

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

**TOWN OF EDGEWOOD
ORDINANCE NO: 2007-1**

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

WASTE WATER TREATMENT PLANT CONSTRUCTION

AUTHORIZING THE TOWN OF EDGEWOOD, NEW MEXICO TO ENTER INTO A LOAN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT FOR THE PURPOSE OF OBTAINING RURAL INFRASTRUCTURE PROGRAM LOAN FUNDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,000,000; DESIGNATING THE USE OF THE LOAN FUNDS FOR THE PURPOSE OF FINANCING A PROJECT TO ACQUIRE, CONSTRUCT, MODIFY AND OTHERWISE IMPROVE THE WASTEWATER FACILITIES OF THE TOWN'S WASTEWATER SYSTEM; DECLARING THE NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE DISTRIBUTIONS TO THE TOWN FROM THE A MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX AUTHORIZED BY ORDINANCE 2005-15 AND APPROVED DECEMBER 7th, 2005 AND THE DISTRIBUTIONS TO THE TOWN OF STATE-SHARED GROSS RECEIPTS TAX REVENUES FROM THE NEW MEXICO TAXATION AND REVENUE DEPARTMENT PURSUANT TO SECTION 7-1-6.4 NMSA 1978; PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFOR; AND DECLARING AN EMERGENCY.

WHEREAS, the Town is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State and its Town Charter as last amended; and

WHEREAS, the Town plans to undertake, subsequent to July 1, 2006, a New Mexico Environment Department 2006 loan payable from the Pledged Revenues in the aggregate principal amount not to exceed \$3,000,000; and

WHEREAS, the Pledged Revenues have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Revenues on the date of the Ordinance; and

WHEREAS, the Council has determined that it is in the best interest of the Town to accept and enter into the Loan Agreement and to execute and to deliver the Note to the Lender.

THEREFORE, BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE TOWN OF EDGEWOOD:

SECTION 1. DEFINITIONS.

As used in the Ordinance, the following terms shall, for all purposes, have the meanings specified below, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined unless the plural form is separately defined):

35 ACT. Sections 74-6A-1 to 74-6A-15 NMSA 1978, as amended and as hereafter amended (the
36 Wastewater Facility Construction Loan Act), and enactments of the Council relating to the Note and the
37 Loan Agreement made by resolution or ordinance, including the Ordinance, and the powers of the town
38 under authority given by the Constitution of the State and the Town Charter.

39 AUTHORIZED OFFICER. The Town's Mayor, Town Administrator, Treasurer, or other officer
40 or employee of the town when designated by a certificate signed by the Mayor of the Town from time to
41 time. The certificate may designate one or more alternates.

42 TOWN. The Town of Edgewood, in the Counties of Santa Fe, Bernalillo and Sandoval and State
43 of New Mexico.

44 COUNCIL. The Council (the governing body) of the Town.

45 FISCAL YEAR. The twelve-month period commencing on the first day of July of each year and
46 ending on the last day of June of the next succeeding year, or any other twelve-month period which the
47 Town or other appropriate authority hereafter may establish as the fiscal year for the System.

48 GROSS REVENUES. All income and revenues directly or indirectly derived by the Town from
49 the operation and use of the System.

50 HEREIN, HEREBY, HEREUNDER, HEREOF, HEREINBEFORE and HEREAFTER. Refer to
51 the Ordinance and not solely to the particular portion of the Ordinance in which such word is used.

52 LENDER. The New Mexico Environment Department, successor to the Environmental
53 Improvement Division of the New Mexico Health and Environment Department and any assignee of the
54 Lender pursuant to the Loan Agreement and Note.

55 LOAN. The loan made pursuant to the Loan Agreement.

56 LOAN AGREEMENT. One or more loan agreements in the form of the loan agreement, and in
57 the form of the amended loan agreement which are on file with the Town Clerk, to state the exact amount
58 the Lender loaned to the Town, and which shall be executed upon completion of the Project to be dated
59 the date of execution thereof between the Town and the Lender pursuant to which funds will be loaned to
60 the Town to construct the Project and pay eligible costs relating thereto, as amended from time to time.

61 NET REVENUES. All gross income and revenues directly or indirectly derived by the Town
62 from the operation of the System LESS the operation and maintenance expenses of the System, parity
63 obligations and other approved debt(s) herein indicated, approved indirect charges, any amounts
64 expended for capital replacements and repair of System, and the required set asides for debt and
65 replacement reserves.

66 MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX. The revenues derived from the
67 tax imposed by the State pursuant to NMSA 1978, § 7-19D-11 and authorized by Edgewood Ordinance
68 2006-__ which equals 0.125% distributed to the Town and pledged to the payment of the Loan
69 Agreement and Note.

70 NMSA 1978. New Mexico Statutes Annotated, 1978 Compilation, as amended and
71 supplemented.

72 OPERATION AND MAINTENANCE. All reasonable and necessary current expenses of the
73 System, paid or accrued, relating to operating, maintaining and repairing the System.

74 ORDINANCE. This Ordinance as amended or supplemented from time to time.

75 PARITY BONDS or PARITY OBLIGATIONS. Other bonds or obligations payable from
76 Pledged Revenues issued with a lien on the Pledged Revenues on parity with the Loan Agreement and
77 Note authorized hereunder, now or hereafter issued with the prior written consent of the Lender.

78 PLEDGED REVENUES. Collectively, the Net Revenues, the Municipal Infrastructure Gross
79 Receipts Tax and State-Shared Gross Receipts Tax Revenues.

80 PROJECT. Construction of a Wastewater Treatment Plant and other improvements as deemed
81 necessary by NMED.

82 PROJECT COMPLETION DATE. The date of completion of the Project as evidenced by a
83 Certificate of Completion signed by an authorized representative of the Lender and an Authorized
84 Officer.

85 REGULATIONS. . Rural Water Supply, Wastewater, and Solid Waste Infrastructure, 20.7.2

86

87 STATE. The State of New Mexico

88 STATE-SHARED GROSS RECEIPTS TAX REVENUES. The revenues derived from the tax
89 imposed by the State pursuant to NMSA 1978 § 7-1-6.4 which equals 1.225% of the 5.00% State Gross
90 Receipts Tax distributed to the Town and pledged to the payment of the Loan Agreement and Note.

91 SYSTEM FUND. The Town's Wastewater Fund and General Fund.

92 WASTEWATER SYSTEM, SEWER SYSTEM, OR SYSTEM. The Town's municipally owned
93 public utility designated as the Town's wastewater system to be constructed with the loan.

94 **SECTION 2. RATIFICATION.**

95 All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the
96 Council, the officers and employees of the Town, directed toward the Loan Agreement and the Note, is
97 hereby ratified, approved and confirmed.

98 **SECTION 3. FINDINGS.**

99 The Council hereby declares that it has considered all necessary and relevant information and
100 data and hereby makes the following findings:

101 (A) The execution and delivery of the Loan Agreement and the Note pursuant to the Act to
102 provide funds to finance the Project, is necessary and in the interest of the public health, safety, morals
103 and welfare of the residents of the Town and will result in savings of interest costs to the Town.

104 (B) The Town will acquire, improve and finance the Project.

105 (C) The money available for the Project from all sources other than the Loan Agreement is
106 not sufficient to pay when due the cost of the Project.

107 (D) The Project is and will be part of the System, which is a publicly owned wastewater
108 system the purposes of which include the disposition of wastes, either by surface or underground
109 methods.

110 (E) The Pledged Revenues may lawfully be pledged to secure the payment of amounts due
111 under the Loan Agreement and Note.

112

113

114

SECTION 4. WASTEWATER UTILITY.

115

The municipal wastewater facilities constitute a wastewater utility and shall be operated and

116

maintained as such.

117

SECTION 5. AUTHORIZATION OF PROJECT.

118

The acquisition of the Project and payment of eligible items as set forth in the Regulations from

119

proceeds of the Loan Agreement and Note is hereby authorized at a cost not to exceed the principal

120

amount of \$3,000,000 excluding any cost of the Project to be paid from any source other than the

121

proceeds of the Loan Agreement and Note.

122

123

SECTION 6. AUTHORIZATION OF LOAN AGREEMENT AND NOTE.

124

(A) This Ordinance has been adopted by the affirmative vote of at least a three-fourths (3/4)

125

majority of all of the members of the Council for the purpose of protecting the public health, conserving

126

the property, protecting the general welfare and prosperity of the citizens of the Town and acquiring the

127

Project. It is hereby declared necessary that the Town, pursuant to the Act, and the Regulations execute

128

and deliver, and the Town is hereby authorized to execute and deliver, with the prior written consent of

129

the Lender, the Loan Agreement and the Note, to be payable and collectible solely from the Pledged

130

Revenues. The Lender has agreed to disburse the proceeds of the Loan Agreement to the Town over the

131

construction period of the Project, without discount. The aggregate principal amount of the Note shall not

132

exceed \$3,000,000 without the adoption of another Ordinance by the Council, and the annual interest rate

133

on that principal amount shall not exceed 3% per annum. The final maturity date on the Note shall not

134

extend beyond 20 years from the Project Completion Date. The Loan shall be repaid in substantially

135

equal annual installments of principal and interest with the first annual installment due within one year of

136

the Project Completion Date. The Town must obtain the written consent of the Lender before issuing

137

additional obligations secured by Pledged Revenues on parity with the lien on the Pledged Revenues.

138 The Lender has given its written consent allowing the Town to issue and incur the obligation evidenced
139 by the Loan Agreement and the Note.

140 (B) The form of the Loan Agreement and the Note are approved. An Authorized Officer is
141 hereby authorized and directed to execute and deliver the Loan Agreement and the Note and any
142 extensions of or amendments to any such document to be executed after completion of the Project, or any
143 substitution therefore, substantially in the form on file with the Town Administrator, with such changes
144 therein as are not inconsistent with the Ordinance and as shall be approved by an Authorized Officer
145 whose execution thereof, or any extension thereof, or substitution therefore, in their final forms shall
146 constitute conclusive evidence of their approval and compliance with this Section. The Town
147 Administrator, is authorized to affix the seal of the Town and to attest to the Loan Agreement and the
148 Note and other documents pertaining to the Loan Agreement if required.

149 (C) From and after the date of the initial execution and delivery of the Loan Agreement and
150 the Note, Authorized Officers, agents and employees of the Town are authorized, empowered and
151 directed to do all such acts and things and to execute all such documents as may be necessary to carry out
152 and comply with the provisions of this Ordinance, the Loan Agreement and the Note.

153 **SECTION 7. SPECIAL LIMITED OBLIGATIONS.**

154 The Loan Agreement and the Note and all payments of principal and interest thereon shall be
155 special limited obligations of the Town and shall be payable and collectible solely from the Municipal
156 Infrastructure Gross Receipts Tax Revenues and from the State-Shared Gross Receipts Tax Revenues as
157 set forth in the Ordinance and Net Revenues generated from operation of the System. The Lender may
158 not look to any general or other municipal fund for the payment of the principal of or interest on the Loan
159 Agreement and the Note except the designated special funds pledged therefor. The Loan Agreement and
160 the Note shall not constitute indebtedness or debts within the meaning of any constitutional, charter of
161 statutory provision or limitation, nor shall they be considered or be held to be general obligations of the
162 Town and shall recite that they are payable and collectible solely out of the Pledged Revenues the income
163 from which is so pledged, and that the holders of the Loan Agreement and the Note may not look to any

164 general or other municipal fund for the payment of the principal of and interest on the Loan Agreement or
165 the Note.

166 **SECTION 8. OPERATION OF PROJECT.**

167 The Town will operate and maintain the Project so that it will function properly over its structural
168 and material design life, which is not less than 20 years.

169 **SECTION 9. USE PROCEEDS; PROJECT COMPLETION; PURCHASERS NOT**
170 **RESPONSIBLE.**

171 Funds shall be disbursed pursuant to the Loan Agreement for costs incurred by the Town for the
172 Project or to pay contractors or suppliers of materials for work performed on the Project as set forth in the
173 Loan Agreement or for other purposes permitted by the Act and Regulations.

174 **SECTION 10. SYSTEM FUND.**

175 So long as the Loan Agreement and the Note are outstanding, either as to principal or interest, or
176 both, all Pledged Revenues shall continue to be set aside and credited to the System Fund.

177 **SECTION 11. ADMINISTRATION OF SYSTEM FUND.**

178 (A) APPLICATION OF PLEDGED REVENUES. The Pledged Revenues shall be applied
179 directly at time of recognition.

180 (B) SUBORDINATE OBLIGATIONS. Pledged Revenues used for the payment of
181 Subordinate Obligations shall be applied first to the payment of the amounts due the Loan Agreement and
182 the Note, including payments to be made to other obligations payable from Pledged Revenues which have
183 a lien on Pledged Revenues on a parity with the lien thereon the Loan Agreement and the Note which are
184 approved in writing by the Lender.

185 (C) EQUITABLE AND RATABLE DISTRIBUTION. Obligations of the Town secured by
186 Pledged Revenues on a parity with the Loan Agreement and the Note on Pledged Revenues, from time to
187 time outstanding, shall not be entitled to any priority one over the other in the application of the Pledged
188 Revenues, regardless of the time or times of their issuance or creation.

189

190

191

SECTION 12. LIEN OF LOAN AGREEMENT AND NOTE.

192

The Loan Agreement and the Note shall constitute irrevocable liens upon the Net Revenues of the

193

System with priorities on the Net Revenues as set forth in Section 11 of the Ordinance and shall also

194

constitute liens upon the State-Shared Gross Receipts Tax Revenues. The Town hereby pledges and

195

grants a security interest in the Pledged Revenues for the payment of the Note and any other amounts

196

owed by the Town to the Lender pursuant to the Loan Agreement.

197

SECTION 13. OTHER OBLIGATIONS PERMITTED.

198

Nothing in the Ordinance shall be construed to prevent the Town from issuing Bonds or other

199

obligations payable from Pledged Revenues and having a lien thereon superior or subordinate to the liens

200

of the Loan Agreement and the Note on the Pledged Revenues; provided that prior to the issuance or

201

incurrence of any obligation payable from Pledged Revenues with a lien on the Pledged Revenues

202

superior to the lien thereon of the Loan Agreement and the Note, the Town shall have satisfied the test

203

required from the issuance of additional bonds payable from Pledged Revenue. The Town shall not issue

204

additional obligations secured by Pledged Revenues on a parity with or superior to the lien on the Net

205

Revenues of the Loan Agreement and Note without the prior written consent of the Lender.

206

SECTION 14. STATE-SHARED GROSS RECEIPTS TAX.

207

Release of lien on State-Shared Gross Receipts Tax Revenues. The Town may request that the

208

Lender consent to the release of the lien of the Loan Agreement and Note on the State-Shared Gross

209

Receipts Tax Revenues, and/or the Municipal Infrastructure Gross Receipts Tax which consent the lender

210

shall not reasonably withhold, upon demonstration that the Net Revenues equal to at least 130% of the

211

maximum Aggregate Annual Debt Service Requirement for two consecutive years.

212

SECTION 15. DEFAULT

213

The following shall constitute an event of default under the Agreement:

214 (A) The failure by the Borrower to pay the principal of or interest on the repayment of the
215 Loan set forth in the Agreement and Interim and Final Promissory Notes when due and payable either at
216 maturity or otherwise; or

217 (B) Default by the Borrower in any of its covenants or conditions set forth under the
218 Agreement (other than a default set forth in clause A of this section) for 60 days after written notice
219 specifying such default and requiring the same to be remedied has been given to the Borrower by NMED.

220 UPON OCCURRENCE OF DEFAULT:

221 (A) The entire unpaid principal amount of the Interim and Final Promissory Note and accrued
222 interest thereon may be declared by NMED to be immediately due and payable and the Borrower shall
223 pay the amounts due under Note from the Pledged Revenues, either immediately or in the manner
224 required by NMED in its declaration, but only to the extent funds are available for payment of the
225 Agreement and Notes, pursuant to the Notes; and

226 (B) NMED shall have no further obligation to make payments to the Borrower under the
227 Agreement.

228 **SECTION 16.**

229 NMED retains the right to seek enforcement of the terms of the Agreement. The parties agree
230 that if the parties cannot reach agreement regarding disputes as to the terms and conditions of this
231 Agreement, such disputes are to be resolved promptly and expeditiously in the district court of Santa Fe
232 County. The parties agree that the district court for Santa Fe County shall have exclusive jurisdiction
233 over the parties and the subject matter of this Agreement and waive the right to challenge such
234 jurisdiction.

235 **SECTION 17. REMEDIES UPON DEFAULT.**

236 Upon the happening and continuance of any of the events of default as provided in the Loan
237 Agreement or in Section 15 of the Ordinance, the Lender may proceed against the Town to protect and
238 enforce its rights under the Ordinance by mandamus or other suit, action of special proceedings in equity
239 or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the

240 specific performance of any covenant or agreement contained in the Ordinance for the enforcement of any
241 proper legal or equitable remedy as such owner or owners may deem most effectual to protect and enforce
242 the rights provided above, or thereby to enjoin any act or thing which may be unlawful or in violation of
243 any right of the Lender, or to require the Town to act as if it were the trustee of an express trust, or any
244 combination of such remedies. Each right or privilege of the Lender is in addition and cumulative to any
245 other right or privilege under the Ordinance or the Loan Agreement and Note and the exercise of any right
246 or privilege by the Lender shall not be deemed a waiver of any other right or privilege thereof.

247 **SECTION 18. DUTIES UPON DEFAULT.**

248 Upon the happening of any of the events of default as provided in Section 15 of the Ordinance,
249 the Town, in addition, will do and perform all proper acts on behalf of and for the Lender to protect and
250 preserve the security created for the payment of the Note to ensure the payment of the principal of and
251 interest on the Note promptly as the same become due. All proceeds derived from the System, so long as
252 the Note is outstanding, shall be treated as revenues. If the Town fails or refuses to proceed as required
253 by this Section, the Lender, after demand in writing, may proceed to protect and enforce the rights of the
254 Lender as provided in the Ordinance and the Loan Agreement.

255 **SECTION 19. DEFEASANCE.**

256 When all obligations under the Note and Loan Agreement have been paid, the Loan Agreement
257 and Note shall no longer be deemed to be outstanding. When all obligations under the Loan Agreement
258 and Note have been paid, the pledge, lien, and all other obligations of the Town under the Ordinance shall
259 be discharged. The principal amount of the Note, or any part thereof, may be prepaid at any time without
260 penalty at the discretion of the Town and the prepayments of principal shall be applied as set forth in the
261 Loan Agreement.

262 **SECTION 20. AMENDMENT OF ORDINANCE.**

263 This Ordinance may be amended with the prior written consent of the Lender.

264

240 specific performance of any covenant or agreement contained in the Ordinance for the enforcement of any
241 proper legal or equitable remedy as such owner or owners may deem most effectual to protect and enforce
242 the rights provided above, or thereby to enjoin any act or thing which may be unlawful or in violation of
243 any right of the Lender, or to require the Town to act as if it were the trustee of an express trust, or any
244 combination of such remedies. Each right or privilege of the Lender is in addition and cumulative to any
245 other right or privilege under the Ordinance or the Loan Agreement and Note and the exercise of any right
246 or privilege by the Lender shall not be deemed a waiver of any other right or privilege thereof.

247 **SECTION 18. DUTIES UPON DEFAULT.**

248 Upon the happening of any of the events of default as provided in Section 15 of the Ordinance,
249 the Town, in addition, will do and perform all proper acts on behalf of and for the Lender to protect and
250 preserve the security created for the payment of the Note to ensure the payment of the principal of and
251 interest on the Note promptly as the same become due. All proceeds derived from the System, so long as
252 the Note is outstanding, shall be treated as revenues. If the Town fails or refuses to proceed as required
253 by this Section, the Lender, after demand in writing, may proceed to protect and enforce the rights of the
254 Lender as provided in the Ordinance and the Loan Agreement.

255 **SECTION 19. DEFEASANCE**

256 When all obligations under the Note and Loan Agreement have been paid, the Loan Agreement
257 and Note shall no longer be deemed to be outstanding. When all obligations under the Loan Agreement
258 and Note have been paid, the pledge, lien, and all other obligations of the Town under the Ordinance shall
259 be discharged. The principal amount of the Note, or any part thereof, may be prepaid at any time without
260 penalty at the discretion of the Town and the prepayments of principal shall be applied as set forth in the
261 Loan Agreement.

262 **SECTION 20. AMENDMENT OF ORDINANCE.**

263 This Ordinance may be amended with the prior written consent of the Lender.

264

265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296

SECTION 21. ORDINANCE IRREPEALABLE.

After the Loan Agreement and Note have been executed and delivered, the Ordinance shall be and remain irpealable until the Note has been fully paid, canceled and discharged, as provided in the Ordinance.

SECTION 22. SEVERABILITY CLAUSE.

If any section, paragraph, clause or provision of the Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance.

SECTION 23. REPEALER CLAUSE.


All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

SECTION 24. EMERGENCY CLAUSE AND EFFECTIVE DATE.

Because of the urgent need for the Project, an emergency is declared to exist and upon due adoption of this emergency Ordinance, the Ordinance shall be recorded in the book or ordinances of the Town kept for that purpose, authenticated by the signatures of the President of the Council and Town Clerk, and approved by the Mayor, and the Ordinance or the title and general summary of the subject matter contained in the Ordinance shall be published in a newspaper which maintains an office and is of general circulation in the Town and the Ordinance shall be in full force and effect upon such publication. The Notice shall constitute compliance with NMSA 1978, Section 6-14-6.

PASSED, APPROVED AMENDED AND ADOPTED THIS 6TH DAY OF August, 2008.

TOWN OF EDGEWOOD, NEW MEXICO

By 
Robert Stearley, Mayor

ATTEST:

By 
Estefanie Muller, Clerk-Treasurer