opportunity for consultation with the terminating party prior to termination.

c. If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this contract shall be made, but: 1) no amount shall be allowed for anticipated profit on unperformed services or other work; and 2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

d. Upon receipt of a termination action under paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this contract, whether completed or in process.

e. Upon termination under paragraphs (a) or (b) above, the Owner may take over the work and may award another party a contract to complete the work under this contract.

f. If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Owner. In such event, adjustment of the sub-agreement price shall be made as provided in paragraph (c) of this clause.

4. REMEDIES

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the OWNER and the ENGINEER arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the OWNER is located.

5. AUDIT; ACCESS TO RECORDS

a. The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The ENGINEER shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the OWNER. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the OWNER, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the ENGINEER agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the ENGINEER agrees to make paragraphs (a) through (f) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

f. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition, this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

3. If the sub-agreement is terminated for default or for convenience.

6. COVENANT AGAINST CONTINGENT FEES

The ENGINEER assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance, the OWNER shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. GRATUITIES

a. If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER'S agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the OWNER, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the OWNER may, by written notice to the ENGINEER, terminate this contract. The OWNER may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the contract by the ENGINEER, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

8. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the ENGINEER shall execute and deliver to the OWNER a release of all claims against the OWNER arising under, or by virtue of, this contract, except claims which are specifically exempted by the ENGINEER to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the OWNER'S claims against the ENGINEER under this contract.

9. 40 CFR Part 33

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in termination of this contract or other legal available remedies.

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement on the respective dates indicated below.

The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section C.

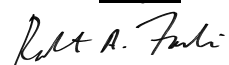
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____

OWNER

Type Name Audrey Jaramillo

Title Mayor

By:  Date: April 18, 2023

ENGINEER

Type Name Robert Fowlie, PE, BCEE

Title Associate, Client Service Leader

Address 6001 Indian School Rd NE

Suite 310

Albuquerque, NM 87110

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

By _____

Type Name _____

Date _____

ATTACHMENT I – Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$1,000,000 for injury to any one person and \$1,000,000 on account of any one accident and in the amount of not less than \$1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

ATTACHMENT II – Engineering Services During the Planning Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the ____ day of ____, 2023 (effective date) by and between the Town of Edgewood, NM, the OWNER, and CDM Smith, the ENGINEER, the OWNER and ENGINEER agree this ____ day of ____, 2023 (authorization to proceed date) that ENGINEER shall furnish ENGINEERING SERVICES During the Planning Phase in accordance with the GENERAL PROVISIONS of the Agreement and OWNER shall compensate the ENGINEER for services described as set forth below:

A. Perform or provide the following tasks and/or deliverables:

The following Scope of Services describes the professional services to be provided by the Engineer for the Owner to prepare a Preliminary Engineering Report (PER) Amendment for the Owner's Wastewater Treatment Plant (WWTP).

The Edgewood WWTP is owned by the Town of Edgewood. The facility was constructed in 2008 as a Membrane Bioreactor (MBR) system. The WWTP started receiving wastewater in 2010 from a limited number of commercial customers along NMSR 333. Flows to the WWTP have been gradually increasing as a result of new commercial customers as well as recent construction of a nursing home and hotel. The facility is operating under a Discharge Permit (DP) from New Mexico Environment Department (NMED). Effluent is reused for dust control on roads and Town-owned properties. The remainder of the effluent is stored in an effluent lagoon for land disposal and/or evaporation. Sludge from the WWTP used to be composted; however, sludge is no longer composted and dewatered sludge is transported to Estancia Valley Solid Waste Authority Regional Landfill for disposal.

During summer of 2013, the WWTP started having operational problems due to excessive fouling of the membranes and was not able to process incoming wastewater. Excessive scaling and ragging (hair or stringy material accumulation) and sludge build-up were observed on the membranes, which resulted in increased transmembrane pressure (TMP) and decreased permeate flow. The main cause of the scaling of the membranes was the high hardness and high total dissolved solids (TDS) in the plant influent, which originate from the water supplied to the town from groundwater wells. Influent hardness ranges from 560 to 900 mg/L, and TDS is approximately 1200 mg/L. Other causes for frequent membrane fouling were inadequate fine screening, aeration, and air entrapment in the membrane system.

Since 2014, the Owner has implemented regular membrane cleanings coupled with frequent membrane replacements to keep the plant operational. The membranes are being replaced every 12 to 18 months, which is significantly shorter than the 10-year life that the membrane manufacturer (Kubota) recommends. The Owner recently installed two fine screens at the facility each with a peak flow capacity of 250,000 gpd. These screens should help remove materials which contribute to membrane clogging. The Town has completed a Water Reclamation Facility PER in 2017 that was prepared by Dennis Engineering Company and Aegean Consulting to evaluate alternatives for improving the treatment processes at the WWTP and improving the effluent disposal

system. The PER recommended construction of a new wastewater treatment plant utilizing AeroMod™ technology that is not susceptible to high hardness and TDS in the influent. The recommended WWTP was not implemented due to cost.

This project will prepare an Amendment to the 2017 PER to update costs for the MBR system improvements and will evaluate two new alternatives that were not included in the 2017 PER. The PER Amendment will evaluate the condition of the existing WWTP components, compile current operational costs, and provide recommendations for process improvements to increase the reliability and flexibility of the Town's WWTP.

SCOPE OF WORK

Task 1: Project Management

This task involves day-to-day administrative, technical, and financial management of the Project budget, schedule, and scope. The Engineer will keep the Owner's staff informed of the status of the work through monthly progress reports attached to the invoices. This effort also includes coordinating meetings, preparing monthly invoices and progress reports, and maintenance of project files.

Also included in this task is a project kickoff meeting with the Owner. The kick-off meeting will cover the following items:

- Introduction of teams and the respective roles/responsibilities
- Review of project objectives, expectations, & requirements
- Review of project alternatives and evaluation criteria
- Identification and coordination of immediate project activities and information requirements
- Review of project goals, critical success factors and expectations

Assumptions:

- The project duration will be 9 months.
- One in-person project kick-off meeting will be held in Edgewood.

Deliverables:

- Meeting agenda and notes submitted electronically in pdf format
- Monthly invoices and progress reports submitted electronically in pdf format

Task 2: Evaluations

The Engineer will perform the following evaluations:

- Evaluation of sampling data provided by the Owner to characterize wastewater influent, effluent, and flows
- Evaluation of financial information and existing operating & maintenance costs for the WWTP
- Evaluation of conditions at the existing Edgewood WWTP including process components and equipment

- Summary of deficiencies for the existing treatment system for existing and future flows
- Evaluation of alternative to continue using the MBR system with improvements, repairs, and expansion with the second train. The following evaluations will be completed:
 - o Determination of necessary upgrades at the existing facility to improve process reliability
 - o Addition of coarse screening at the existing lift station
 - o Addition of equipment for the second treatment train including anoxic basin mixer, aeration basins diffusers, membrane cassettes, additional blower, additional permeate pump, and associated piping
 - o Improvements to the chlorination system
- Evaluation of alternative to construct a lagoon system to replace the existing MBR system to treat existing and future flows
- Evaluation of a third treatment process alternative that incorporates utilization of the existing basins for biological treatment, removal of membranes, and construction of new clarifiers
- Evaluation of the existing sludge handling units and identification of deficiencies, if any
- Evaluation of effluent disposal system and identification of deficiencies, if any
- Development of construction cost and operating & maintenance cost estimates for each alternative
- Evaluation of life cycle costs for each alternative with focus on ability of each technology to handle high hardness and TDS and ability to meet effluent reuse requirements
- Selection of a recommended alternative and conceptual development of proposed project
- Recommendations for project phasing

The Engineer will employ its internal quality control procedures throughout the course of the project. Engineer will engage senior technical staff within the involved design disciplines to provide analyses and recommendations for the alternative evaluations and development of the PER.

Assumptions:

- Owner will provide influent and effluent wastewater data for flows, BOD, TSS, TKN, and ammonia. If existing data is not sufficient, the Owner will perform additional wastewater sampling for the parameters identified by the Engineer.
- Ultimate design flow for the WWTP will be 150,000 gpd, which is the design flow published in record drawings for the WWTP.
- Results of the evaluations of the bioreactor basins from the 2022 CDM Smith Technical Memorandum will be incorporated into the PER Amendment. No new process modeling will be performed.

- One site visit will be conducted to meet with the wastewater plant operator to review the condition of the plant, collect information, discuss operational problems, and review the existing plant conditions.
- Owner will provide financial information that consists of annual operating budget, operating and maintenance costs for the WWTP, debt repayments, reserves, and a list of all existing short-lived wastewater assets.
- The evaluation will be limited to the treatment and disposal components. Collection system components are not included in the study.

Task 3: Draft PER Amendment

Engineer will summarize the results from Task 2 in a draft PER Amendment. The report will be prepared in accordance with the NMED PER guidelines and will be submitted to the Owner and NMED-CPB for review. CDM Smith will conduct an in-person review workshop to discuss the comments received. The PER Amendment will update the following sections:

- Section 1 Project Overview to include project history since 2017
- Section 2 Project Planning Area to update population projections and latest community engagement activities related to the WWTP
- Section 3 Existing Facilities to update the condition of existing equipment as well as the plant operating budget and Owner's financial information
- Section 4 Need for Project to update current needs of the plant
- Section 5 and 6 Treatment System Alternatives to update MBR system costs and to add new alternatives
- Section 7 and 8 Effluent Disposal System Alternatives to update for current needs
- Section 9 Recommended Project to summarize recommended improvements and provide project phasing

Assumptions:

- Engineer will utilize relevant sections of the 2017 Wastewater PER (Dennis Engineering and Aegean Consulting, 2017) for information required for Sections 1 and 2 of the PER.
- One review workshop will be held in Edgewood with the Owner and NMED-CPB to review the results of the evaluations.
- Draft PER will be submitted electronically in pdf format.
- Owner and NMED-CPB will provide review comments on the Draft PER Amendment within 60 days after draft submittal.

Deliverables:

- Draft PER Amendment submitted electronically in pdf format
- Workshop agenda and notes submitted electronically in pdf format

Task 5: Final PER Amendment

The Engineer will incorporate the comments received from the Owner and NMED-CPB to prepare the final PER Amendment. The Engineer will submit a final stamped PER Amendment to the Owner and NMED.

Assumptions:

- Final stamped PER will be submitted within 30 days of the comments received from the Owner and NMED.

Deliverables:

- Responses to the Owner and NMED-CPB comments
- Final PER submitted electronically and two bound hard copies

- B. Cost Proposal – Include hourly breakdown for each task
Attached spreadsheet provides a detailed breakdown of the labor hours and costs.

- C. Reimbursable Expense Schedule

N/A

- D. Contract Time shall be 275 calendar days from the date of the OWNERS signature on Attachment II. Planning phase services shall be completed and accepted by the OWNER by / /2023 (DATE). If planning phase services have not been completed and accepted by 3 years from date on the contract the ENGINEER shall pay the OWNER liquidated damages as outlined in the Agreement.

2. Compensation for ENGINEERING SERVICES During the Planning Phase shall be by the

☒ **LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES During the Planning Phase, as described, including reimbursable expenses shall not exceed \$166,642.00, excluding gross receipt tax.

☐ **STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, including reimbursables, for ENGINEERING SERVICES During the Planning Phase, as described, shall not exceed \$N/A, excluding gross receipt tax, without prior written approval of the OWNER, with Funding Agency concurrence.

3. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5.

4. Signatures

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____

OWNER

Type Name Audrey Jaramillo

Title Mayor

By: Robert A. Fowlie Date: April 18, 2023

ENGINEER

Type Name Robert A. Fowlie, PE, BCEE

Title Associate, Client Service Leader

Address CDM Smith Inc.

6001 Indian School Rd NE

Albuquerque, NM 87110

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

By _____

Type Name _____

Date _____

Exhibit A - Town of Edgewood Engineering Services during the Planning Phase
WWTP PER Amendment
Total Project Level of Effort Breakdown

	Labor												Total Hours	Total Labor Cost	Direct Expenses (ODC)			CDM Smith Total Cost Effort
Task / Activity	Client Service Leader	Project Manager	Specialist	Senior Reviewer	Environmental Engineer	Environmental Engineer	Environmental Engineer	CAD support	CAD support	Contract Admin	Editor	Admin Assistant			Expense	Travel	Total ODC Costs	
	Robert	Ege	Anthony	Eric	Natalie	Conor	Emily	Bobbie	Todd	Shannon	TBD	Cheryl						
Rate:	\$275	\$225	\$275	\$175	\$135	\$125	\$110	\$165	\$165	\$130	\$155	\$100						
Task 1 : Project Management	4	38	0	0	8	0	0	0	0	16	0	20	86	\$14,810	\$0	\$0	\$0	\$14,810
Setup, coordination		30								16		20	66	\$10,830	\$0	\$0	\$0	\$10,830
Kickoff meeting	4	8			8								20	\$3,980	\$0	\$0	\$0	\$3,980
Task 2: Evaluations	3	92	5	2	372	60	40	8	30	0	0	0	612	\$91,640	\$0	\$0	\$0	\$91,647
Existing data and design basis		4			12								16	\$2,520	\$0	\$0	\$0	\$2,520
Financial info		2			20								22	\$3,150	\$0	\$0	\$0	\$3,150
Evaluation of existing conditions		12		2	40	20							74	\$10,950	\$0	\$0	\$0	\$10,950
MBR alternative		12	4		80		40						136	\$19,000	\$0	\$0	\$0	\$19,000
Lagoon alternative		16			60								76	\$11,700	\$0	\$0	\$0	\$11,700
Clarifier alternative		20			60	40		8					128	\$18,920	\$0	\$0	\$0	\$18,921
Evaluation of sludge handling		8			20								28	\$4,500	\$0	\$0	\$0	\$4,502
Evaluation of effluent disposal		4			20								24	\$3,600	\$0	\$0	\$0	\$3,603
Cost analysis	1	8	1		40				30				80	\$12,700	\$0	\$0	\$0	\$12,700
Selection of an alternative	1	2			8								11	\$1,805	\$0	\$0	\$0	\$1,805
Phasing	1	4			12								17	\$2,795	\$0	\$0	\$0	\$2,795
Task 3: Draft Report	4	44	16	12	100	0	20	20	0	0	12	12	240	\$39,560	\$0	\$0	\$0	\$39,560
Draft report		20			80		20	20					140	\$20,800	\$0	\$0	\$0	\$20,800
Reviews and QC		8	12	12	8						12	12	64	\$11,340	\$0	\$0	\$0	\$11,340
Workshop preparation		8			8								16	\$2,880	\$0	\$0	\$0	\$2,880
Client workshop	4	8	4		4								20	\$4,540	\$0	\$0	\$0	\$4,540
Task 4: Final Report	1	28	2	2	70	0	8	8	0	0	0	8	127	\$19,925	\$700	\$0	\$700	\$20,625
Final report		20	2	2	40		8	8				8	88	\$13,800	\$700	\$0	\$700	\$14,500
Responses to comments	1	8			30								39	\$6,125	\$0	\$0	\$0	\$6,125
Total Hours	12	202	23	16	550	60	68	36	30	16	12	40	1065					
Total Raw Labor Cost	\$3,300	\$45,450	\$6,325	\$2,800	\$74,250	\$7,500	\$7,480	\$5,940	\$4,950	\$2,080	\$1,860	\$4,000		\$165,935	\$700	\$0	\$700	
TOTAL (LUMP SUM FOR TASKS 1 THROUGH 5)																		\$166,642

**AGREEMENTS FOR ENGINEERING SERVICES
(Publicly Funded Project)**

THIS Agreement, made this _____ day of _____ 2023 (effective date) by and between the Town of Edgewood hereinafter referred to as the OWNER, and CDM Smith, Inc. hereinafter referred to as the ENGINEER. This contract expires on 3 years from the date on the contract.

The OWNER intends to construct a Project consisting of Water Quality Improvements Preliminary Engineering Report (PER)

in Santa Fe County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any subagreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

CONTENTS

SECTION A - GENERAL PROVISIONS

1. General
2. Approvals
3. Responsibilities of the ENGINEER
4. Responsibilities of the OWNER
5. Changes
6. Termination of Contract
7. Payment
8. Time
9. Project Design
10. Audits and Access to Records
11. Subcontracts
12. Insurance
13. Environmental Conditions of Site
14. Mutual Waiver
15. Independent Contractor
16. Equal Employment Opportunity
17. Gratuities
18. Covenants Against Contingent Fees
19. Cost and Pricing Data on Federally
Funded Projects
20. Remedies
21. Assurance Against Debarment

SECTION B - ENGINEERING SERVICES

- Engineer Services During the Planning Phase
- Engineering Services During the Design Phase
- Engineering Services During the Construction Phase
- Engineering Services During the Operation Phase

SECTION C - SPECIAL PROVISIONS OR MODIFICATIONS

ATTACHMENTS

- ☒ Attachment I – Insurance - required
- ☒ Attachment II - Engineering Services During the Planning Phase
Authorization to proceed date: This _____ day of _____, 2023
Contract Time shall be 275 calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ Attachment III - Engineering Services During the Design Phase
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.

- ☐ Attachment IV - Engineering Services During the Construction Phase
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ Attachment V - Engineering Services During the Operation Phase
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ Attachment VI – Amendments to Agreements for Engineering Services
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ _____

SECTION A – GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event, any provisions of this Agreement or any subsequent amendment shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) The OWNER and the ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of the OWNER and the ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the Agreement. Neither the OWNER nor the ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by the OWNER or the ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them; and

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the OWNER to confirm all Funding Agency requirements are met.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, at which representatives of the Funding Agency and interested parties will also be in attendance, and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

2. Approvals

(a) This Agreement shall not become effective until reviewed and approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is

for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER shall, promptly and without additional compensation, correct or revise errors or omissions in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be, and shall remain, liable to the proportionate extent, in accordance with applicable law, for damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) The ENGINEER'S opinions of probable Construction Cost are to be made on the basis of the ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since the ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, the ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost and project schedules will not vary from opinions of probable Construction Cost prepared by the ENGINEER. If the OWNER wishes greater assurance as to probable Construction Cost, the OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over the Contractor's work, nor shall the ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of the Contractor to

comply with Laws and Regulations applicable to the Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by the ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. The ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with the ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the OWNER

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) The OWNER shall be responsible for, and the ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the OWNER to the ENGINEER pursuant to this Agreement. The ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of the OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of documents for information and reference in connection with use on the Project by the OWNER. Such documents are not intended or represented to be suitable for reuse by the OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by the ENGINEER will be at the OWNER's sole risk and without liability or legal exposure to the ENGINEER. Any verification or adaptation as stated above, will entitle the ENGINEER to further compensation at rates to be agreed upon by the OWNER and the ENGINEER.

5. Changes

(a) The OWNER and the ENGINEER may, at any time, with prior approval of the Funding Agency, make changes within the general scope of this Agreement in the services or work to be performed. Any such change must be in writing and approved by both parties to this Agreement. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

(c) All changes to the scope, cost or time of this Agreement and services described in the Attachments must be in writing and documented in Attachment VI – Amendment to Agreements for Engineering Services.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party. Any termination must be in writing. No such termination may be effected unless the other party is given: 1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and 2) an opportunity to cure the default with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given: 1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate; and 2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement shall be made, but: 1) no amount shall be allowed for anticipated profit on unperformed services or other work; and 2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall: 1) promptly discontinue all affected work (unless the notice directs otherwise); and 2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 6(c) of this clause.

7. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed

in the Attachments.

(b) The OWNER shall pay the ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate Attachment. The amounts payable to the ENGINEER for reimbursable expenses will be the project-related internal expenses, such as reproduction, and all invoiced external reimbursable expenses allocatable to the project, including consultants, multiplied by a factor of 1.1 (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Mileage and per diem will not be multiplied by a factor. Reimbursable expenses shall not exceed the estimate in the Attachments without prior written approval of the OWNER, with Funding Agency concurrence. Copies of invoices from consultants, mileage logs, and receipts for which the ENGINEER is requesting reimbursement must accompany the ENGINEER'S invoice.

(c) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If the OWNER contests an invoice, the OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(d) Final Payment under this Agreement, or settlement upon termination of this Agreement, shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(e) If the OWNER fails to make any payment due to the ENGINEER within forty-five (45) calendar days after the OWNER's receipt of the ENGINEER's invoice, the amount due to the ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. Any payment of interest under this contract is not reimbursable from grant or loan funds. In addition, after ten (10) calendar days' prior written notice, the ENGINEER may suspend services under this Agreement until the ENGINEER is paid in full. The OWNER waives any and all claims against the ENGINEER for any such suspension.

8. Time

(a) PROGRESS AND COMPLETION

1. The ENGINEER has prepared and the OWNER has approved a schedule for the performance of the ENGINEER's services. This schedule is reflected in the contract time(s) as detailed in the Attachment(s) and represents reasonable times in which to complete the services. The schedule includes reasonable times required for the OWNER and other applicable parties to the agreement to provide necessary information, provide any applicable services not included in the ENGINEER's Scope of Work and make decisions necessary for completion of the work. The schedule also includes reasonable allowances for review and approval times required by the OWNER and by public authorities having jurisdiction over the Project. The schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by the OWNER, or for delays or other causes beyond the ENGINEER's reasonable control.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated

schedule regardless of the reason.

4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or negligence of the OWNER, changes in the Work as agreed upon by the OWNER and the ENGINEER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended per Section 5 of this Agreement. Extensions of time not associated with modifications or changes to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages, as found in Subsection (b) of this Section.
5. The ENGINEER shall promptly notify the OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. The OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will provide for completion within the Contract Time. It is expressly understood and agreed, by and between the ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. The ENGINEER agrees to promptly notify the OWNER of delays in completing the services under this Agreement that are beyond ENGINEER's control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails, or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the amount specified in the Attachments, not as a penalty, but as liquidated damages.
2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly payments due to the ENGINEER, or from other monies being withheld from the ENGINEER, when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of liquidated damages shall be determined at completion and the ENGINEER shall be liable for any liquidated damages over and above unpaid balances held by the OWNER.
4. The OWNER and the ENGINEER agree that reasonable liquidated damages for delay (but not as a penalty) due from the ENGINEER to the OWNER are \$100 (minimum one-hundred dollars [\$100.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. The OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

10. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof. and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, the OWNER, and the State water pollution control agency, or their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies) and the General Accounting Office.

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to agreements (except formally advertised, competitively awarded, fixed price agreements) and agreement amendments regardless of the type of agreement. In addition, this right of access applies to records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants but will not dictate whom the ENGINEER must hire.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due to the ENGINEER and detailed in the Attachments without prior written approval of the OWNER and funding agency.

12. Insurance

The ENGINEER agrees to obtain and maintain, at their expense, such insurance as specified in Attachment I.

13. Environmental Condition of Site

(a) The OWNER has disclosed to the ENGINEER in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) The OWNER represents to the ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to the ENGINEER, exist at the Site.

(c) If the ENGINEER encounters an undisclosed Constituent of Concern, then the ENGINEER shall notify: 1) the OWNER; and 2) appropriate governmental officials if the ENGINEER reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that the ENGINEER'S scope of services does not include any services related to Constituents of Concern. If the ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then the ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until the OWNER: 1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and 2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of the ENGINEER'S services under this Agreement, then the ENGINEER shall have the option of: 1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or 2) terminating this Agreement for cause on 30 calendar days' notice.

(f) Owner acknowledges that the ENGINEER is performing professional services for the OWNER and that the ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with the ENGINEER'S activities under this Agreement.

14. Mutual Waiver

To the fullest extent permitted by law, the OWNER and the ENGINEER waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

15. Independent Contractor

The ENGINEER will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by the ENGINEER'S performance of the Services.

16. Equal Employment Opportunity

The ENGINEER shall comply with U.S. Executive Order 11246, entitled "Equal Employment Opportunity", as amended by U.S. Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

17. Gratuities

(a) If the OWNER find that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the Funding Agency in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in Subsection (a) of this Section, the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

18. Covenant Against Contingent Fees

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)

The ENGINEER and its subcontractor(s) confirm that cost and pricing data submitted for

evaluation with respect to negotiation of prices for negotiated agreements, lower tier subagreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

20. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

21. Assurance Against Debarment

The ENGINEER confirms that it and its subcontractors have not been suspended or debarred by EPA, USDA, or the State of New Mexico.

SECTION B –ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

1. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment II – Engineering Services During the Planning Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
2. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment III – Engineering Services During the Design Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
3. ENGINEER shall complete the ENGINEER SERVICES described in Attachment IV – Engineering Services During the Construction Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
4. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment V – Engineering Services During the Operation Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

SECTION C – SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Mark those that apply or describe, attach or indicate “None”)

☒ None

☐ For Planning Grant Funds from NMFA Insert the note: For Preliminary Engineering Reports or other documents paid for using NMFA Planning Grant Funds, the community can only submit one reimbursement request. This request for payment must be based on a final invoice and can only occur after the document is approved by the pertinent reviewing agency. Interim payments to the engineer will be at the discretion of the community as agreed upon in this contract.

☐ The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the OWNER may immediately terminate this Agreement by giving the ENGINEER written notice of such termination. The OWNER’s decision as to whether sufficient appropriations are available shall be accepted by the ENGINEER and shall be final. The ENGINEER hereby waives any rights to assert an impairment of contract claim against the OWNER or NMED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the OWNER or the Department

☐ This contract is funded in whole or in part by funds made available under a NMED Grant Agreement. Should the NMED early terminate the grant agreement, the OWNER may early terminate this contract by providing the ENGINEER written notice of such termination. In the event of termination pursuant to this paragraph, the OWNER’s only liability shall be to pay the ENGINEER or vendor for acceptable goods delivered and services rendered before the termination date.

☐ MODEL CONTRACT CLAUSE FOR ENGINEERING AGREEMENTS
used for Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) projects.

1. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

2. CHANGES

1. The OWNER may at any time, by written order make changes within the general scope of this contract in the services to be performed. If such changes cause an increase or decrease in the ENGINEER’S cost or time required to perform any services under this contract, whether or

not changed by any order, the OWNER shall make an equitable adjustment and modify this contract in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the OWNER'S notification of change, unless the OWNER grants additional time before the date of final payment.

2. No claim by the ENGINEER for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

3. TERMINATION

a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

b. This contract may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given: 1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and; 2) an opportunity for consultation with the terminating party prior to termination.

c. If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this contract shall be made, but: 1) no amount shall be allowed for anticipated profit on unperformed services or other work; and 2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

d. Upon receipt of a termination action under paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this contract, whether completed or in process.

e. Upon termination under paragraphs (a) or (b) above, the Owner may take over the work and may award another party a contract to complete the work under this contract.

f. If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Owner. In such event, adjustment of the sub-agreement price shall be made as provided in paragraph (c) of this clause.

4. REMEDIES

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the OWNER and the ENGINEER arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the OWNER is located.

5. AUDIT; ACCESS TO RECORDS

a. The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The ENGINEER shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the OWNER. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the OWNER, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the ENGINEER agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the ENGINEER agrees to make paragraphs (a) through (f) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

f. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition, this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

3. If the sub-agreement is terminated for default or for convenience.

6. COVENANT AGAINST CONTINGENT FEES

The ENGINEER assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance, the OWNER shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. GRATUITIES

a. If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER'S agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the OWNER, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the OWNER may, by written notice to the ENGINEER, terminate this contract. The OWNER may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the contract by the ENGINEER, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

8. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the ENGINEER shall execute and deliver to the OWNER a release of all claims against the OWNER arising under, or by virtue of, this contract, except claims which are specifically exempted by the ENGINEER to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the OWNER'S claims against the ENGINEER under this contract.

9. 40 CFR Part 33

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in termination of this contract or other legal available remedies.

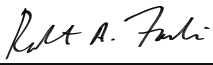
IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement on the respective dates indicated below.

The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section C.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____

OWNER
Type Name Audrey Jaramillo
Title Mayor

By:  Date: April 21, 2023

ENGINEER
Type Name Robert Fowlie, PE, BCEE
Title Associate, Client Service Leader
Address 6001 Indian School Rd NE
Suite 310
Albuquerque, NM 87110

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

By _____

Type Name _____

Date _____

ATTACHMENT I – Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$1,000,000 for injury to any one person and \$1,000,000 on account of any one accident and in the amount of not less than \$1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

ATTACHMENT II – Engineering Services During the Planning Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the ____ day of ____, 2023 (effective date) by and between the Town of Edgewood, NM, the OWNER, and CDM Smith, the ENGINEER, the OWNER and ENGINEER agree this ____ day of ____, 2023 (authorization to proceed date) that ENGINEER shall furnish ENGINEERING SERVICES During the Planning Phase in accordance with the GENERAL PROVISIONS of the Agreement and OWNER shall compensate the ENGINEER for services described as set forth below:

A. Perform or provide the following tasks and/or deliverables:

The following Scope of Services describes the professional services to be provided by CDM Smith Inc. (Engineer) for the Town of Edgewood (Owner) to prepare a Preliminary Engineering Report (PER) for the Water Quality Improvements Project (Project).

The Project consists of evaluating alternatives for improving the quality of drinking water supplied to Edgewood residents. Edgewood is currently supplied by five groundwater wells owned and operated by EPCOR. Total hardness in the groundwater wells ranges is approximately 560-910 mg/L. Total hardness is not a Primary or Secondary Drinking Water Standard established by EPA. Most groundwater in New Mexico is hard to very hard, which corresponds to Total Hardness concentrations of 121-180 mg/L and greater than 181 mg/L, respectively. The extremely hard water from the wells has resulted in residents and businesses in Edgewood having to install expensive water softening systems to improve the quality of the water and operational impacts to the treatment process equipment at the Owner's Wastewater Treatment Plant.

Owner has completed two previous studies to identify measures for improving the quality of the water:

- Dennis Engineering Company and Aegean Consulting. January 2017 "Town of Edgewood Water Reclamation Facility Preliminary Engineering Report".
- Wilson and Company Engineers and Architects Inc. "Final Preliminary Engineering Report for the Water System Purchase and I-40 Water Line Crossing". (date of publication unknown).

Both of the previous studies evaluated a 1.5 million gallons per day (MGD) Central Water Softening Plant (CWSP) to reduce the total hardness of the groundwater produced from the EPCOR wells that supply the town. The Dennis Engineering/Aegean Consulting PER did not evaluate water treatment process alternatives and assumed ion exchange as the treatment process for the CWSP. The Wilson PER evaluated lime softening, ion exchange and reverse osmosis treatment processes for the CWSP and recommended ion exchange for the treatment process. However, the ion exchange CWSP recommended by Wilson was not developed further or pursued by the Owner.

CDM Smith has met with the Owner and NMED to discuss viable alternatives to a CWSP to address the water quality issues in Edgewood. While a CWSP would reduce hardness, there are no water softening treatment plants in New Mexico and a treatment plant would be complex and expensive to operate. As an alternative to the CWSP, the

Owner would like to evaluate the feasibility of identifying a better-quality water source in the Estancia Basin and piping water to supply Edgewood. This alternative would consist of identifying potential water sources, acquiring water rights costs, permitting requirements, and evaluating the necessary infrastructure to deliver water from another source in the Estancia Basin to the town.

CDM Smith will be responsible for project management, evaluating water treatment technologies, evaluating infrastructure needed to convey water from an alternative water source in the Estancia Basin (storage, pumping, and piping) and completion of the PER. Subconsultant John Shomaker and Associates (JSAI) will complete the evaluation of alternative groundwater supplies from the Estancia Basin.

SCOPE OF WORK

Task 1: Project Management

This task involves day-to-day administrative, technical, and financial management of the Project budget, schedule, and scope. The Engineer will keep the Owner's staff informed of the status of the work through monthly progress reports attached to the invoices. This effort also includes coordinating meetings, preparing monthly invoices and progress reports, management of subcontracts, and maintenance of project files.

Also included in this task is a project kickoff meeting with the Owner and EPCOR. The kick-off meeting will cover the following items:

- Introduction of teams and the respective roles/responsibilities
- Review of project objectives, expectations, & requirements
- Review of project alternatives and evaluation criteria
- Identification and coordination of immediate project activities and information requirements
- Review of project goals, critical success factors and expectations

Assumptions:

- The project duration will be 9 months.
- One in-person project kick-off meeting will be held in Edgewood with the Owner and EPCOR staff.

Deliverables:

- Kick-off meeting agenda and meeting notes in pdf format submitted electronically
- Monthly invoices and progress reports in pdf format submitted electronically

Task 2: Alternative Evaluations

Engineer will evaluate two alternatives for improving water quality for the town. Alternatives that will be evaluated for improving water quality are as follows:

1. A CWSP using ion exchange or nanofiltration (NF) membranes. NF membrane technology was developed specifically to soften high hardness groundwater with less than 1000 mg/L TDS at low pressures without concentrating sodium, chloride and silica. Lime softening and reverse osmosis will not be evaluated as treatment technologies for the CWSP. This evaluation will consist of the following:

- Evaluation of infrastructure (pumps and pipeline) required to convey groundwater from existing well to the CWSP and to convey treated water from the CWSP to existing storage facilities currently serving the town.
- Identification of potential CWSP site(s).
- Identification of process equipment and comparison of technologies in terms of their land requirements, estimated construction costs, estimated operations and maintenance costs, and a life cycle cost analysis, advantages and disadvantages

2. Alternative groundwater supplies from the Estancia Basin. Edgewood is located within the Estancia Underground Water Basin as administered by the New Mexico Office of the State Engineer. Wells drilled east of Edgewood in valley fill sediments produce larger quantities of water than the existing wells serving the town and produce better quality water. This alternative will consist of the following:

- Assessment of water quality in the valley-fill sediments 5 to 10 miles east of the town and identification of data gaps.
- Assessment of production rates, water-level declines, and saturated thickness in the valley-fill sediments 5 to 10 miles east of the town.
- Assessment of historic water quality, non-pumping water levels, pumping rates, and pumping water levels at wells that provide water to the town and the aquifer in the general area of the wells. The assessment is limited to compiling and interpreting existing data.
- Review of the following sources for collection of information: U.S. Geological Survey, NMOSE, New Mexico Interstate Streams Commission regional water plans, New Mexico Bureau of Mining and Mineral Resources, and EPCOR well information (production and water quality records, drill logs if available)
- Water rights summary based on NMOSE website of agricultural wells in the study area that may produce adequate quality and quantity.
- Development of recommendations for required permits for water rights applications related to purchasing new rights, moving water right point of diversion, leasing rights, or changing ownership of right.
- Recommendations for areas to pursue water rights. Recommendations will include:
 - Considerations for evaluating water rights
 - Methods for documenting current production capacity for comparison with permitted or licensed right quantity
 - Long-term production considerations based on aquifer saturation thickness changes and implications on rights
- Evaluation of infrastructure (storage, pumps, pipeline) required to convey water from new well(s) in the Estancia Basin to the existing storage and transmission facilities currently serving the town.

The PER will also include recommendations for ownership and operation of the selected alternative. EPCOR currently owns and operates the town's water system, and the PER will need to address who will own and operate the selected alternative and how ownership and operations will impact the Owner's ability to fund construction of the project. Engineer will conduct two meetings with the Owner, EPCOR, and NMED-CPB to discuss ownership and operations and develop an approach in the PER that satisfies NMED-CPB.

Assumptions:

- The Owner and EPCOR will provide production and water quality data on the existing wells and water system serving the town.
- CDM Smith will provide a list of water quality parameters to be sampled. EPCOR will perform the sampling.
- EPCOR and the Owner will provide information on the financial status of the water utility.
- The Owner will provide a copy of the Wilson and Company 2018 PER for reference.
- Information on, population projections and future water demands will be obtained from the "EPCOR Water New Mexico Edgewood 40-Year Plan" prepared by CDM Smith in December 2022.
- Engineer will utilize relevant sections of the 2017 Dennis Engineering/Aegean PER for information required for Sections 1 and 2 of the PER.
- One site visit will be conducted to review the existing and new well locations, transmission system alignments, and evaluate potential CWSP sites.
- Lime softening and reverse osmosis treatment processes, which were evaluated in previous studies, will not be included in the evaluation of water treatment processes. These treatment processes are costly and not appropriate for the Project.
- Class 5 level construction cost estimates will be prepared for each alternative.
- Two meetings will be scheduled with the Owner, EPCOR, and NMED-CPB to discuss ownership and operations & maintenance of the selected alternative. These meetings will take place at the Owner's offices and will be in-person meetings.
- The water rights evaluation for the alternative water source from the Estancia Basin does not include preparing technical exhibits supporting water rights applications or expert witness testimony.
- Sampling of wells in the Estancia Basin is not included in this scope of work.
- An Environmental Information Document (EID) will not be prepared as part of this scope of services.

Task 3: Draft PER

Engineer will summarize the results from Task 2 in a draft PER. The report will be prepared in accordance with the NMED PER guidelines and will be submitted to the Owner, NMED-Construction Programs Bureau (NMED-CPB) and NMED-Drinking Water Bureau (NMED-DWB) for review. CDM Smith will conduct an in-person review workshop to discuss the comments received.

Assumptions:

- One review workshop will be held in Edgewood with the Owner to review the results of the evaluations.
- Draft PER will be submitted electronically in pdf format.
- The Owner, NMED-CPB, and NMED-DWB will provide review comments on the Draft PER within 60 days after draft submittal.

Deliverables:

- Draft PER submitted electronically in pdf format
- Workshop agenda and notes submitted electronically in pdf format

Task 4: Final PER

The Engineer will incorporate the comments received to prepare the final PER. The Engineer will submit a final stamped PER to the Owner, NMED-CPB, and NMED-DWB.

Assumptions:

- Final stamped PER will be submitted within 30 days of the comments received from the Owner.

Deliverables:

- Responses to comments received from Owner, NMED-CPB, and NMED-DWB
- Final PER submitted electronically and two bound hard copies

- B. Cost Proposal – Include hourly breakdown for each task
Attached spreadsheet provides a detailed breakdown of the labor hours and costs.

- C. Reimbursable Expense Schedule
N/A

- D. Contract Time shall be 275 calendar days from the date of the OWNERS signature on Attachment II. Planning phase services shall be completed and accepted by the OWNER by / /2023 (DATE). If planning phase services have not been completed and accepted by 3 years from date on the contract the ENGINEER shall pay the OWNER liquidated damages as outlined in the Agreement.

2. Compensation for ENGINEERING SERVICES During the Planning Phase shall be by the

☒ **LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES During the Planning Phase, as described, including reimbursable expenses shall not exceed \$196,518.00, excluding gross receipt tax.

☐ **STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, including reimbursables, for ENGINEERING SERVICES During the Planning Phase, as described, shall not exceed \$N/A, excluding gross receipt tax, without prior written approval of the OWNER, with Funding Agency concurrence.

3. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5.

4. Signatures

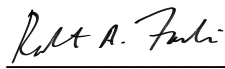
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____

OWNER

Type Name Audrey Jaramillo

Title Mayor

By:  Date: April 21, 2023

ENGINEER

Type Name Robert A. Fowlie, PE, BCEE

Title Associate, Client Service Leader

Address CDM Smith Inc.

6001 Indian School Rd NE

Albuquerque, NM 87110

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

By _____

Type Name _____

Date _____

Exhibit A - Town of Edgewood Engineering Services during the Planning Phase
Water Quality Improvements PER
Total Project Level of Effort Breakdown

	Labor											Total Hours	Total Labor Cost	Subcontractors				Direct Expenses (ODC)			CDM Smith Total Cost Effort
Task / Activity	Client Service Leader	Project Manager	Specialist	Senior Reviewer	Environmental Engineer	Environmental Engineer	CAD support	CAD support	Contract Admin	Editor	Admin Assistant			Subcontractor	Raw Cost	Sub Markup (10%)	Total Cost	Expense	Travel	Total ODC Costs	
	Robert	Ege	Chandrikaa	Jason	Zehsan	Natalie	Bobbie/ Carl	Todd	Shannon	TBD	Cheryl										
Rate:	\$275	\$225	\$275	\$250	\$225	\$135	\$165	\$165	\$130	\$155	\$100										
Task 1 : Project Management	4	38	0	0	2	8	0	0	16	0	20	88	\$15,260		\$0	\$0	\$0	\$0	\$0	\$0	\$15,260
Setup, coordination		30							16		20	66	\$10,830		\$0	\$0	\$0	\$0	\$0	\$0	\$10,830
Kickoff meeting	4	8			2	8						22	\$4,430		\$0	\$0	\$0	\$0	\$0	\$0	\$4,430
Task 2: Evaluations	30	66	0	8	53	218	24	30	0	0	0	429	\$75,365		\$34,307	\$3,431	\$37,738	\$0	\$0	\$0	\$113,103
Existing data and design basis		1			4	8						13	\$2,205		\$0	\$0	\$0	\$0	\$0	\$0	\$2,205
Financial info		1			4	8						13	\$2,205		\$0	\$0	\$0	\$0	\$0	\$0	\$2,205
Site visit/existing conditions	6	6			1	20						33	\$5,925		\$0	\$0	\$0	\$0	\$0	\$0	\$5,925
CWSP technology (I/E)		2		4	8	40						54	\$8,650		\$0	\$0	\$0	\$0	\$0	\$0	\$8,650
CWSP technology (membranes)		2		4	8	40						54	\$8,650		\$1	\$0	\$1	\$0	\$0	\$0	\$8,651
CWSP site and transmission	4	8			8	25	16					61	\$10,715		\$0	\$0	\$0	\$0	\$0	\$0	\$10,715
New groundwater source	4	4			8	4						20	\$4,340	JSAI	\$34,305	\$3,431	\$37,736	\$0	\$0	\$0	\$42,076
Water rights considerations	4	12										16	\$3,800		\$0	\$0	\$0	\$0	\$0	\$0	\$3,800
New source infrastructure		4			8	25	8					45	\$7,395		\$0	\$0	\$0	\$0	\$0	\$0	\$7,395
Cost analysis	1	8				40		30				79	\$12,425		\$0	\$0	\$0	\$0	\$0	\$0	\$12,425
Selection of an alternative	1	2			4	8						15	\$2,705		\$0	\$0	\$0	\$0	\$0	\$0	\$2,705
Phasing	2	8										10	\$2,350		\$1	\$0	\$1	\$0	\$0	\$0	\$2,351
System ownership & management	8	8										16	\$4,000		\$0	\$0	\$0	\$0	\$0	\$0	\$4,000
Task 3: Draft Report	4	44	12	12	28	104	20	0	0	12	12	248	\$44,000		\$0	\$0	\$0	\$0	\$0	\$0	\$44,000
Draft report		20			20	80	20					140	\$23,100		\$0	\$0	\$0	\$0	\$0	\$0	\$23,100
Reviews and QC		8	12	12	8	8				12	12	72	\$14,040		\$0	\$0	\$0	\$0	\$0	\$0	\$14,040
Workshop preparation		8				8						16	\$2,880		\$0	\$0	\$0	\$0	\$0	\$0	\$2,880
Client workshop	4	8				8						20	\$3,980		\$0	\$0	\$0	\$0	\$0	\$0	\$3,980
Task 4: Final Report	1	16	2	2	28	70	12	0	0	0	8	139	\$23,455		\$0	\$0	\$0	\$700	\$0	\$700	\$24,155
Final report		8	2	2	20	40	12				8	92	\$15,530		\$0	\$0	\$0	\$700	\$0	\$700	\$16,230
Responses to comments	1	8			8	30						47	\$7,925		\$0	\$0	\$0	\$0	\$0	\$0	\$7,925
Total Hours	39	164	14	22	111	400	56	30	16	12	40	904									
Total Raw Labor Cost	\$10,725	\$36,900	\$3,850	\$5,500	\$24,975	\$54,000	\$9,240	\$4,950	\$2,080	\$1,860	\$4,000		\$158,080		\$34,307	\$3,431	\$37,738	\$700	\$0	\$700	
TOTAL (LUMP SUM FOR TASKS 1 THROUGH 5)																					\$196,518

ELECTIONS

Municipalities have two choices when conducting municipal elections.

1. They may choose to hold municipal elections in November of odd-years along with other local elections (school board, soil & water conservation board, etc.), via the OPT-IN procedures below. This election is run by the county clerk and is known as the Regular Local Election (RLE), or,
2. They can continue to conduct the municipal election themselves. Those elections are held in March of even years and is known as the Municipal Officer Election (MOE). This election is run by the municipal clerk and the municipality pays for all of the election.

OPT-IN

- If a municipality chooses to have their municipal elections as part of the RLE in November, instead of the MOE in March, they must make the change by ordinance. In addition, the municipality must determine whether to reduce or extend the terms of office for the Elected Officials. The choice to opt-in must be adopted and submitted to the Secretary of State by June 30 of the year in which the RLE will occur.

1-21-14. Penalty.

Any person willfully making a false statement or affidavit under the Federal Voting Rights Compliance Act is guilty of a fourth degree felony.

History: 1953 Comp., § 3-21-17, enacted by Laws 1971, ch. 322, § 17.

ARTICLE 22

Local Elections

Sec.

- 1-22-1. Short title.
- 1-22-2. Definitions.
- 1-22-3. Regular local elections; special local elections; ballot questions; qualifications of candidates.
 - 1-22-3.1. Municipal officer election day; procedures; exceptions.
 - 1-22-3.2. Municipalities; municipal election provisions; adjustment of dates and charter amendments for procedures affected by the Election Code; public financing.
- 1-22-4. Regular local election; proclamation; publication.
- 1-22-5. Repealed.
- 1-22-6. Repealed.
- 1-22-7. Declaration of candidacy; filing date; penalty.

Sec.

- 1-22-8. Declaration of candidacy; sworn statement of intent; form.
 - 1-22-8.1. Write-in candidates.
- 1-22-9. Repealed.
- 1-22-10. Candidate qualification; challenges; ballots.
 - 1-22-10.1. Repealed.
- 1-22-11. Repealed.
- 1-22-12. Repealed.
- 1-22-13. Repealed.
- 1-22-14. Repealed.
- 1-22-15. Repealed.
- 1-22-16. Municipal runoff elections.
- 1-22-17. Recompiled.
- 1-22-18. Local election; date term of office begins.
- 1-22-19. Early voting; municipal early voting locations.
- 1-22-20. Recompiled.

1-22-1. Short title.

Chapter 1, Article 22 NMSA 1978 may be cited as the "Local Election Act".

History: 1978 Comp., § 1-22-1, enacted by Laws 1985, ch. 168, § 3; repealed and reenacted Laws 2018, ch. 79, § 16.

1-22-2. Definitions.

As used in the Local Election Act:

- A. "local election" means a local government election;
- B. "local governing body" means a board, council or commission, as appropriate for a given local government;
- C. "local government" means a:
 - (1) political subdivision of the state with authority to levy taxes pursuant to Article 8, Section 9 of the constitution of New Mexico and its enabling legislation, but does not include a county; and
 - (2) political subdivision of the state without authority to levy taxes pursuant to Article 8, Section 9 of the constitution of New Mexico or its enabling legislation, but whose statutory provisions provide for election of officers or ballot questions to be decided pursuant to the Local Election Act;
- D. "municipal officers" means the local governing body and any elective executive and judicial officers of a municipality;
- E. "regular local election" means the biennial local election at which local governing body members are elected pursuant to the provisions of the Local Election Act; and

F. "special local election" means a local election conducted at a time other than a statewide election at which only ballot questions are considered pursuant to the provisions of the Special Election Act [Chapter 1, Article 24 NMSA 1978].

History: 1978 Comp., § 1-22-2, enacted by Laws 1985, ch. 168, § 4; 1987, ch. 249, § 45; 1999, ch. 267, § 33; 2015, ch. 145, § 79; repealed and reenacted

Laws 2018, ch. 79, § 17; 2019, ch. 212, § 140; repealed and reenacted by Laws 2019, ch. 212, § 141.

1-22-3. Regular local elections; special local elections; ballot questions; qualifications of candidates.

A. A regular local election shall be held on the first Tuesday after the first Monday in November of each odd-numbered year. A regular local election shall be held to elect qualified persons to membership on a local governing body and, where applicable, to elective municipal executive office and to municipal judicial office.

B. A regular local election shall be a nonpartisan election, and the names of all candidates shall be listed on the ballot with no party or slate designation. No person shall become a candidate in a regular local election unless the person physically resides within the boundaries of the district or districted area in which the person desires to be elected or to represent and the person's record of voter registration shows that the person is both a qualified elector of the state and was registered to vote in the area to be elected to represent on the date the proclamation calling a local election is filed in the office of the secretary of state.

C. A local government may propose a ballot question to be considered by the voters of the local government:

(1) at a regular local election or a general election as provided by Subsection B of Section 1-16-3 NMSA 1978; or

(2) at a special local election called, conducted and canvassed as provided in the Special Election Act [Chapter 1, Article 24 NMSA 1978].

D. Except as otherwise provided in the Local Election Act, local elections shall be called, conducted and canvassed as provided in the Election Code.

History: 1978 Comp., § 1-22-3, enacted by Laws 1985, ch. 168, § 5; 1997, ch. 252, § 1; 2015, ch. 145, § 80;

repealed and reenacted by Laws 2018, ch. 79, § 18; 2019, ch. 212, § 142.

1-22-3.1. Municipal officer election day; procedures; exceptions.

A. All municipalities shall elect their municipal officers pursuant to this section on the municipal officer election day, which is the first Tuesday in March of even-numbered years, unless the municipality has opted in to the election of its municipal officers at the regular local election.

B. Except as provided in Subsection C of this section, any municipality may by ordinance opt in to the election of its municipal officers in the regular local election if the municipality passes an ordinance and files the ordinance with the secretary of state no later than June 30 of the year in which the next regular local election is scheduled. The ordinance shall also determine if the terms of office for current office holders will be lengthened or shortened to correspond with the new election date. Following the second regular local election at which its municipal officers are elected at the regular local election, a municipality that has passed an ordinance pursuant to this subsection may rescind the ordinance opting in to the election of its municipal officers in the regular local election and file the rescission with the secretary of state no later than June 30 of the year in which the next regular local election is scheduled.

C. A home rule municipality that pursuant to its charter is implementing a form of required voter identification that supersedes the provisions of Section 1-1-24 NMSA 1978 shall not elect its municipal officers at the regular local election.

D. For municipalities that elect their officers on municipal officer election day:

(1) all provisions of the Local Election Act as supplemented by the Election Code apply, except as provided in this section;

(2) for a municipal officer election, when the Local Election Act or the Election Code references a process or procedure to be conducted by the county clerk in the administration of a regular local election, the process or procedure shall instead be fulfilled and administered by the municipal clerk;

(3) for a special local election, the municipal clerk shall fulfill the duties of the county clerk pursuant to the Special Election Act [Chapter 1, Article 24 NMSA 1978] in the conduct of administering a special local election by the municipality, unless the municipal clerk has entered into a memorandum of understanding with the county clerk to administer the special local election on behalf of the municipality;

(4) for a recall election, notwithstanding the laws of any municipality to the contrary, the county clerk shall at all times conduct a municipal recall election pursuant to the provisions of the Recall Act [Chapter 1, Article 25 NMSA 1978];

(5) in an election administered by the municipal clerk, the secretary of state shall provide to the municipal clerk access to the list of voters of the municipality through the voter registration electronic management system;

(6) the provisions of the Uniform Military and Overseas Voters Act [1-6B-1 through 1-6B-17 NMSA 1978] apply to an election administered by the municipal clerk; provided that for the municipal officer election, military-overseas ballots shall be sent to federal qualified electors beginning thirty-five days before the election;

(7) upon the approval of the governing body of a municipality, a local government ballot question may appear on the ballot for an election conducted pursuant to this section at the request of a county, school or special district;

(8) the governing body of a municipality may act in relation to the duties of the board of county commissioners set forth in Section 1-3-2 NMSA 1978 in setting polling places and consolidating precincts for the municipal officer election; provided that if the governing body of a municipality does not pass a resolution as provided by Section 1-3-2 NMSA 1978, the polling places set by the board of county commissioners within the boundaries of the municipality shall be used for municipal officer elections;

(9) the provisions of Section 1-22-3.2 NMSA 1978 apply to a municipality conducting elections pursuant to this section; provided that the adjustment of dates in the laws of the municipality shall accord with the schedule imposed by the Election Code for the conduct of the municipal officer election; and

(10) a municipality that elects its municipal officers pursuant to this section shall bear the costs of administering the municipal officer election.

E. Candidate procedures for municipalities that elect their officers on municipal officer election day are as follows:

(1) the secretary of state shall, in accordance with the provisions of Section 1-22-4 NMSA 1978, issue the proclamation calling for the municipal officer election for all municipalities conducting the election of their officers pursuant to this section. The municipal clerk shall post those portions of the proclamation relevant to the municipality and publish what is posted in accordance with the schedule and procedures provided in Subsection D of Section 1-22-4 NMSA 1978, and each county clerk shall post the entire proclamation on the county clerk's website along with a notice of which municipalities in the county are conducting elections pursuant to this section;

(2) each declaration of candidacy shall be delivered for filing in person by the eligible candidate or by a person acting by virtue of written authorization. The proper filing officer shall not accept for filing from any one individual more than one declaration of candidacy;

(3) declarations of candidacy for municipal officer elections shall be filed between 9:00 a.m. and 5:00 p.m. on the fifty-sixth day before the election. No name shall be placed on the ballot until the person has been notified in writing by the municipal clerk that the certificate of registration of the candidate on file with the county clerk, the declaration of candidacy and the petition, if required, are in proper order and that the person, based on those documents, is qualified to be a candidate. The municipal clerk shall deliver the notice to the person no later than 5:00 p.m. on the Friday following the filing date;

(4) write-in candidates for municipal officer elections shall file declarations of candidacy between 9:00 a.m. and 5:00 p.m. on the forty-ninth day before the election. No space shall appear on the ballot for a write-in candidate until the person has been notified in writing by the municipal clerk that the certificate of registration of the candidate on file with the county clerk and the declaration of candidacy are in proper order and that the person, based on those documents, is qualified to be a declared write-in candidate. The municipal clerk shall deliver the notice to the person no later than 5:00 p.m. on the Friday following the filing date;

(5) any voter may challenge the candidacy of any person seeking election to municipal office for the reason that the person does not meet the requirements for the office sought by filing a petition in the district court within seven days after the deadline for filing a declaration of candidacy. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith; and

(6) the municipal clerk shall certify in writing the ballot for each precinct in the municipality containing the name of each candidate who has been qualified, a space for any offices with a declared write-in candidate and any ballot questions to be voted on at the municipal officer election. The order of candidates for the same office in a municipal officer election shall follow the randomization method established by rule by the secretary of state for the regular local election. Each ballot certified pursuant to this paragraph shall, no later than forty-two days before the election, be sent to the ballot printer or other person preparing the ballot for use by the voters and a certified copy sent to the secretary of state. A copy of each certification shall be kept on file in the office of the secretary of state for twelve months, after which the ballot certification shall be transferred to be a permanent record at the state records center.

F. Except for municipalities that provide for a top-two runoff election pursuant to Section 1-22-16 NMSA 1978, the term of office for municipalities holding elections pursuant to this section shall begin the first day of the month following the election. For municipalities that provide for a top-two runoff election, the term of office for municipalities holding elections pursuant to this section shall begin the first day of the month following the runoff election.

G. When the Municipal Code [Chapter 3 NMSA 1978]:

(1) provides for vacancies in municipal office to be filled by election at the next regular local election, the vacancies shall instead be filled by election at the next municipal officer election; or

(2) references a ballot question that may be placed on the regular local election or general election ballot, the reference shall also permit placing the ballot question on the municipal officer election ballot.

History: Laws 2018, ch. 79, § 34; 2019, ch. 212, § 143.

1-22-3.2. Municipalities; municipal election provisions; adjustment of dates and charter amendments for procedures affected by the Election Code; public financing.

A. Election provisions or procedures in the laws of a municipality that operate in addition to and do not conflict with the provisions of the Election Code continue in effect as long as such provisions do not conflict with the Election Code or until amended or repealed by the municipality. Election provisions or procedures in an ordinance or charter of a municipality that conflict with the Election Code or other applicable state or federal law are not operable and shall not be enforced. Election provisions or procedures in an ordinance or charter of a municipality that do not conflict with the Election Code shall be administered pursuant to the ordinances or charter of the municipality, unless the municipal clerk and the county clerk have signed a memorandum of understanding for the county clerk to conduct election provisions or procedures on behalf of the municipality.

B. A municipality with election provisions or procedures in an ordinance or its charter that do not conflict with the Election Code shall adjust the calendar dates that implement those election provisions and procedures to accord with the schedules imposed by the Election Code. At the discretion of the municipality, the adjustment of calendar dates may be done administratively, by ordinance or as otherwise provided by the charter of the municipality. The municipal clerk shall post the adjusted dates no later than June 30 of each odd-numbered year.

C. At the discretion of the municipality, a municipality with a charter may amend its charter by ordinance or as otherwise provided by the municipality to conform its ordinances or charter with the requirements of the Election Code and other applicable state or federal laws related to elections.

D. In any municipality implementing public financing for its municipal elections consistent with this section and notwithstanding any provision to the contrary in the ordinances or charter of the municipality:

(1) the municipality shall require as a precondition to the receipt of public financing that a person first be qualified as a candidate;

(2) if the date in the ordinances or charter of the municipality for submitting documents to be approved for public financing is an earlier date than the filing date for declarations of candidacy provided in the Local Election Act, the municipal clerk shall accept declarations of candidacy and other candidate qualification documents from persons seeking to be approved for public financing on the date provided in the ordinances or charter of the municipality upon which the municipal clerk shall deliver to the county clerk the candidate qualification documents of each person seeking to be approved for public financing;

(3) the county clerk shall notify the municipal clerk in writing no later than 5:00 p.m. on the third day following receipt of the candidate qualification documents that the certificate of registration of the candidate, the declaration of candidacy and the petition, if any, are in proper order and whether the person, based on those documents, is qualified to be a candidate;

(4) any voter may challenge the candidacy of a person seeking election to municipal office by the county clerk for the reason that the person does not meet the candidate qualification requirements by filing a petition in the district court within seven days after the deadline for the municipal clerk to approve candidates to receive public financing. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith; and

(5) on the day provided in the Local Election Act to submit declarations of candidacy, any qualified person may file a declaration of candidacy for municipal office and other candidate qualification documents, including a person who failed to be approved for public financing but who otherwise qualifies to be a candidate, but not including a person who previously sought public financing in the same election but was not qualified to be a candidate; provided that any candidate qualification requirements imposed by the municipality other than those pertinent to public financing and the date for filing a declaration of candidacy must be fulfilled by a person who submits a declaration of candidacy on the day provided in the Local Election Act.

History: Laws 2018, ch. 79, § 35; 2019, ch. 212, § 144; repealed and reenacted by Laws 2019, ch. 212, § 145.

1-22-4. Regular local election; proclamation; publication.

A. Between one hundred twenty and one hundred fifty days before the next regular local election, each local government shall notify the county clerk of the county in which the primary administrative office of the local government is situated of all local government positions that are to be filled at the next regular local election. Each county clerk shall inform the secretary of state of all positions to be filled no later than one hundred twelve days before the regular local election.

B. The secretary of state shall by resolution issue a public proclamation in Spanish and English calling a regular local election. The proclamation shall be issued and filed by the secretary of state in the office of the secretary of state ninety days preceding the date of the regular local election, and upon filing the proclamation, the secretary of state shall post the proclamation and certify it to each county clerk.

C. The proclamation shall specify:

- (1) the date when the election will be held;
- (2) each elective office, local governing body and judicial position to be filled;
- (3) the date on which declarations of candidacy are to be filed;
- (4) the date on which declarations of intent to be a write-in candidate are to be filed; and
- (5) the municipalities subject to a ranked-choice voting runoff election and those subject to a top-two runoff election and the date of the top-two runoff election should one be necessary.

D. After receipt of the proclamation from the secretary of state, the county clerk shall post the entire proclamation on the county clerk's website and, not less than seventy-five days before the date of the election, shall publish portions of the proclamation relevant to the county at least once in a newspaper of general circulation within the county. The publication of the proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended, and shall specify:

- (1) the date when the election will be held;
- (2) for each local government situated in whole or in part in the county, each elective executive, local governing body and judicial position to be filled by voters of any precinct in the county;
- (3) the date on which declarations of candidacy are to be filed and the date on which declarations of intent to be a write-in candidate are to be filed;
- (4) the location, days and hours for voting at the office of the county clerk;
- (5) the location, days and hours for early voting at each alternate voting location and mobile alternate voting location;
- (6) the location, date and hours for voting at each election day polling place; and
- (7) the date certificates of registration shall be subscribed and sworn as required by law.

E. Whenever two or more members of a local governing body are to be elected at large for terms of the same length of time, the secretary of state shall numerically designate the positions on the ballot as "position one", "position two" and such additional consecutively numbered positions as are necessary, but only one member shall be elected for each position. Whenever two or more members of a local governing body are to be elected to represent the same area with terms of different lengths of time, the secretary of state shall list the office with the shorter length of time first and shall designate each position with "for a term expiring _____".

History: 1978 Comp., § 1-22-4, enacted by Laws 1985, ch. 168, § 6; 1987, ch. 338, § 1; 1991, ch. 105, § 40;

2007, ch. 337, § 19; repealed and reenacted by Laws 2018, ch. 79, § 19; 2019, ch. 212, § 146.

1-22-5. Repealed.

1-22-6. Repealed.

1-22-7. Declaration of candidacy; filing date; penalty.

A. A candidate for a position that will be filled at a regular local election shall file a declaration of candidacy with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the seventieth day before the date of the regular local election.

B. A candidate shall file for only one position in the same local government but may file for a position in more than one local government on the same filing day.

C. A declaration of candidacy shall not be amended after it has been filed with the proper filing officer.

D. Each declaration of candidacy shall be delivered for filing in person by the eligible candidate or by a person acting by virtue of written authorization. The proper filing officer shall not accept for filing from any one individual more than one declaration of candidacy.

E. Whoever knowingly makes a false statement in a declaration of candidacy is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 1-22-7, enacted by Laws 1985, ch. 168, § 9; 1999, ch. 267, § 34; 2015, ch. 145,

§ 83; repealed and reenacted by Laws 2018, ch. 79, § 20; 2019, ch. 212, § 147.

1-22-8. Declaration of candidacy; sworn statement of intent; form.

In making a declaration of candidacy, the candidate shall submit a sworn statement of intent in substantially the following form:

"DECLARATION OF CANDIDACY--STATEMENT OF INTENT"

I, _____ (candidate's name on certificate of registration), being first duly sworn, say that I am a voter of the county of _____, State of New Mexico. I reside at _____ and was registered to vote at that place on the date of the proclamation calling this election;

I reside within and am registered to vote in the area to be elected to represent;

I desire to become a candidate for the office of _____ at the regular local election to be held in November of the year this declaration is filed;

I will be eligible and legally qualified to hold this office at the beginning of its term; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

(Signature of Declarant)_____
(Mailing Address)_____
(Residence Address)

Subscribed and sworn to before me by _____ this _____ day of _____, 20 _____.

(Notary Public)

My commission expires:

".

History: 1978 Comp., § 1-22-8, enacted by Laws 1985, ch. 168, § 10; 1987, ch. 249, § 47; 1993, ch. 314, § 63; 1993, ch. 316, § 61; 1997, ch. 252, § 2; 2015, ch.

145, § 84; repealed and reenacted by Laws 2018, ch. 79, § 21; 2019, ch. 212, § 148.

1-22-8.1. Write-in candidates.

A. Write-in candidates shall be permitted in regular local elections.

B. A person may be a write-in candidate only if the person has the qualifications to be a candidate for the position for which the person is running.

C. A person desiring to be a write-in candidate for an office shall file with the proper filing officer a declaration of candidacy. The declaration shall be filed between 9:00 a.m. and 5:00 p.m. on the sixty-third day preceding the date of the election. The county clerk shall ensure that a declaration of candidacy filed pursuant to this section specifies that it is for a write-in candidate.

D. At the time of filing the declaration of candidacy, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Local Election Act, except that the write-in candidate's name shall not be printed on the ballot nor posted in any polling place.

History: 1978 Comp., § 1-22-8.1, enacted by Laws 2018, ch. 79, § 22; 2019, ch. 212, § 149.

1-22-9. Repealed.

1-22-10. Candidate qualification; challenges; ballots.

A. The proper filing officer shall determine whether a candidate filing a declaration of candidacy is registered to vote within the area to be elected to represent and, if required for the office being sought, whether the candidate's nominating petition for that office has been filed with a number of signatures that is equal to or greater than the number required for that office. If the candidate is so qualified and no withdrawal of candidacy has been filed as provided in the Local Election Act, the proper filing officer shall place the candidate's name on the ballot for the position specified in the declaration of candidacy and notify each candidate in writing no later than 5:00 p.m. on the sixtieth day before the local election.

B. Any voter may challenge the candidacy of any person seeking election at the regular local election for the reason that the person does not meet the requirements for the office sought by filing a petition in the district court within seven days after the day for filing a declaration of candidacy. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith.

C. Ballots for the regular local election shall be prepared by the proper filing officer and printed in accordance with the provisions of Section 1-10-5 NMSA 1978.

D. The printed ballot shall contain the name of each person who is a candidate and the position for which the person is a candidate.

E. The ballot shall also contain all ballot questions that are to be submitted to the voters as certified by a local governing body to the county clerk in each county in which the local government is situate and shall conform to the requirements for ballot questions on the regular local election ballot as provided in Chapter 1, Article 16 NMSA 1978.

History: 1978 Comp., § 1-22-10, enacted by Laws 1985, ch. 168, § 12; 1993, ch. 4, § 1; 2009, ch. 150, § 35;

repealed and reenacted by Laws 2018, ch. 79, § 24; 2019, ch. 212, § 150.

1-22-10.1. Repealed.

1-22-11. Repealed.

1-22-12. Repealed.

1-22-13. Repealed.

1-22-14. Repealed.

1-22-15. Repealed.

1-22-16. Municipal runoff elections.

A. All runoff elections authorized by Article 7, Section 5 of the constitution of New Mexico shall be conducted pursuant to this section as a top-two runoff election or as a ranked-choice runoff election as follows:

(1) a top-two runoff election shall be conducted on a separate ballot when the candidate receiving the most votes for an office did not receive the percentage of votes required by the laws of the municipality to be elected in the first round of voting. When ordered, the top-two runoff election shall be held following the regular local election and allow the voter to select between the two candidates who in the first round of voting received the highest number of votes for an office; and

(2) a ranked-choice runoff election shall be conducted on the same ballot as the regular local election and allow the voter to rank the candidates for an office in the order of preference for the voter.

B. If a municipality whose laws provide for top-two runoff elections is notified by the proper canvassing board that a runoff election is required following the regular local election, the top-two runoff election shall be conducted in accordance with those election provisions and procedures in the ordinances or charter of the municipality that do not conflict with the Election Code or administrative rules issued by the secretary of state; provided that in a municipality in which the first round of voting is conducted at the regular local election:

(1) the county clerk shall perform the duties of administering the top-two runoff election; and

(2) the municipality shall reimburse the secretary of state the actual cost of conducting the runoff election.

C. A municipality whose laws provide for a runoff election shall conduct the election in the manner provided by the municipality's ordinance or charter; provided that a municipality may by ordinance choose between conducting a top-two runoff election and a ranked-choice runoff election.

The ordinance shall be filed with the secretary of state no later than June 30 of the year the next regular local election is scheduled.

D. The secretary of state shall issue rules to implement top-two and ranked-choice runoff elections.

History: 1978 Comp., § 1-22-16, enacted by Laws 1985, ch. 168, § 18; repealed and reenacted by Laws 2018, ch. 79, § 29; 2019, ch. 212, § 151.

1-22-17. Recompiled.

1-22-18. Local election; date term of office begins.

The term of office of a candidate elected in a regular local election or ensuing top-two runoff election shall begin on January 1 following the candidate's election, and the candidate to whom a certificate of election has been issued shall take the oath of office before entering upon the duties of office.

History: 1978 Comp., § 1-22-18, enacted by Laws 1985, ch. 168, § 20; 2009, ch. 150, § 36; repealed and reenacted by Laws 2018, ch. 79, § 31.

1-22-19. Early voting; municipal early voting locations.

In a regular local election, a county clerk shall provide at least one alternate voting or mobile alternate voting location in a municipality when requested by a municipality in the county; provided that the:

- A. municipality elects its municipal officers at the regular local election and submits a written request to the county clerk no later than January 30 of the year of the local election;
- B. alternate voting or mobile alternate voting location may operate for less than the full early voting period, to be decided upon between the municipality and the county clerk;
- C. location of the alternate voting or mobile alternate voting location in the municipality conforms to the requirements for alternate voting locations; and
- D. municipality provides the facility and services for the alternate voting or mobile alternate voting location.

History: 1978 Comp., § 1-22-19, enacted by Laws 1985, ch. 168, § 21; 1987, ch. 249, § 51; 1999, ch. 267, § 35; 2015, ch. 145, § 86; repealed and reenacted by Laws 2018, ch. 79, § 32; 2019, ch. 212, § 152.

1-22-20. Recompiled.

ARTICLE 22A

School District Campaign Reporting

- Sec.
- 1-22A-1. Short title.
 - 1-22A-2. Definitions.
 - 1-22A-3. Reports required; time and place of filing.
 - 1-22A-4. Contents of report.
 - 1-22A-5. Anonymous contributions; special event fundraisers.
 - 1-22A-6. Voluntary compliance; complaints and investigations; arbitration; referrals for enforcement.

- Sec.
- 1-22A-7. Reports and statements; late filing penalty; failure to file.
 - 1-22A-8. Civil penalties.
 - 1-22A-9. Penalties; criminal enforcement.
 - 1-22A-10. Campaign funds; limitations on use.

TOWN OF EDGEWOOD RESOLUTION NO. ~~2023-XXX-2005-24~~

Repealing and Replacing Resolution 2005-24

A RESOLUTION ADOPTING PUBLIC IMPROVEMENT DISTRICT GUIDELINES AND APPLICATION PROCEDURES

WHEREAS the governing body recognizes the need for guidelines and procedures to facilitate its processing and evaluation of Petitions brought pursuant to the Public Improvement District Act, NMSA 1978, §§ 5-11-1 et seq. (PIDA).

And

WHEREAS the governing body has determined that the public interest supports the promulgation of such guidelines and procedures;

THEREFORE, be it resolved by and through the Town's governing body as follows:

I. STATEMENT OF PURPOSE.

These Public Improvement District Guidelines and Application Procedures are intended to serve as guidelines for the purpose of considering and, as appropriate, approving the establishment of public improvement districts, the issuance of bonds of such districts, and provision for payment of municipal services pursuant to the PIDA. Their purpose is to enable the Town to make a reasonable judgment concerning the terms and conditions upon which to approve the formation of a public improvement district (a "PID") and to provide procedures for the Town to consider PID applications.

II. GUIDELINES AND PROCEDURES.

ARTICLE I GENERAL CONCEPTS

SECTION 1.1. GENERAL USE.

a. PIDs should be utilized primarily in connection with the financing of infrastructure for development of residential projects, master ~~planned~~planned communities or substantial commercial development and redevelopment. PIDs may also be utilized to provide an enhanced level of public infrastructure amenities and/or municipal services. In order to avoid inefficient use of the limited resources of the Town, unless otherwise agreed by the Town ~~Council~~Commission, PIDs will not be approved to finance less ~~than \$3,000,000.~~\$600,000

b. The Town's approval of a PID shall be based on an Applicant's demonstration, to the reasonable satisfaction of the Town, that the PID will provide benefits to the

end-users of the PID-financed infrastructure or to the Town which would not otherwise be available. These benefits may include, without limitation, additional amenities, services, increased quality of development, or pricing benefits.

c. When a fiscal impact analysis for a master planned development demonstrates that the cost of infrastructure delivery to the development will not have a net cost to the Town, that master planned development will be deemed to have met the end-user benefit requirement of the Town.

D. Public improvements financed by a PID should conform to applicable Town policies for development.

E. Except as expressly agreed by the Town based upon its determination that Town-owned utilities will not be adversely affected, "stand alone" utilities which compete directly or indirectly with Town services shall not be financed through PIDs. Real property dedications and conveyances required by general Town policies for development, growth management and conservation should remain in effect notwithstanding the establishment of a PID.

SECTION 1.2. COST AND EXPENSES: REIMBURSEMENT.

a. Unless otherwise agreed by the Town, the Applicant shall pay through advance payments to the Town as provided herein for all costs and expenses incurred by the Town in connection with:

- (1) Its review of a PID application; and
- (2) The formation of a PID.

b. These costs and expenses include the cost of Town staff, and time and services rendered by any outside consultants who may reasonably be retained by the Town, including, but not limited to, bond counsel, financial advisers, engineers, appraisers, tax consultants and attorneys, at the rates normally charged by those consultants.

c. If authorized by the PID, all or part of such costs may be reimbursed to the Applicant from a PID tax levy, PID assessments, PID revenues or PID bond proceeds, provided that such reimbursement shall be conformity with federal law, state law, and these guidelines.

d. Except as otherwise agreed by the Town, PIDs will construct or finance improvements on such terms and with such persons as the PID Board of Directors determines to be appropriate, in accordance with § 5-11-10 (D) of the PIDA.

e. Unless otherwise agreed by the Town, all costs of administration and operation of the PID and the operation and maintenance of any public infrastructure constructed by the PID shall be the financial responsibility of the PID, the Applicant, applicable homeowners associations, or any combination of the forgoing, as may be acceptable to the Town and the PID.

SECTION 1.3. PID BOARDS OF DIRECTORS; DELEGATED AUTHORITY

- a. Unless otherwise agreed by the Town, a PID will initially be governed by a 5-member board of directors appointed by the Town ~~Council~~Commission and shall be composed of two members appointed by the Town ~~Council~~Commission, two persons selected by the Applicant with the approval of the Town ~~Council~~Commission, and a fifth member selected by the other 4 members.
- b. The Applicant and the Town shall nominate their respective candidates for the board of directors at least fifteen (15) days prior to any vote on formation of the PID. In the event the Applicant or the Town has reservations concerning the persons nominated for the board of directors, the Town's policy is to encourage discussion and resolution of these differences. Nothing herein limits the prerogative of the Applicant to withdraw its Petition prior to a final vote on PID formation.
- c. The Town ~~Council~~Commission may, in accordance with law, delegate certain responsibilities of governance of a PID to public officials employed by the Town.
- d. Unless otherwise agreed by the Town, the day-to-day responsibilities of a PID shall be performed by outside personnel pursuant to an agreement, including a PID Development Agreement, constituting a development agreement pursuant to Section 5-11-10 (A)(2) of the PIDA, or the Town staff.
- e. Each PID Development Agreement shall be in implementation of this Policy, and upon execution by the Town and the Applicant, it shall supersede this Policy in the event of any conflict between the Policy and the Development Agreement.
- f. On a date not more than 6 years after the formation of a PID, new PID Board members shall be elected or the governance of the PID shall revert to 5 members of the Town ~~Council~~Commission, in accordance with the PIDA.

SECTION 1.4. SELF-SUPPORTING; NO IMPACT ON TOWN.

- a. Unless otherwise agreed by the Town, a PID shall be self-supporting with regard to financing, operations and maintenance, and Town funds will not be used for PID purposes.
- b. Notwithstanding anything contained in this Policy, neither the Town's property, its full faith and credit nor its taxing power shall be pledged to the payment of any PID obligation or indebtedness.
- c. The amount and structure of debt of a PID should not have any direct negative material impact on the Town's debt ratings with Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investor Services, Inc. or any other nationally recognized bond-rated agency service that is currently rating the Town's outstanding bonds in the opinion of the Town's Financial Advisor.

SECTION 1.5. PID DEVELOPMENT AGREEMENT; FEASIBILITY REPORTS.

- a. The PID board shall determine the amount, timing and form of financing to be used by a PID based upon a project feasibility report.

b. The matters to which reference is made in subsection a of this Section shall be established by agreement of the Town, the PID and the Applicant through a PID Development Agreement pursuant to Section 5-11-1 O(A)(2) of the PIDA.

ARTICLE 2

PRE-APPLICATION MEETING WITH PID REVIEW COMMITTEE

SECTION 2.1 PID REVIEW COMMITTEE; PRELIMINARY TASKS.

a. The Town shall appoint a PID Review Committee to review each PID application. A PID Review Committee shall be composed of the Town Clerk, the Town independent Financial Advisor, the Town Land Use Planning Director, the Town Public Works and/or Public Safety Adviser, and the Town Attorney, or functionally equivalent Town officials or consultants.

b. Each PID Applicant shall meet with the PID Review Committee as reasonably necessary to allow the Committee to accomplish the following preliminary tasks:

(1) Make an initial determination whether the proposed PID is consistent with the Town's growth policies, land use and development policies, zoning and other applicable regulations;

(2) Make an initial determination whether the PID Applicant's ownership

interest, delegation of ownership rights, or other legal control of the real property proposed to be included in the PID confers standing to submit a PID application;

(3) Establish a proposed schedule for:

- (i) The Applicant's submittal of a PID application;
- (ii) The Town PID Committee's review of the application for completeness; and
- (iii) Town ~~Council~~Commission meetings for consideration of and action on the application; and

(4) Identify any related Town approvals that will be required to permit the PID, if approved by the Town ~~Council~~Commission, to construct the proposed improvements.

SECTION 2.2 ROLE OF PID REVIEW COMMITTEE.

Determinations by PID Review Committee shall be of an advisory nature, for the purposes of assisting Applicants in submitting completed applications with detail and information required to enable meaningful consideration by the Town ~~Council~~Commission. Committee determinations and recommendations shall be considered by but shall not be binding on the Town ~~Council~~Commission.

SECTION 2.3. INVITATION TO APPLY FOR PID FORMATION.

- a. If the PID Review Committee concludes that an application is consistent with applicable Town policies and regulations, including this Policy, then an invitation to submit an application will be extended to the Applicant and the PID Review Committee or its designee will advise the Applicant on the requested application contents in the matter set fourth in Article 3.
- b. If the PID Review Committee determines that proposed PID is inconsistent with applicable Town policies and regulations, the Applicant may appeal that determination of the Town ~~Council~~Commission, which will determine whether or not an invitation to apply for a PID will be extended to the Applicant.
- c. Upon determining that the Applicant has provided the information reasonably required under these policies and procedures for PID applications, the PID Review Committee shall promptly send written notice to the Applicant and the

Town ~~Council~~Commission that the Application is complete. The date of this written notice of completion is the date on which any Petition shall be deemed to have been submitted under § 5-1 1-3(A) of the PIDA.

ARTICLE 3
APPLICATION CONTENTS

The application should include the following information and documentation:

SECTION 3.1 LEGAL DESCRIPTION; QUALIFIED ELECTORS' CONSENT.

The Applicant shall provide:

- a. A description of the proposed PID, including a legal description of its boundaries, identity and addresses of all persons or entities with any interest in the property, and the names and addresses of any qualified electors located within the proposed boundaries.
- b. A current title report on the property and a certificate from the county clerk shall be submitted as evidence of the names or persons with any interest in the land and qualified resident electors located within the proposed PID boundaries.
- c. Evidence satisfactory to the Town of the irrevocable consent of the number of property owners and qualified electors required by the Act for the creation of the PID.

SECTION 3.2. GENERAL PLAN.

The Applicant shall provide:

- a. A detailed description of the types of public infrastructure to be financed by the PID, including:
 - (1) The estimated construction or acquisition costs of the public infrastructure;
 - (2) Projection of working capital needs, including adequate funds for repair and replacement of infrastructure; and
 - (3) Annual operation and maintenance costs of the public infrastructure and the governmental approvals that will be required for both the public and private improvements to be constructed operated.

And/or:

b. A detailed description of enhanced services to be financed or provided by the PID, including:

(1) The identity of the services to be funded or provided;

(2) The area in which such services are to be provided;

(3) The identity of the service providers or proposed service providers;

(4) A detailed analysis of the level and type of service necessary to be provided on a yearly basis, taking into consideration factors including geography, anticipated changes in population; and anticipated population makeup as may be relevant to the type of services to be funded or provided; and

(5) A detailed analysis of the cost over the proposed lifetime of the PID for the provision of these services on a yearly basis, taking into consideration the other factors listed above.

c. The description provided pursuant to this Section shall contain adequate information to established financial parameters for the operation and financing of the PID as set forth in Article 5 of this Policy.

SECTION 3.3 PRELIMINARY FINANCING PLAN & SCHEDULE.

The Applicant shall provide:

a. An estimated project schedule for construction commencement and completion or provision of:

(1) The public infrastructure and/or enhanced services; and

(2) The private development, which shall include a financing plan for the public infrastructure and/or enhanced services including both capital and operating/maintenance costs for all undedicated improvements undertaken by the PID.

b. The financing plan may include projections for a period covering the expected term of existence of the PID or the bond payment date of any Bonds issued by the PID, whichever shall be the longest.

c. The financing plan should include a preliminary description of the improvements

to be owned and maintained by the Town, the PID, or the Applicant, and shall specify the ultimate owner or maintainer of each such improvement.

SECTION 3.4. FEASIBILITY STUDY.

A financial feasibility study shall be prepared by an independent professional with appropriate expertise for the entire project (or such phases of the project that are expected to be constructed during the term of the development), covering the public infrastructure, any enhanced services, and the private development. The feasibility study should include:

- (a) An analysis of how the proposed debt financing, operation and maintenance costs, user charges and other PID costs will impact the ultimate end users of the property; and
- (b) Specifically projected property taxes, property tax rates, special levies, special assessments, fees, charges and other cost that would be imposed on property in the PID, and analysis of potential the impact that such taxes, levies and charges will have on the marketability of the private development; comparison of proposed tax rates and charges in adjoining and similar areas outside of the proposed district.

SECTION 3.5. APPRAISAL.

To the extent applicable to a request for debt financing, the Applicant shall provide a current appraisal (the "MAI Appraisal") of the fair market value of the property within the proposed PID, including:

- (a) The improvements to be financed by the PID; and
- (b) Other improvements being constructed by the Applicant during the PID construction period, the completion of which the Applicant guarantees.

The MAI Appraisal shall be prepared by a person who is designated as a Member Appraisal Institute ("MAI") and a certified general real estate appraiser (such person hereafter referred to as an "MAI Appraiser"). The form and substance of the MAI Appraisal shall be acceptable to the Town, in its discretion.

SECTION 3.6. MARKET DEMAND STUDY.

To the extent applicable, the Applicant shall provide a market demand study for private development in the PID, which shall be prepared or reviewed and concurred with by an independent consultant acceptable to the Town. Such study shall include estimates of the revenue to be generated by the development and estimated market absorption of the development.

SECTION 3.7. APPLICANT FINANCIAL INFORMATION.

The Applicant shall provide a description of the Applicant's professional experience and evidence demonstrating its financial capability to undertake the development associated with the public infrastructure and private development. Such information may be accompanied by audited, reviewed, or, at minimum, compiled financial statements for the most recent 3 years, and a description of past projects and disclosure of any material litigation or known claims during the last ten years.

SECTION 3.8. DRAFT DISCLOSURE.

The Applicant shall provide an initial draft from of disclosure to prospective PID landowners that may be filed and recorded with the County Clerk at the time of each sale of real property within the PID. The disclosure form shall describe the anticipated and maximum tax, special levy, assessment, charge, and any other financial obligation that the Applicant anticipates will be imposed on real property within the PID. The disclosure shall be subject to Town review and approval.

SECTION 3.9. OPERATING PLAN.

The Applicant shall provide a draft Operating Plan for the PID describing:

- a. The operation and maintenance of the infrastructure and all other services in the PID,
- b. The estimated cost of the same, and
- c. Whether the Applicant proposes to provide for operation and maintenance of any infrastructure by the PID, the Town, or a third party acceptable to the Town.

SECTION 3.10. COMPLIANCE CERTIFICATE.

The Applicant shall provide a certificate that the PID will comply the Town's current zoning and planning and platting requirements.

SECTION 3.11. OTHER INFORMATION.

The Applicant shall provide such other information as the Town may reasonable require after its initial review of the Application, including:

- a. Preliminary legal opinions,
- b. Further information regarding the relationship of the plan to Town's development objectives,
- c. Additional proof of financial capability,
- d. Business references, and
- e. Term sheets for financing and financial commitment letters.

Following the application conference, the Town shall, within 15 days provide as complete as practicable a list of additional information items needed.

- a. Preliminary legal opinions,
- b. Further information regarding the relationship of the plan to Town's development objectives,
- c. Additional proof of financial capability,
- d. Business references, and
- e. Term sheets for financing and financial commitment letters. Following the application conference, the Town shall, within 15 days provide as complete as practicable a list of additional information items needed.

ARTICLE 4 APPLICATION AND APPROVAL PROCESS

SECTION 4.1.APPLICATION SUBMISSION.

Ten copies of an application for the formation of a PID and an application fee of \$30,000
(the "Application Fee") shall be submitted to the Town Clerk-Treasurer.

SECTION 4.2 APPLICATION FEES.

- a. The Application Fee shall be utilized by the Town for initial application review and project feasibility analysis, including the payment of the Town's financial and legal advisors, at their customary rates, to assist in the evaluation of the feasibility of the proposed PID project.
- b. \$10,000 of the Application Fee shall be non-refundable.
- c. The balance of the Application Fee shall be used by the Town in connection with its review of the application.
- d. Upon completion of the application review, or if the Applicant withdraws its application prior to the Town's completion of its application review, the Town shall remit the unused portion, if any, of the Application Fee other than the nonrefundable \$10,000 portion.
- e. Upon the Applicant's request, the Town will provide an accounting of expenditures of funds advanced within a reasonable time.
- f. The Town and its financial and legal consultants shall use reasonable efforts to determine whether any features of a PID proposed in an application appear not to be feasible, and to advise the Applicant early in the review process, for the purpose of avoiding unnecessary additional costs of review.

SECTION 4.3. POST-APPLICATION CONFERENCE.

- a. After the Application Fee has been submitted, the Town Clerk-Treasurer will arrange a conference with the appropriate PID Review Committee for the purpose of reviewing the application and determining whether the application is complete.
- b. If, following the application conference or any other time during the application process, the PID Review Committee requests additional information, the Applicant shall provide any and all supplemental information requested, in accordance with the provisions of Section 3.11 of this Policy.

SECTION 4.4. PID REVIEW COMMITTEE REPORT.

- a. After analysis of an application as supplemented, PID Review Committee shall prepare a report including recommendations relating to the PID, an analysis of the impact of the formation of the PID, and its effects on the Town.
- b. The report may provide a recommended disposition of the application and any additional requirements that are recommended in connection with the Applicant and/or the PID.
- c. All costs billed to or incurred by the Town must be paid by the Applicant by a date at least 14 days prior to the date of the meeting of the Town ~~Council~~Commission at which the appropriate resolution approving the application is to be introduced.
- d. When the Committee determines that ~~the~~ an application meets the qualifications provided herein, the application, along with the report and recommendations of the PID Review Committee will be forwarded to the Town ~~Council~~Commission, along with drafts of the appropriate implementing resolution.

SECTION 4.5 DEVELOPMENT AGREEMENT.

If the Town ~~Council~~Commission preliminarily approves an application for formation of a PID, the Applicant and the Town shall coordinate a schedule of events for formation of the PID and shall negotiate an appropriate PID Development Agreement between the Town and the Applicant, which shall be entered into prior to formation of the PID which, if approved by the Town ~~Council~~Commission, shall incorporate the recommendations of the PID Review Committee relating to such PID, and any other restrictions, provisions and agreements by the Town.

SECTION 4.6 PRELIMINARY APPROVAL.

- a. Requests for Preliminary Approval will be considered following payment of the Initial Application Fee and information such as the following:

- (1) A description of the proposed PID boundaries;
 - (2) A description of the improvements to be constructed and/or enhanced services to be funded or provided by the Applicant;
 - (3) The estimated construction costs of the improvements and anticipated completion time;
 - (4) A description, by category, of improvements and related costs to be financed by the PID;
 - (5) The estimated issuance amount of PID bonds;
 - (6) The total annual special levy amount (i.e. estimated aggregate annual debt service on bonds); and
 - (7) The maximum annual PID property tax or, in the case of a special levy, the allocation method and maximum special levy per dwelling unit (single family residences) or per acre (multi-family and commercial), and method by which the levy will be allocated from a bulk tract to finished lots.
- b. The PID Review Committee report will advise the Town ~~Council~~Commission whether Preliminary Approval is recommended, not recommended, or that no recommendation is made.

SECTION 4.7. ADDITIONAL FEES.

- a. An Applicant that has received Preliminary Approval may be required to make such additional advances as the Town reasonably determines are necessary to pay the costs of reviewing the Applicant's request for ~~formal~~formal approval of the formation of the PID based on a PID Development Agreement within the meaning of the Act.
- b. An Applicant may be required to submit an additional Initial Application Fee if, in Town's determination, the application for formal approval of a PID departs substantially from the parameters set forth in the application for Preliminary Approval.

SECTION 4.8. APPROVAL OF PID FORMATION AND PID FINANCING.

- a. The Town ~~Council~~Commission may consider the granting of formal approval to the formation of the PID based on the terms of the PID Development Agreement, which may be approved prior to or concurrently with the approval of the formation of the PID.
- b. The Town ~~Council~~Commission may include in its approval of the formation of the PID the issuance of one or more series of PID bonds, subject to the terms and conditions of the PID Development Agreement.
- c. The Town ~~Council~~Commission's approval of PID formation and issuance of bonds shall be conditioned on the requirement that the PID shall utilize bond counsel, underwriters and/or other consultants selected by or otherwise acceptable to the Town.
- d. PID Development Agreements shall not be amended without the express written approval by the Town ~~Council~~Commission.

ARTICLE 5

PID OPERATIONS AND DEBT FINANCING

SECTION 5.1. PID ADMINISTRATION EXPENSE FEE.

- a. In addition to the amounts set forth in Article 4, upon formation of a PID the Applicant shall deposit with the PID a nonrefundable administrative expense fee in the amount of \$10,000.
- b. The administrative expense fee shall be applied by the PID to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the PID or its public improvements.
- c. From time to time, upon depletion of the administrative expense fee, the PID may request, and the Applicant shall promptly deposit with the PID, additional amounts deemed by the PID to be reasonably necessary for the purposes contemplated in this Section 5.1.
- d. Nothing in this Section 5.1 shall preclude the reimbursement of such expenses from PID taxes, levies, charges or bond proceeds, as permitted by the PIDA.

SECTION 5.2. ADMINISTRATION, OPERATION AND MAINTENANCE CHARGE.

- a. In order to provide for the PID to be self-supporting or its administrative, operation, and maintenance expenses, and to finance services in addition to those provided by the Town, the Town may condition its approval of a PID on the PID's imposition of up to \$3.00 per \$1,000 of assessed value ad valorem tax. This tax shall not be considered as a tax or charge by the Town, but in accordance with the provisions of Section 5-11-23 of the PIDA upon the PID taxable property.
- b. To the extent permitted by law, the PID shall be entitled to charge such rates, fees and charges to property owners as are necessary to address any shortfall in the expense required to operate and maintain PID improvements, and such rates, fees and charges shall be established in the Development Agreement for the PID.

SECTION 5.3. GENERAL OBLIGATION BONDS.

- a. General Obligation Bonds of the PID will be payable from an unlimited ad valorem tax on taxable property located within the PID designated by the general plan for the PID as subject to the PID property tax, as required by the PIDA.
- b. An application for general obligation bonds shall describe to the PID Board of Directors in a project feasibility report the following:
 - (1) The current direct and overlapping tax and assessment burden on the taxable property that is proposed to be taxed, and the fair market value and assessed valuation of the taxable property as shown on the most recent assessment roll.
 - (2) The projected amount and timing of PID general obligation bonds to be used.
 - (3) The projected market absorption of the development within the PID.
 - (4) The effect of the PID bond issuance on PID tax rates calculated as of the beginning, midway through, and at the end of the market absorption period or based on the phasing of the project to be financed, as applicable.

- (5) An estimate of the Applicant's construction costs associated with the public improvements, in excess of the estimated PID funded costs of the project..
- (6) The necessity of the Applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the Applicant.
 - c. The projected tax rate for debt service set forth in the feasibility report shall be established in the PID Development Agreement, and may include provisions which
- (l) Limit the maximum tax rate that will be imposed by the PID for the payment of debt service on PID bonds;
- (2) Require a contribution agreement from the Applicant for the payment of debt service in the event of a shortfall in revenue from the PID tax revenues projected in connection with, and at the time of; PID formation; or
- (3) Establish, to the Town's satisfaction, other protection for homeowners or other end-users of the property located in the PID against excessive tax rates in the event that PID indebtedness exceeds PID tax revenues available to pay debt service in any particular year.

SECTION 5.4. SPECIAL LEVY BONDS.

- a. Special Levy Bond shall be secured by a first lien (co-equal to the lien for general taxes and prior special assessments) on the property benefited in the manner contemplated by Section 5-11-20(0) NMSA 1978.
- b. Applicants for special levy bonds shall describe in each project feasibility report, the following:
 - 1. The current direct and overlapping tax, assessment burdens, and special levy on real property to comprise the PID, and the fill cash value and assessed valuation of that property as shown on the most recent assessment roll.
 - 2. The projected amount and timing of the PID special levy bonds to be issued.
 - 3. The projected market absorption of development on the PID.
 - 4. The projected special levy burden to be placed on the assessed parcels, and the anticipated methodology of assessment.
 - 5. An estimate of the Applicant's construction cost associated with the public improvements in excess of the estimated PID funded costs of the project.
 - 6. The necessity of the Applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the Applicant.
- b. The value to lien ratio, after the issuance of the bonds and construction of the improvements to be financed by the PID, will be at least 3 to 1 based on a MAI appraisal.
- c. At the time the PID is formed, the maximum allowable rate of special levy for residential property shall not cause the total tax and assessment obligation for such property, including projected ad valorem taxes, special levies, and special assessments, to exceed 1.99% of the anticipated market value of residential property as determined by a then-current MAI Appraisal. The 1.99% shall include all known and authorized, but unissued debt and any other anticipated fees or assessments which may be imposed by the Town or special district on a property within the PID -i.e., special assessment districts, including the proposed maximum special levy, except service charges for utilities and refuse.

SECTION 5.5. REVENUE BONDS.

- a. Revenue Bonds shall be payable from a PID revenue source.
- b. An application for revenue bonds shall describe in each project feasibility report, the following:
 - (1) The current fee structure for comparable services or otherwise incurred by persons who would be responsible for paying the proposed rates, fees, and charges.
 - (2) The revenue source from which bonds will be payable. The Town reserves the right to require the Applicant to produce such independently prepared feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues.
 - (3) The projected market absorption of development within the PID.
 - (4) The projected amount and timing of ID revenue bonds to be issued.
 - (5) The financial impact of the proposed rates, fees, and charges on prospective residents or other users of such rates, fees, and charges.
 - (6) An estimate of the Applicant's construction cost associated with the public improvements in excess of the estimated PID funded costs of the project.
 - (7) The necessity of the Applicant and the PID entering into an appropriate contribution agreement, which may require a letter of credit or other third party guarantee of the bonds by the Applicant.

SECTION 5.6. SUITABILITY.

- a. The Town intends that the PID only have the power to sell the proposed bonds to suitable investors.
- b. If the proposed bond issue is not rated (either on its own merits or by the use of appropriate credit enhancement) in I of the 3 highest rating categories used by Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investors Services, Inc., or any other nationally recognized bond-rating agency service, then the bonds must have minimum denominations of \$25,000 and be available for purchase and restricted with respect to resale to "Qualified Institutional Buyers" (as such term is defined in Rule 144A of the Securities and Exchange Commission) or to "accredited investors" (as such term is defined in Rule 501 of Regulation D of the Rules Governing the Limited Offering and Sale Securities without Registration under the Securities Act of 1933).
- c. It is the intention of the Town to have investor suitability achieved through the rating requirements set forth in the preceding sentence or the establishment of large minimum denominations (e.g. not less than \$25,000), and, if the Town determines it is appropriate, covenants limiting secondary market sales of PID bonds through registered broker-dealers.
- d. Notwithstanding the restrictions pertaining to public sales and private placements of bonds set forth in this Article 5, the restrictions may be modified or relaxed if other financing structures or features are presented that, in the sole discretion of the Town ~~Council~~Commission, provide other means to address investor suitability concerns.
- e. The minimum denomination requirements set forth above for PID bonds which are initially issued without rating shall not continue to apply if the PID subsequently obtains a rating in one of the three highest rating categories as provided in this Section.

SECTION 5.7. CONTRIBUTION.

- a. At the time the PID is formed financial projections must demonstrate that the landowners shall provide over the life of the Project at least \$0.25 in infrastructure or community improvements (which may include, for example, dry utilities and other improvements for the benefit of the property owners within the PID, irrespective of whether such improvements are publicly or privately owned) for each \$1.00 of debt to be issued by a PID to finance public infrastructure purposes, except as otherwise determined by the Town in its discretion.
- b. The Town, in its discretion, may condition approval of PID formation on additional financing requirements, including, without limitation, the deposit of cash or a letter of credit (or similar credit facility) as security for completion of the infrastructure development.
- c. If agreed to by the Town or PID Board, as applicable, in the discretion of the Town or PID Board, infrastructure and community improvements constructed or acquired by the Applicant prior to, contemporaneously with, or subsequent to the formation of the PID may be included in calculating the Applicant's compliance with Section 5.7. However no improvements that have not already been constructed or acquired shall be included in this calculation unless the completion of the improvements is guaranteed or secured by an appropriate completion bond, cash deposit or other security acceptable to the Town or PID Board, as applicable.

SECTION 5.8. DEBT SERVICE RESERVE FUNDS.

If allowed by law (including any applicable federal laws relating to the tax exempt status of the bonds), all bond issues may include a debt service reserve fund in an amount acceptable to the PID Board.

SECTION 5.9. ENVIRONMENTAL SITE ASSESSMENTS.

Unless otherwise provided to the Town pursuant to the other requirements, prior to PID financing and acquisition by the PID or Town, the PID and Town will require an independent environmental report or assessment of any real property which will be dedicated to or otherwise owned, leased or operated by the Town or the PID and a proposed form or indemnity agreement with respect to all environmental law liability.

SECTION 5.10. REFINANCING AND REFUNDING BONDS.

a. Refinancing and refunding of bonds issued on behalf of a PID will be considered using the same criteria set forth in Articles of this Policy and shall be subject to the review and approval of the Town ~~Council~~Commission or its designee.

b. Refinancings and refunding will be expected to:

(1) Generate interest rate or net present value savings;

(2) Restructure payment of principal,

(3) Reimburse the Applicant for actual costs expended for public improvements contemplated to be part of the proposed Project, or

(4) Eliminate burdensome covenants.

SECTION 5.11. COST OF CHANGE. Applicants shall be responsible for all additional costs and expenses incurred in any special levy or property tax modifications resulting from changes to the development not anticipated in the application.

ARTICLE 6 MISCELLANEOUS

SECTION 6.1. DISCRETION AND WAIVER.

a. Based upon the recommendations of PID Review Committee and/or financing and legal consultants retained by the Town, the Town ~~Council~~Commission may approve PID applications that do not meet the foregoing criteria, unless such criteria also are required by the PIDA or other applicable laws.

b. In deciding whether to waive any criterion contained herein, the Town ~~Council~~Commission, in its discretion, shall determine whether the particular features of the proposed PID, likelihood that the PID projects and purposes will be successfully completed, and the mechanisms for protecting against default on bonds, warrant such relief.

c. In making this determination, the Town ~~Council~~Commission may consider an opinion of an underwriter with a reputation satisfactory to the Town ~~Council~~Commission, or any other suitable consultant.

SECTION 6.2. PURCHASER DISCLOSURE; MARKETING MATERIALS.

a. Each purchaser of real property located in the PID shall execute an acknowledgment of the PID disclosure form.

b. The Applicant shall also supply the Town with a copy of the acknowledgement.

- c. Applicants are required to describe in their promotional material the financial and other relative impacts on the developments being induced in a PID. Copies of the disclosure form must be placed on file with the Town.

SECTION 6.3. INDEMNITY.

The Applicant, or such other third party acceptable to the Town and the PID, shall indemnify the Town and the PID and their agents and employees and shall hold the Town and the PID and their agents, officers and employees harmless for, from, and against any and all liabilities, claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding to the formation, operation, administration of the PID, the offer and sale of PID bonds, the levying by the PID of any tax, assessment, special levy or charge and the operation and maintenance of public infrastructure financed or owned by the PID.

SECTION 6.4 AMENDMENT.

- a. All amendments to this Resolution shall have a prospective effect only and shall not in any way effect or otherwise modify the approval of a preexisting PID.
- b. The governing body must duly approve any amendment to this Resolution.
- c. Upon any such amendment, the Clerk-Treasurer shall cause a complete and accurate version of the amended Resolution to be compiled and to replace any outdated copies.

WITNESSED AND APPROVED THIS 9TH DAY OF MAY, 2023: