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**MINUTES OF A REGULAR MEETING
OF THE GOVERNING BODY OF THE TOWN OF BERNALILLO
HELD AT THE TOWN HALL
February 11, 2013**

The Governing Body of the Town of Bernalillo met in a regular session within the law and rules of the Town on February 11, 2013, at 6:30 P.M.

Upon Roll call the following members were found to be present:

PRESENT:

Mayor Torres
Councilor Prairie
Councilor Montoya
Councilor Sisneros
Councilor Jaramillo

ALSO PRESENT:

Julian Gonzales James Pike
Karen Lermuseaux Susan Rinaldi
Steve Amiot Margie Amiot

ABSENT:

Others Present Not Identified

APPROVAL OF AGENDA: 4a)

Mayor Torres requested that Item 7d) on New Business be moved to Item 7a) and the other item in New Business to follow in sequential order.

Councilor Sisneros moved to approve the agenda as amended. The motion was seconded by Councilor Montoya and the motion carried unanimously.

PUBLIC HEARING: 5a) Discussion, Consideration and Action on Adoption of Ordinance #271 Amendments to Ordinance #198 Water Conservation, Drought Management and Emergency Response Ordinance. Presenter: Maria Rinaldi

Maria Rinaldi Capital Improvement Director for the Town of Bernalillo and Alice Darilek from PCR Resources introduced the Water Conservation, Drought management and Emergency Response Ordinance. The history and need for revision are as follows:

- Bernalillo water rights permit #RG-2478, issued by the New Mexico Office of the State Engineer (OSE) in 2012, included an accompanying condition that requires Bernalillo to develop a municipal water conservation plan. One item required for the plan is a provision for reducing water use during periods of drought, typically accomplished through a municipal ordinance. The development of such an ordinance is seen as the first step in meeting the OSE requirements.
- Although Bernalillo Ordinance No. 198, adopted in 2005, addresses drought response as required by the OSE, it needs to be revised to adequately address the water shortage situations that might occur.

- 47 • The current ordinance contains two stages of response that address only severe situations,
48 when significant water use reductions must be obtained very quickly. It does not contain
49 an earlier moderate stage, which would be used primarily to educate the public about the
50 water shortage and encourage moderate water use reductions. A moderate stage helps
51 prepare the public for more severe conditions and is contained in most municipal drought
52 response ordinances.
53
- 54 • The trigger mechanisms for initiating the response stages are described in very general
55 terms, making it unclear when each stage would actually be implemented. The ordinance
56 also contains outdated information in some of the sections; and the fees assessed for
57 ordinance violations are considered too low to generate the desired response.
58

59 **Major Recommended Changes**

60 Three water shortage response stages replace the two states in the original ordinance:

- 61 1. Stage #1 to address a moderate drought situation;
- 62 2. Stage#2 to address a severe drought or a moderate water system problem; and
- 63 3. Stage#3 to address a major water system failure or to further respond to drought.
64

65
66 The trigger mechanisms for each stage are more specific and relate to the water levels that can be
67 maintained in the storage tanks for specified number of days. These triggers were developed in
68 consultation with the Town staff and engineering consultants.
69

70 The fees for violation have been increased and the number of violations reduced before water
71 service can be restricted or suspended.
72

73 The water waste and water conservation of the ordinance have been updated to be consistent with
74 new plumbing standards and with irrigation watering restriction in nearby communities.
75

76 **STATE OF NEW MEXICO**

77
78 **TOWN OF BERNALILLO**

79
80 **ORDINANCE NO. 198**

81 **WATER CONSERVATION, DROUGHT MANAGEMENT**
82 **AND EMERGENCY RESPONSE ORDINANCE**
83

84
85 **WHEREAS**, water is a valuable resource that should be used as wisely and efficiently as possible;
86 and **WHEREAS**, The Town Council recognizes the need to minimize the effects of a water shortage
87 to the users of the water system; and

88 **WHEREAS**, The Town Council has determined that drinkable water is necessary for the public

89 health, safety, and welfare of the users: and
90 **WHEREAS**, The Town Council believes in supporting the STATE of NEW MEXICO'S State Water
91 Plan Common Priorities, Goals and Objectives; and,
92 **WHEREAS**, the Legislature of the State of New Mexico, through Senate Bill 554 (passed during the
93 2003 legislative session), has mandated that municipalities have "Water Conservation and Drought
94 Management Plans" in order to be eligible for financial assistance through the New Mexico Finance
95 Authority Act.

96
97 **NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN**
98 **OF BERNALILLO, COUNTY OF SANDOVAL, STATE OF NEW MEXICO:**

99
100 **ARTICLE ONE**

101
102 **PROHIBITION OF WATER WASTE**

103
104 **Declaration of Prohibition on Water Waste**
105 No customer shall waste any water supplied through the Town of Bernalillo water utility distribution
106 system.

107
108 **A. Water Waste Restriction**

109
110 The following constitute or contribute to "water waste" as used in this Ordinance and are restricted
111 as described:

- 112
113 1. Using treated water for any purpose or in such a way that it flows, sprays, or is
114 otherwise discharged upon any street, alley, or other public right-of-way, ditch or drain; or
115 the watering of grass, lawns, groundcover, shrubbery, trees, and open ground, in a manner or
116 to an extent which allows water to run off the area being watered or onto an adjacent
117 property.
- 118 2. The use of a free-flowing hose to wash any vehicle. Vehicles may be washed only from
119 a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick
120 rinses.
- 121 3. The washing of sidewalks, walkways, driveways, parking lots, and all other hard-
122 surfaced areas by direct hosing, except where public health is at risk.
- 123 4. Failing to repair or correct breaks or leaks within the customer's plumbing or
124 distribution system, within a maximum of five (5) working days from the time which the
125 break or leak is discovered. If more than five working days are required to repair or correct a
126 leak, every effort must be made to minimize water loss through closing the water supply to
127 the leaking area or using other temporary measures.

128
129 **B. Water Waste Restriction Exceptions**

130

131 The Water Waste Restrictions described in Section A do not apply to the following:

132

- 133 1. Flow resulting from firefighting or routine inspection of fire hydrants or from fire training
- 134 activities.
- 135 2. Water applied to abate spills of flammable or otherwise hazardous materials, where water
- 136 is the appropriate mitigating action.
- 137 3. Water applied to prevent or abate health, safety, or accident hazards when alternate
- 138 methods are not available.
- 139 4. Flow resulting from routine inspection, operation, or maintenance of the municipal water
- 140 supply system.
- 141 5. Flow resulting from routine inspection or maintenance of irrigation systems.
- 142 6. Water used for construction or maintenance activities where the application of water is the
- 143 appropriate methodology and where no other practical alternative exists.

144

145 **Voluntary Year-Round Practices**

146

147 All water users are encouraged to exercise voluntary water conservation practices at all times during

148 the year regardless of the water shortages or emergency conditions. Year-round conservation

149 practices include, but are not limited to, the following:

150

- 151 1. Inspect and repair all faulty and defective parts of plumbing fixtures, water-using
- 152 appliances and irrigation equipment.
- 153 2. Limit showers to 5 minutes or less.
- 154 3. Shut faucets off while shaving, brushing teeth, or rinsing dishes.
- 155 4. Operate clothes washers and dishwashers only when fully loaded.
- 156 5. Limit lawn and landscape watering to what is necessary to maintain plant health.
- 157 6. Reuse household graywater to water ornamental plants, whenever possible, as applicable
- 158 to State Law.
- 159 7. Utilize or convert high water-use landscapes to water-efficient landscapes.
- 160 8. Use irrigation ditches or acequias to water landscaping, wherever legally possible.
- 161 9. Use rain barrels or cisterns to capture rainwater from residential rooftops and reuse it to
- 162 irrigate plants.
- 163 10. Repair indoor and outdoor water leaks promptly.
- 164 11. Collect and reuse cold water when running a faucet to get hot water.
- 165 12. Use weather-based, automatic irrigation controllers, as well as rain, wind and soil
- 166 moisture sensors, to make landscape watering more efficient.
- 167 13. Replace high-water-using plumbing fixtures, appliances and irrigation equipment with
- 168 more efficient models.

169

170

171 **ARTICLE TWO**

172

173 **INDOOR CONSERVATION REQUIREMENTS FOR NEW OR REMODEL**
174 **CONSTRUCTION**

175
176 **A. Water Conservation Plumbing Fixtures**
177 All new and remodeling construction shall meet the requirements of the U.S. Environmental
178 Protection Agency's Water Sense standards for plumbing fixtures and irrigation controllers.
179

180 **B. Irrigation for Medians and Slopes**
181 No spray irrigation shall be allowed on medians or other narrow landscaped areas of eight
182 feet or less in dimension, or on sloped areas with 20 percent or more grade, to avoid
183 overspray or runoff.
184

185
186 **ARTICLE THREE**

187
188 **COMMERCIAL CONSERVATION REQUIREMENTS**

189
190 A. Eating establishments shall provide water only upon request.
191 B. Hotels and motels will not change linens on a daily basis for multiple-night stays, unless
192 specifically requested by guests.
193

194
195 **ARTICLE FOUR**

196
197 **IRRIGATION AND OTHER OUTDOOR USES**

198
199 The following measures shall be applied in the use of Town water for irrigation purposes, unless
200 otherwise specified:
201

202 A. The watering of grass, lawns, groundcover, shrubbery, trees, and all types of vegetative
203 matter shall occur only between 7:00 p.m. and 11:00 a.m. No watering is allowed if
204 winds are greater than 15 miles per hour. Sprinklers shall be shut off when it is raining.
205 This restriction remains in effect from April 1 to October 31 of each year.
206

207 **ARTICLE FIVE**

208
209 **GENERAL ENFORCEMENT**

210
211 The Town Administrator, or designee, will enforce and assure Ordinance compliance in the
212 following manner:
213

214 **A. Education**

215 The Town Administrator, Water Superintendent, and other town department officials will inform the
216 public of the water conservation measures within the Water Waste Section of the Ordinance. Public
217 information/education will be conducted for a reasonable time, with various methods, to allow the
218 public to become informed of said conservation measures.
219

220 **B. Violations/Penalties**

221 The following procedure and applicable penalty will be used in addressing violations of the
222 supporting Ordinance upon observation or reasonable suspicion of said violation. Notices of
223 violations will be issued by Utility Department employees or code enforcement officials. All
224 penalties will be assessed through the Utility Billing Department. Fine monies shall be placed in a
225 Capital Improvement Fund designated by the Finance Director.
226

227 **C. Continuing and Separate Violation**

228 With respect to violations occurring under normal conditions that are that are continuous in time,
229 each 24-hour period that the violation continues is a separate offense.
230

231 **First Violation:** Issuance of Notice of Violation
232 **Second Violation:** \$75.00
233 **Third Violation:** \$100.00
234 **Fourth Violation:** \$150.00
235 **Fifth Violation:** Water service may be restricted or suspended.
236

237
238 **ARTICLE SIX**
239

240 **DROUGHT AND EMERGENCY CONDITION MEASURES**
241

242 The Mayor, upon consultation with the Town Council and the Water Superintendent, shall determine
243 when each stage of the drought and emergency condition measures is to be implemented based on
244 | operational requirements and projected or actual water supply limitations.
245 Implementation of stages may or may not be sequential; and the Mayor, upon consultation with the
246 Town Council and the Water Superintendent, will determine the duration. The Mayor, or designee,
247 shall make public announcements through the local news media defining the stages and the actions
248 required under each stage.
249

250 Water use restrictions under each stage may be temporary or long-term, based upon the nature of the
251 situation, and shall include, when and as necessary, municipal action as authorized by law, to take
252 control of the water supply system for the purpose of protecting it during actual or projected drought
253 | conditions, or other emergency water shortage situations.
254

255 These restrictions shall apply to all residents, businesses, institutions, and industrial facilities using
256 Town-provided water and shall also apply to all properties within the Town boundaries, owned by

257 the Town, County, or State. Residential and commercial water users will be provided water to the
258 extent that the Town of Bernalillo is capable of providing treated water.

259 |
260 Further restrictions may be enforced depending upon the supply and availability of water. To avoid
261 conflicting with publicly scheduled water usage and to minimize impacts to reserves, an alternate
262 schedule for Town parks may be authorized by the Mayor.

263 |
264 The following stages of water conservation measures will be implemented when conditions are
265 warranted.

266 |
267 **A. STAGE 1 MODERATE CONDITIONS**

268
269 Stage I will be declared if deemed necessary in response to moderate drought conditions in the
270 region. This stage will be implemented if the water levels in the Town's storage tanks cannot be
271 maintained at 70 percent or more of the tanks' capacity for seven consecutive days.

- 272
273 1) Landscapes can only be watered on designated days during designated times.
274 Town Area A, Even Numbered Addresses:
275 May water only on even numbered days between 7:00 PM and 11:00 AM
276 Town Area B, Odd Numbered Addresses:
277 May water on odd numbered days only between 7:00 PM and 11:00 AM

278
279 | This restriction shall not apply to a person, firm, or corporation engaging in the
280 business of growing or selling plants.

- 281
282 2) Use of water from fire hydrants shall be limited to firefighting, fire-related activities or other
283 activities necessary to maintain the health, safety, and welfare of the citizens served by the
284 municipal water system. Metered use of hydrants may be allowed at the discretion of the
285 Water Superintendent. The Fire Chief shall restrict floor washing at fire stations to only when
286 absolutely necessary.

- 287
288 3) No new building permits shall be issued.

- 289
290 | 4) No vehicle washing shall occur except at commercial car washes with recycling systems.

291 |
292
293 **B. STAGE 2 SEVERE CONDITIONS**

294
295 Stage 2 will be declared if deemed necessary to respond to severe drought conditions in the region,
296 or if a problem occurs in the water supply system that restricts water production, transmission and/or
297 pressure. This stage will be implemented if the water levels in the Town's storage tanks cannot be
298 maintained at 50 percent or more of the tanks' capacity for seven consecutive days, or if the water

299 system cannot otherwise maintain its normal supply, transmission, storage or delivery capacity.

300
301 1) Landscape irrigation is limited to one day a week.

302
303 This restriction shall not apply to a person, firm or corporation engaging in the business
304 of growing or selling plants.

305
306 2) Use of water from fire hydrants shall be limited to firefighting, fire-related activities or
307 other activities necessary to maintain the health, safety, and welfare of the citizens
308 served by the municipal water system. Metered use of hydrants may be allowed at the
309 discretion of the Water Superintendent. The Fire Chief shall restrict floor washing at fire
310 stations to only when absolutely necessary.

311
312 3) No new building permits shall be issued.

313
314 4) No vehicle washing shall occur except at commercial car washes with recycling systems.

315
316 5) Outdoor pools, fountains and other water features shall not be refilled.

317
318 6) Identified sources of non-potable water can be used for applications deemed appropriate by
319 the Town Administrator.

320
321
322 **C. STAGE 3 EMERGENCY CONDITIONS**

323
324 Stage 3 will be declared in the event of a major deficiency in the water supply system, such as the
325 failure of a well or a break in a major water line, or in further response to severe drought conditions
326 in the region. This stage will be implemented when a steep decline occurs in water supply
327 availability, storage capacity or water pressure that severely threatens the ability of the water supply
328 system to deliver water.

329
330 1) No outside watering using Town treated water or Town irrigation water is allowed.

331
332 This restriction shall apply to persons, firms or corporations engaging in the business of
333 growing or selling plants.

334
335 2) All large commercial water users such as car washes and Laundromats will shut down.

336
337 3) Use of water from fire hydrants shall be limited to fire fighting, fire-related activities, or
338 other activities necessary to maintain the health, safety, and welfare of the citizens served by
339 the municipal water system. Metered use of hydrants shall be allowed at the discretion of the
340 Water Superintendent.

- 341
342 4) No new building permits shall be issued.
343
344 5) Outdoor pools, fountains and other water features shall not be refilled.
345
346 6) Identified sources of non-potable water can be used for applications deemed appropriate by
347 the Town Administrator.
348
349 7) Exceptions to any of the above may be granted through action of the Town Council.
350

351
352 **ARTICLE SEVEN**

353
354 **DROUGHT AND EMERGENCY CONDITION ENFORCEMENT**

355
356 All violations of the Ordinance under the Drought and Emergency Condition Measures Section shall
357 come under the jurisdiction of the Utility Department. All penalties will be assessed through the
358 Utility Billing Department. Fine monies will be placed in a designated Capital Improvement Fund.
359 The Town Administrator shall determine terminations and reestablishments of service with advice
360 from the Police Department, Finance Director and the Water Superintendent. Any person, business,
361 institution, or industrial plant found in violation of the supporting Ordinance shall be penalized as
362 follows:
363

364
365 **A. STAGE 1**

- 366 **First Violation:** Issuance of Notice of Violation
367 **Second Violation:** \$150.00
368 **Third Violation:** \$200.00
369 **Fourth Violation:** Water service may be restricted or suspended.
370

371 **B. STAGE 2**

- 372 **First Violation:** Issuance of Notice of Violation
373 **Second Violation:** \$200.00
374 **Third Violation:** Water service may be restricted or suspended.
375

376 **C. STAGE 3**

- 377 **First Violation:** Issuance of Notice of Violation
378 **Second Violation:** Water service may be restricted or suspended.
379

380
381 **ARTICLE EIGHT**
382

383 **DEFINITIONS**

384 For the purpose of this article, the following definitions shall apply unless the context clearly
385 | indicates or requires a different meaning.

386
387 **Effluent Water** means water that has been treated by the Waste Water Treatment Plant.

388 **Hand Watering** means the application of water for irrigation purposes through a handheld hose,
389 including hoses moved into position by hand and left to flow freely or through a shut-off nozzle.

390 **Distribution System** means the Town's Water System.

391 **Unaccounted Water** means the difference between the water produced at the source, such as wells,
392 and the water sold for the same period of time.

393 **Water-efficient landscape** consists of water-efficient plants that are suitable to the climate and soil
394 in which they will grow. Water-efficient design incorporates zones. Plants in each zone require less
395 water the further away the zone is from a dwelling. Water-efficient design is **NOT** a collection of
396 rocks with one or two desert plants.

397 **Landscape Area** means the entire parcel less the building footprint, driveways, and other
398 impervious areas.

399 **Runoff** means water that is not absorbed by the soil or landscape to which it is applied. Runoff
400 occurs when water is applied too quickly (application rate exceeds infiltration rate), particularly if
401 there is a severe slope. This definition does not apply to storm water runoff created by natural
402 precipitation rather than human-caused or applied water use.

403 **Shut-Off Nozzle** means a device attached to the end of a hose that can completely shut off water
404 flow, even if left unattended.

405 **Water Waste** means the non-beneficial use of water. Non-beneficial uses include but are not limited
406 to:

- 407 (1) Landscape water applied in such a manner, rate, and/or quantity that it overflows the
408 landscaped area being watered and runs onto adjacent property or public right-of-way;
- 409 (2) Landscape water leaving a sprinkler, sprinkler system, or other application device in
410 such a manner or direction as to spray onto or seep into adjacent property or public right-
411 of-way;
- 412 (3) Washing of vehicles, equipment or hard surfaces such as parking lots, aprons, pads,
413 driveways, or other surfaced areas when water is applied in sufficient quantity to flow
414 from that surface onto adjacent property or the public right-of-way;
- 415 (4) Water applied in sufficient quantity to cause ponding on impervious surfaces.

416 |
417
418 **ARTICLE NINE**

419
420 **A. SEVERABILITY**

421
422 If any section, paragraph, clause or provision of this ordinance shall, for any reason, be held to be
423 invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or
424 provision shall not affect any of the remaining provisions of this ordinance.

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B. EFFECTIVE DATE

This ordinance shall go into effect 30 days after adoption.

Mayor Torres opened the floor for questions from the Governing Body.

Councilor Prairie asked are the violation in accordance with other communities.

Maria Rinaldi stated that the fees are slightly higher that other communities.

Mayor Torres asked where do we fit with in the Metro Area with the fees.

Maria Rinaldi stated that we are in line with Rio Rancho and slightly less than Bernalillo Water Authority. What we had before was not a deterrent.

Mayor Torres asked what our fees were.

Maria Rinaldi stated the fees are slightly higher the second violation is \$75 used to be \$25 and the fourth is \$150. Maria Rinaldi stated that there will also be an education campaign to our highest water users.

Mayor Torres stated that there is an education component that is important. We must meet with staff so that we do not violate the ordinance. Large water users must be provided with the ordinance and its restrictions.

Councilor Montoya stated who does pay for the information to be given to the high water users like the hotels.

Maria Rinaldi stated there is not money in the budget to provide information to their guest. We do have the table tent card for the restaurants to place for their customer with information about conserving water. Alice Darilek state that most of the hotel chains have that information and provide them to their customers in not changing their linen to conserve water.

Mayor Torres stated that is section 4 show violation in continues in time on page 4 2nd fine \$75 to 4th \$150 and in Section 7 are more severe.

Maria Rinaldi stated that the difference is in Section 7 is for drought conditions.

Mayor Torres stated in reading the Ordinance how would someone know.

Maria Rinaldi stated that in Section 4 some editing can be made to include the words “normal

467 conditions”.

468

469 Mayor Torres also asked on page 5 and 6 defining moderate and severe conditions and it refers to
470 70% or more of the tanks’ capacity for seven consecutive days where did those percentages come
471 from

472

473 Maria Rinaldi stated that other ordinances were reviewed and met with the water engineer and
474 they concur that would be a sufficient percentage.

475

476 Councilor Prairie does this take in consideration failure to the wells.

477

478 Maria Rinaldi stated yes.

479

480 Councilor Jaramillo asked so this is not only for statewide it could be used for our community.

481

482 Maria Rinaldi stated that is correct.

483

484 Mayor Torres stated that in Stage 3 there are no fines.

485

486 Maria Rinaldi stated that is correct water services will be restricted or suspended Stage 3 is the
487 most severe Stage.

488

489 Mayor Torres asked the public if anyone wished to speak for or against Ordinance #271.

490

491 Mayor Torres swore in James Pike.

492

493 James Pike board member for the Water and Soil Conservation stated that they are beginning to
494 work with Placitas and Algodones to harvest water and to be used for irrigation. There are many
495 residents interest in Placitas concerning water conservation. There will be a meeting at the
496 Placitas Library with the Water Alliance and the Forest Service.

497

498 Maria Rinaldi wanted to thank Alice Darilek for her work on the ordinance and stated she was a
499 pleasure to work with.

500

501 Mayor Torres entertained a motion

502

503 Councilor Jaramillo made a motion to adopt Ordinance #271 Amendments to Ordinance #198
504 Water Conservation, Drought Management and Emergency Response Ordinance. The motion
505 was seconded by Councilor Montoya.

506

507 Roll Call Vote

508

Councilor Montoya Yea

509 Councilor Sisneros Yea
510 Councilor Jaramillo Yea
511 Councilor Prairie Yea

512
513
514

APPROVAL OF MINUTES: 6a) Regular Meeting of January 28, 2013

516 Councilor Jaramillo moved to approve the minutes as presented. The motion was seconded by
517 Councilor Montoya and the motion carried unanimously.

518
519

**NEW BUSINESS 7a) Discussion, Consideration and Action on Adoption of By Laws
for the Town of Bernalillo Martha Liebert Public Library. Presenter: Maria Rinaldi and
Michael Stern, Board, Member**

523 Maria Rinaldi introduced Michael Stern board member for the library. The following are the
524 changes made to the bylaws.

525

- 526 1. The board has had a revolving door there are 4 current active members on the board. The
527 Youth board member moved out of town and just recently Rhonda Gallegos resigned. If
528 we have a member that does not participate we do not have a way to bring someone from
529 the community to be an active board member.
- 530 2. The previous bylaws stated that the board was a standalone board and could obtain
531 property. The current board felt that was not the purpose of the board. The members are
532 appointed by the Mayor and Council and wanted the bylaws to state as such.
- 533 3. The new bylaws clearly state that with the consent of the Mayor and Council shall adopt
534 rules and policies.

535 Michael Stern further stated that the bylaws are now 4 pages and simple. The 4 board members
536 currently work well together. These new bylaws would allow us to replace members and submit
537 those names for your approval.

538
539

TOWN OF BERNALILLO MARTHA LIEBERT PUBLIC LIBRARY

540

BY-LAWS

541

ARTICLE I

545 This organization shall be called the Town of Bernalillo Martha Liebert Public Library Board
546 (“BPL”), and shall operate under the sponsorship and supervision of the Town of Bernalillo,
547 New Mexico, through its Mayor and City Council. BPL shall, not affiliate itself with or advocate
548 any political or religious cause. The organization shall operate as a public library board, not a
549 private organization or other entity.

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ARTICLE II

The object of BPL shall be to undertake and promote such actions and decisions which shall assist in the maintenance and operation of a public library for the Town of Bernalillo and those areas within the vicinity not otherwise served by a public library facility; to promote on behalf of the Town of Bernalillo and the public library the acquisition and ownership by purchase, lease, gift, endowment, rental or other lawful means, all necessary lands, buildings, facilities, and equipment for the sole purpose of creating, establishing, constructing, maintaining, equipping and operating a public library; to provide library and library associated services for children and adults of the community it serves; and to undertake such other programs as shall promote the purposes set forth herein.

Included in the purposes, objects and powers of this organization shall be the promotion of the purchase, acquisition by donation or otherwise in any lawful manner of books, manuscripts, periodicals, publications and library equipment, as well as bookmobiles for the library.

The services undertaken by BPL shall be free or at minimal cost to the community. Nothing herein shall prohibit BPL from assessing such fees or charges for special events or to seek enforcement of its rules related to its services provided such fees or charges are uniformly applied, reasonably administered and the receipts therefrom inure to the benefit of the Town of Bernalillo. The amount of such fees and charges shall be adopted by the Library Board as selected herein and be subject to review by the City Council.

ARTICLE III

The Library Board of Directors (Board) currently consists of seven (7) members who are collectively, as a board, responsible for advising and advocating for and on behalf of the Library. Any person who is a legal resident of the Town of Bernalillo or is a legal resident of Sandoval County not served by another public library is eligible to serve on the Board. A legal resident is defined as a person who has resided within the State of New Mexico for one year and Sandoval County for ninety (90) days. Members shall not receive financial remuneration for performance of their duties as Board members, but may receive reasonable reimbursement for expenses incurred which are approved by the Mayor and the City Council. A majority of the active members of the Board shall constitute a quorum to conduct business. Meetings shall be called at such times as the Chairperson of the Board, or his or her designee shall direct, and public notice shall be given consistent with New Mexico law and the dictates of the Mayor and City Council. It is contemplated that meetings shall occur monthly but shall be subject to the requirements as set forth above. The committees established by the Board, created as set forth in Article IV, may meet informally as the Chairperson or the committee shall determine appropriate, and present to the Board for consideration such recommendations and work product as is deemed appropriate..

592 The Board shall be appointed by the Mayor with the approval of a majority of the City Council.
593 Board members shall serve terms of two years. An “active member” of the Board shall mean a
594 Board Member not otherwise suspended as otherwise set forth herein While the Board currently
595 consists of seven (7) Members, said number shall be subject to increase or decrease by the Mayor
596 with the approval of the City Council. The Mayor, with the approval of the City Council, may,
597 within his or her appointment process authority, establish criteria for Board membership of
598 individual Board members designed to insure that the Board has a broad diversity of experience
599 and points of view representing the community. The purpose of the criteria for Members shall
600 not be for purposes of discriminating against any group or class but to insure that a broad range
601 of experience and values is available to the Board.
602

603 The Mayor, with the approval of the City Council, shall have the right to dismiss or replace a
604 Member of the Board for such reasons as the Mayor shall deem appropriate. If a Member is
605 removed then such Member’s replacement shall be appointed for the unexpired term of the
606 original Member replaced.
607

608 ARTICLE IV

609
610 The Board shall elect its officers by a majority vote of the active members constituting a quorum.
611 The Board officers shall consist of a Chairperson, Vice-Chairperson, Secretary and two or more
612 executive members. In addition, the Librarian shall be a voting Member of the Board.
613

614 The Chairperson shall preside at meetings and with suggestions and guidance of the Board
615 appoint the Board committees and Members assigned thereto. The Vice-Chairperson shall
616 preside in the absence of the Chairperson and succeed to that office in the event a vacancy
617 occurs. The Secretary shall keep minutes of meetings and prepare the official Board
618 correspondence. In the event neither the Chairperson nor Vice-Chairperson are present to preside
619 over the meeting the Secretary shall preside over the meeting in their stead.
620

621 The committees created shall be for such purposes as the Board shall determine. Each committee
622 shall have at least one Board member and may also include members of the community who
623 volunteer to provide services, without remuneration, to the Library Board (“Community
624 Member”). Selection of such Community Members shall be made by the Chairperson with the
625 consent of a majority of the voting Board Members, excluding the Chairperson. Once assigned
626 the Community Member shall serve for such periods as the Chairperson, with the approval of the
627 majority of the Board, shall direct. Such Community Member may be removed by the
628 Chairperson with the approval of a majority of the remaining Board Members, and shall further
629 cease to serve at such time as the Committee has been dissolved or its purpose accomplished.
630

631 Any officer of the Board may be removed for cause as otherwise defined herein by a vote of two
632 –thirds (2/3rds) of the Library Board, excluding the vote of the officer sought to be removed. No
633 removal shall occur except at a duly called meeting and not until the officer sought to be

634 removed has been provided reasonable opportunity to be present at such vote and had an
635 opportunity to be heard at the meeting.

636

637

ARTICLE V

638

639 A Board Member duly appointed under Article III, shall be considered an Active Member unless
640 otherwise determined to be in a suspended status. Only active members shall be entitled to vote
641 on all matters before the Board, hold an office position on the Board and actively participate in
642 Board Meetings. An Active Member shall automatically become a Suspended Member upon the
643 occurrence of any of the following conditions:

644

645 1) The failure to attend either (a) one-half of the regularly scheduled Board meetings in any six
646 month period, (b) engage in periodic absences which the remainder of the Board believes is
647 disruptive to the overall operation of the Board business. Absences which are due to significant
648 health related reasons shall not be counted in determining whether a member shall be placed on
649 suspended status.

650 2) The commission of any criminal or immoral act which would materially damage the
651 reputation of the BPL or significantly damage its ability to conduct its business.

652 3) The failure to maintain legal resident status for purposes of Board membership as defined in
653 Article III for more than thirty (30) consecutive days.

654

655 In addition a majority of the Board, after providing the affected Member an opportunity to be
656 present and heard, may place a Member on suspended status for good cause. Good cause shall
657 include, but not be limited to, actions or failure to act by the Member which the Board believes
658 has a disruptive or damaging effect upon the Board business.

659

660 Once a member is placed on suspended status, unless a majority of the Board requests otherwise,
661 the Chairperson shall notify the Mayor of the suspended status of a Member and the
662 recommendation of the Board as to what action the Board requests be taken regarding that
663 Member's Board membership.

664

665 A Suspended Member shall not be permitted to participate in any of the meetings of the Board,
666 other than as a general member of the community. A Suspended Member may apply to the
667 Board for a change in status. The Board may act upon such request as the Board shall deem
668 appropriate which such action may include deferring such determination to the Mayor and City
669 Council.

670

671 A member shall be removed at any time from the Board at the Member's request. A Member
672 may be removed from the Board at the direction of the Mayor with the approval of the Council,
673 with or without the recommendation by the Board.

674

675 The Mayor of Bernalillo, with the consent and approval of the Town Council, shall fill vacancies
676 on the Library Board. All vacancies shall be filled for the remaining term of the removed
677 Member.

678
679 ARTICLE VI
680

681 Meetings shall be called at the discretion of the Chairperson. Absent good cause, meetings shall
682 be held not less often than monthly at such times as shall be convenient to a majority of the
683 members. Nothing herein shall prohibit meetings being held more frequently. At the Board
684 meeting in January the Board shall elect its officers, review Board members' terms and prepare
685 an annual report to present to the Mayor and Council. Members may be re-elected to their officer
686 positions. Meetings shall be conducted in accordance with Robert's Rules of Order. Meetings
687 shall be open to the public but only Board Members shall be allowed to discuss business at such
688 meetings except during that portion of the meeting which is specifically designated for public
689 comments. The Chair shall have the authority to remove any person disrupting the meeting.

690
691 ARTICLE VII
692

693 The Board shall approve and/or adopt rules and policies, all subject to the approval of the Mayor
694 and the City Council, and make the same public upon their request. .The Board shall pursue such
695 Library business as shall further the efforts of the Library, such matters which it decides to
696 pursue following the request of the Mayor or the City Council, or which it is required to pursue
697 by law. The Board shall at all times comply with the legal requirements imposed upon a Library
698 Board by statute or applicable ordinance. The Board shall seek to be of service to the community
699 and to deal with the general needs of the Library. The Board shall cooperate with the Mayor,
700 City Council, the Library employees and members of the community but may determine, in its
701 discretion, to delay, defer, or deny any requests not required to be undertaken by law.

702
703 ARTICLE VII
704

705 These By-Laws may be added to or amended by a majority of the Board Members. All business
706 of the Board shall be conducted at a public meeting. These by-laws replace and supersede all
707 previously adopted by-laws.

708
709 Mayor Torres entertained a motion.

710
711 Councilor Prairie moved to adopt the By Laws for the Town of Bernalillo Martha Liebert Public
712 Library. The motion was seconded by Councilor Sisneros and the motion carried unanimously.

713
714
715 **NEW BUSINESS: 7b) Discussion, Consideration and Action on Adoption of**
716 **Resolution 02/11/13 Resolution Regarding Disposal of Public Property and its Sales.**

717 **Presenter: Ida Fierro**

718

719

Town of Bernalillo

720

721

722

Resolution No. 02-11-13

723

724

725

A Resolution Regarding Disposal of Public Property and Authorizing
its Sale

726

727

728

WHEREAS, Section 13-6-1 through 13-6-2 NMSA, 1978 provides that
local government may dispose of obsolete, worn-out or
unusable tangible public property by means of a
negotiated sale or donation to other local public bodies,
and

729

730

731

732

733

734

WHEREAS, The Town of Bernalillo Police Department no longer
needs the 2009 BMW Motorcycle R1200RT Vehicle
Identification Number WB103880X9ZT15789. The
Police Department is disbanding the Traffic Unit
therefore it is no longer needed for essential governmental
purposes,

735

736

737

738

739

740

741

WHEREAS, The City of Rio Rancho has expressed interest in
purchasing the BMW Motorcycle.

742

743

744

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING
BODY OF TOWN OF BERNALILLO:**

745

746

747

Section 1. That authorization is hereby given for the disposal of surplus
public property 2009 BMW Motorcycle R 1200 RT Vehicle Identification
Number WB103880X9ZT15789 located at Police Department.

748

749

750

751

Section 2. That the Governing Body approves the sale of the 2009
BMW Motorcycle R1200RT Vehicle Identification Number
WB103880X9ZT15789 to the City of Rio Rancho as provided by Sections
13-6-1 through 13-6-2, NMSA, 1978

752

753

754

754

755
756 **PASSED, APPROVED and ADOPTED** by the governing body at its meeting of
757 February 11, 2012.
758
759 Mayor Torres entertained a motion.
760
761 Councilor Montoya moved to adopt Resolution 02/11/13 Resolution Regarding Disposal of
762 Public Property and Authorizing it's Sales. The motion was seconded by Councilor Jaramillo and
763 the motion carried unanimously.

764
765 **NEW BUSINESS: 7c) Discussion, Consideration and Action on Adoption of**
766 **Resolution 02/11/13A Resolution Authorizing the Application for Community Block Grant**
767 **(CDBG) Funds for Application Year 2013. Presenter: Maria Rinaldi**

768
769 **RESOLUTION 2-11-2013A**

770 **A RESOLUTION AUTHORIZING THE APPLICATION FOR COMMUNITY**
771 **DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR APPLICATION YEAR 2013**

772
773 **WHEREAS**, The Town of Bernalillo wishes to participate in the Small Cities Non-Entitlement
774 Community Development Block Grant Program (CDBG) in order to improve the infrastructure
775 of Bernalillo and the municipal water services to our residents, and

776
777 **WHEREAS**, The Town of Bernalillo has solicited public input on community needs at a public
778 hearing held on December 26, 2012, and

779
780 **WHEREAS**, The Town of Bernalillo determines that there is significant need to undertake the
781 Rehabilitation of Municipal Drinking Water Well #2, and

782
783 **WHEREAS**, The Town of Bernalillo has determined that the Rehabilitation of Municipal
784 Drinking Water Well #2 meets the requirements of the Community Development Block Grant
785 Program (CDBG).

786
787
788 **NOW, THEREFORE BE IT RESOLVED** that the Governing Body of the Town of Bernalillo
789 does hereby authorize Mayor Jack Torres to sign and submit a Community Development Block
790 Grant (CDBG) application on behalf of the Town of Bernalillo under the category of Community
791 Infrastructure for the Rehabilitation of Municipal Drinking Water Well #2 in the amount of
792 \$500,000.00.

793
794 **Passed, Approved and Adopted this 11th day of February, 2013**

795
796 Mayor Torres entertained a motion.

797
798 Councilor Jaramillo moved to adopt Resolution 02/11/13A Resolution Authorizing The
799 Application for Community Development Block Grant (CDBG) Fund for Application Year 2013.
800 The motion was seconded by Councilor Sisneros and the motion carried unanimously.

801
802 **NEW BUSINESS: 7d) Discussion, Consideration and Action on Approval of License**
803 **Agreement Between the Town of Bernalillo and Zayo Group, LLC. Presenter: Maria**
804 **Rinaldi**

805
806 Maria Rinaldi introduced the Dylan DeVito the AGC & Sr. Director for Network Development
807 of the Zayo Group stated the project is to use the utility easement to lay fiber optic cable to
808 provide broadband to large business in the area.

809
810 **LICENSE AGREEMENT**

811
812 THIS AGREEMENT is made by and between the Town of Bernalillo (the “City”), a municipal
813 corporation and political subdivision of the State of New Mexico, and Zayo Group, LLC (the
814 “Company”), a Delaware limited liability company duly authorized to conduct business in New
815 Mexico, as of the day and year indicated below.

816
817 In consideration of the parties’ respective covenants set forth herein, the parties agree as follows:

818 **1. Grant of License.** The City hereby grants to the Company, its successors and assigns a non-
819 exclusive license (the “License”) to locate, construct, erect, operate, repair, replace and maintain, in,
820 along, across, and under the streets, alleys, and other public rights-of-way now in use or dedicated,
821 and all extensions thereof, and additions thereto, in the City, high-speed telecommunications cables,
822 underground conduits and related telecommunications facilities necessary or proper for the
823 maintenance and operation of the Company's telecommunications business in the City (collectively, the
824 Company’s “Facilities”). Wherever practicable, the Company shall install its Facilities within the
825 public utilities easement adjoining any such street, alley, or other public right-of-way.

826 **2. The Company’s Obligations.** In consideration of the City’s grant of the License, the Company
827 shall, at its sole cost and expense, comply with the following obligations and conditions:

- 828 **a.** install, operate, maintain, repair, replace and remove its Facilities in a good and workmanlike
829 manner, in compliance with all applicable laws, codes, regulations, rules and ordinances;
830 reasonably restore all surfaces, structures and improvements disturbed by such work promptly
831 upon completion of the work; and relocate its facilities when reasonably required by the City for
832 the construction, completion, repair, relocation, or maintenance of City facilities;
- 833 **b.** warrant, maintain and repair any such surface restoration performed by the Company for a
834 period of one (1) year following completion of such restoration work;
- 835 **c.** place all above-ground Facilities (if any) in such manner that they do not interfere with
836 ordinary pedestrian and/or vehicular traffic or the flow of water in any gutter or drain, provided
837 that, Company shall not place above-ground Facilities along Camino Don Tomas between US-
838 550 and Calle San Lorenzo;
- 839 **d.** obtain all required permits and pay all usual and customary fees therefor in connection with
840 the installation, operation, maintenance, repair, replacement or removal of its Facilities;
- 841 **e.** not interfere with the placement, operation, maintenance, repair, replacement or removal of
842 any public utilities and shall coordinate with all public utilities, including the City's water and
843 wastewater operations, in the installation, operation, maintenance, repair, replacement or removal
844 of the Company Facilities;
- 845 **f.** participate in the New Mexico One Call line locator program with respect to all buried
846 telecommunications Facilities;
- 847 **g.** pay the City an amount equal to three and fifteen one-hundredths percent (3.15%) of the
848 Company's retail gross revenues, exclusive of all excise, sales or gross receipts taxes, received
849 by the Company for the use of its telecommunications Facilities within the City, in quarterly
850 installments, within forty-five (45) days following the end of each calendar quarter during the term
851 of this Agreement;
- 852 **h.** permit the City, upon ten (10) days' prior written notice, during customary business hours, at
853 the Company's principal office in New Mexico, to inspect or audit the Company's books and
854 record, to the extent necessary to verify the Company's gross receipts for purposes of paragraph g,
855 above;

856 **i.** if an audit by the City reveals an error, made or caused by the Company, resulting in an
857 underpayment of three percent (3%) or more of the payments to be made pursuant to paragraph g
858 above, pay the cost of such audit or reimburse the City for the same within thirty (30) days of the
859 City's submittal of an invoice therefor; and

860 **j.** defend and indemnify the City and hold it harmless for, from and against any and every
861 claim, action, liability, loss, damage or suit, arising or resulting from the Company's fault in the
862 use of the License granted herein and the construction, installation, operation, repair and
863 maintenance of the Company's facilities thereunder.

864 Each of the Company's obligations under this paragraph is a material obligation, and the breach of
865 any such obligation shall be considered a material breach of this Agreement.

866 **3. Payment in Lieu of Other Taxes.** In consideration of the payments provided for in Section 2
867 above, the parties acknowledge and agree that such payments shall be in lieu of any and all franchise,
868 license, occupation, or any other form of excise or revenue tax (except general *ad valorem* property
869 taxes, and sales or gross receipts taxes) based upon or measured by the revenue, payroll, employees,
870 property, Facilities, installations or other property of the Company or any part thereof. Nothing in
871 this section shall be deemed to waive or relinquish the requirements of any City ordinance requiring
872 excavation or right-of-way permits or fees therefor, generally required by the City for work in the
873 City's right-of-way.

874 **4. Breach and Forfeiture.** If the Company shall fail to perform any of its material obligations
875 hereunder, within thirty (30) days of the City's written notice to the Company of such material
876 breach, this Agreement may be terminated at any time at the option of the City. Notwithstanding the
877 foregoing, the City shall not so terminate this Agreement if within such thirty (30) day period the
878 Company demonstrates to the to the City that the Company has cured such default or has
879 commenced to cure such default, provided that such efforts are prosecuted to completion with
880 reasonable diligence. Delay in curing a default will be excused if due to causes beyond the
881 reasonable control of the Company.

882 **5. Term.** This Agreement shall become effective upon the latter date signed by the parties hereto.
883 Unless sooner terminated pursuant to Section 4, this Agreement and the License established hereby
884 shall remain in effect for five (5) years. Notwithstanding the foregoing, this Agreement may be
885 terminated by either party upon at least one hundred and eighty (180) days' prior written notice to the
886 other party.

887 **6. Notices.** All notices required or permitted hereunder shall be sufficient if mailed First Class to
888 the address, or faxed to the fax number, given for each party below.

889	<u>If to the City:</u>	<u>If to the Company:</u>
890	Town Clerk	Zayo Group, LLC
891	829 Camino del Pueblo	400 Centennial Parkway
892	PO box 638	Suite 200
893	Bernalillo, NM	Louisville, CO 80027
894	87004	Attn: General Counsel, ZFTI

895 **7. Severability, Waiver, Merger and Amendment.** If any term or portion of this Agreement shall
896 be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected by such
897 invalidity or unenforceability, if the overall purpose of the Agreement is not thereby rendered
898 impossible and the original purpose, intent or consideration is not materially impaired. No waiver by
899 either party of any breach hereunder shall be construed as a waiver of any other breach. This
900 Agreement represents the entire agreement of the parties with regard to the matters addressed herein,
901 and all prior agreements and understandings are merged into this Agreement. This Agreement shall
902 not be altered or amended except by written instrument executed by both parties.

903 IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the date it has
904 been approved by both parties.

905
906
907 Mayor Torres stated that on item g of the agreement the words "three and "were typed twice and
908 needed to be corrected.

909
910 Councilor Prairie wanted to know who was going to oversee the project and make sure the
911 walking trail on Don Tomas is repaired after the Zayo Group work is completed.

912
913 Maria Rinaldi stated that staff would oversee the project and there is a punch list with the last
914 contractor that used the utility easement along Don Tomas.

915
916 Mayor Torres entertained a motion.

917
918 Councilor Montoya moved to approve the License Agreement Between the Town of Bernalillo
919 and Zayo Group, LLC. The motion was seconded by Councilor Sisneros and the motion carried
920 unanimously.

921
922 **FINANCIAL SECTION:8a) Approval of Accounts Payable Voucher List.**

923 Mayor Torres asked for a motion to approve the accounts payable voucher list in the amount of
924 \$237,152.04.

925
926 Councilor Jaramillo made a motion to approve the accounts payable voucher list in the amount of
927 \$237,152.04. The motion was seconded by Councilor Montoya and the motion carried
928 unanimously.

929
930 **MISCELLANEOUS SECTION: 9a) Public Comment. Presenter: Mayor Torres**

931 Mayor Torres welcomed the public to speak. There were none.

932
933 **MISCELLANEOUS SECTION: 9b) Announcements. Presenter: Mayor Torres**

934 Mayor Torres announced the following:

935
936 Mayor Torres stated the first item was a letter from Tom Church DOT Interim Cabinet Secretary
937 as the letter states NMDOT will maintain timely communication with the Town and consider
938 input and local expertise on US 550 corridor related matters.

939
940 After the tragic accident that occurred on the railroad we have met with several individuals and
941 made phone calls to NMDOT, Amtrak, and Burlington and met with MRCOG. Maria Rinaldi
942 has handed out this evening is installation of 2.5 mile of pedestrian barrier fence and trail along
943 the railroad right-of-way with four full equipped pedestrian crossings. In doing this we had taken
944 two capital requests to our legislators one was to complete Phase 3 of 313 and the Athena Pond
945 Park Installation. There is a possibility that MTB board may fund the Phase 3 of 313 and if we
946 get that funding we will pull that request and put this as the request of \$250,000 for the railroad
947 Pedestrian barrier fence and trail. We have explained it to our legislators.

948
949 Maria Rinaldi stated that the Senior Center Roof is 70% complete.

950
951 The Legislative Municipal Day is February 20.

952
953 The letter from the United States Department of Interior for the Sandia Pueblo land acquisition

954 was provided to you as requested.

955

956 There being no further business, Councilor Montoya moved to adjourn the meeting at
957 7:55 P.M. The motion was seconded by Councilor Sisneros and carried unanimously.

958

959 Done this 11th day of February 2013.

960

961

962 ATTEST:

963

964 _____
965 Ida Fierro, Town Clerk
(seal)

Jack S. Torres, Mayor