



June 17, 2022

Via Email: vjoe@nmag.gov

Valerie Joe

Open Government

NM Office of Attorney General

Re: Notice of Emergency Meeting pursuant to Open Meetings Act

Dear Ms. Joe

I am writing you on behalf of my client Sambrito Mutual Domestic Water Consumers Association (Sambrito). Pursuant to the Open Meetings Act, I am writing to notify the Office of Attorney General of an emergency meeting and the reasons why an emergency meeting needed to be called.

On Tuesday, June 14, 2022 at 6 p.m. to about 9:30 p.m. an emergency membership meeting of Sambrito was held to elect new board members because 3 out of 5 board members had resigned and the board no longer had a quorum or the number of board members required by the Sanitary Projects Act to be a valid mutual domestic.

Additionally, the water system is in the middle of transferring from being owned by a private entity, Rosa Joint Venture, which is regulated by the NM Public Regulation Commission, to Sambrito, which is regulated by the NM Environment Department. Sambrito's Board has been operating the water system during the last 8 months. Completion of the transfer is time-sensitive because Sambrito is trying to accomplish the transfer in time to make use of legislative funds that have been appropriated to it and which must be encumbered by June 30, 2022.

The water system is in the upper North-East corner of San Juan County and borders Colorado. It is a very isolated community with no other options for either being acquired by another water system or connecting to another water system. The only viable option to repair the water system so that it can become a reliable water system is to operate as a mutual domestic eligible for state and federal funds.

The water system serves approximately 80 homes and generates between \$5,000 to \$6,000 from customers monthly. This is barely enough to meet expenses when production from the water system's wells are meeting customer demand. Because the water system's wells are not meeting system demand, the water system is having to haul water to meet customer demand. This is not economic and not sustainable. **The water system is in daily crisis.**

The following information describes what led up to the need for an emergency meeting:

1. Toward the end of March, the Board's Secretary notified Board members that she was resigning because she sold her home and was moving out of the neighborhood. Request was made to the community via the Board website at <https://sambrito.myruralwater.com> that the Board Secretary had resigned and that the Board needed a volunteer to fill that position. Additionally, Board members called various folks in the community asking if they would be willing to serve in that role until the vote of the membership at the next annual meeting. No one stepped forward to fill that role.
2. On June 3, 2022 the Board's President tendered his resignation indicating that he needed to resign because the amount of work required to keep the water system running was interfering with his job.
3. Discussion occurred with undersigned counsel and the Board's Vice President to see if he was willing to move up to President. Discussion also occurred on setting a meeting to see if anyone in the community would be willing to serve on the Board because the Vice President was also considering stepping down.
4. An eligible community member indicated that she would be willing to serve as a board member, but that the meeting would need to be held on Monday or Tuesday when she was off of work.
5. Given the extremely limited amount of funds of Sambrito, a meeting was discussed being held at the library in Ignacio, CO, which is free. The amount of time that the library had available for the meeting was limited to an hour and there was concern that community members would not travel to Ignacio, about 16 miles from Sambrito, to attend the meeting. As a result, undersigned counsel communicated with the Vice President on setting a meeting the following week on Monday or Tuesday at the Grange Hall in Allison, CO, for which undersigned counsel offered to pay the use fee. This would accommodate the person mentioned above that was interested in becoming a board member, but would also provide more time for the community to meet and it would be much closer to the community so as to encourage more participation.
6. However, late Sunday evening on June 12, 2022, Sambrito's Vice President tendered his resignation and indicated that he would be turning over his operational duties regarding water system operations as well. The Vice President's role in making sure that the community water system provides water to the community is extremely critical. The water system is in daily crisis because the water system's wells are not meeting demand. As a result, the Vice President managed the delivery of water to supplement customer needs on a daily basis. Additionally, a portion of the water system is located at a higher elevation. Based on the configuration of the system, in order to make sure the

neighborhood with higher elevation has water, the system must be checked, and often times water must be transferred into the system, multiple times a day. It is a very time-consuming, but absolutely critical, function performed by the Vice President.

7. The resignation of the Vice President left the Board with only 2 members, the Board Treasurer and the At-Large Member who performs monthly meter readings, both of whom are tasked with other key functions in the operation of the water system. As a result there was extreme concern that the remaining board members would not be able to take on all of the functions previously performed by the board members who resigned and that the daily crisis situation could quickly become a full-blown emergency situation without additional board members. Additionally, with only 2 board members the board would not have a quorum and as a result could no longer take official action of any kind. Given the importance of the statutory requirement that a mutual domestic be able to conduct business with a governing board of at least 3 members, the extreme nature of the ongoing crisis that the water system is currently experiencing, and the need to continue the transfer process discussed above so that the water system can obtain public funding to assist it in getting out of crisis, undersigned counsel discussed the need for an emergency meeting of community members in order to elect new board members, with the intention of still having the community annual meeting wherein the community could have additional notice to elect board members.
8. The Open Meeting Act allows the calling of an emergency meeting with 24 hours' notice of the agenda in emergency situations. As stated above in paragraph 7, once the Vice President resigned, an emergency situation was created both from an operational standpoint in making sure the community continued to receive water, but also from an organizational and managerial standpoint in that without 3 board members, the mutual domestic would literally not be able to make decisions or even operate the water system at all.
9. On Monday, June 13, 2022, an agenda was sent out as an alert from the Sambrito website and was also posted on the Sambrito website the afternoon providing 24-hour notice. The agenda was posted on an alert that is provided to residents, as well as on the community Facebook page by that page's administrator. The Agenda specifies that the meeting is an emergency meeting and provides an explanation as to why the emergency situation exists.
10. On Tuesday, June 14, 2022, at 6 p.m., approximately 19 people attended the community board meeting in person and about 5 people attended by phone. This is actually a good showing – the average number of persons attending meetings in the past had been between 5 and 15 persons. Pursuant to the Bylaws, attached as Attachment 2, a quorum of eligible voting community members was present.
11. 7 people indicated their willingness to serve on the Board. The community members present voiced a desire to elect all of those willing to serve, particularly given the need

for additional volunteers to help keep the system running. Two nominees dropped out leaving 5 nominees.

12. The Bylaws were reviewed and it was determined that based on the language of the Bylaws, the community could elect more than just the 3 vacated positions. Language from the Bylaws regarding eligibility to vote, as well as eligibility to serve as a board member was discussed.
13. Community members present who were eligible to vote, namely property owners that are not in arrears for amounts owed to the water system, voted in 5 new board members by paper ballot.
14. As specified by the Bylaws, and the attached agenda, the newly elected Board voted in officers.
15. One of the board members elected as President of the Board has since resigned because he has opted to become an apprentice operator for the water system.
16. The Vice-President of the Board is now acting President until the next Board Meeting, at which the Board will elect a new President.

Please let me know if you have any questions or would like to discuss further.

All my best,

Germaine Chappelle

Germaine Chappelle
Attorney for Sambrito
Mutual Domestic Water
Consumers Association

ATTACHMENT 1

EMERGENCY MEETING

SAMBRITO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

JUNE 14, 2022

THE GRANGE HALL, ALLISON, COLORADO

6-8 PM

This meeting is being called because 2 additional board members (Mike House and Kyle Guire) have resigned leaving the Board without a quorum. Additionally, time is of the essence because Sambrito is also in the middle of transferring to NMED and is working on preserving its legislative appropriation.

1. Discussion of vacated board seats:
 - a. Secretary – vacated when Cherie Young sold her home.
 - b. President – Mike House
 - c. Vice-President – Kyle Guire
2. Nominations by membership of 3 board seats
3. Vote by membership on nominations
4. Request for volunteers

Call to Order of New Board:

1. Vote by new board on officers of Board for Secretary, President and Vice-President.
2. Report on status of transfer to NMED.
3. Adjourn Meeting.

ATTACHMENT 2

AMENDED AND RESTATED BYLAWS
OF THE
SAMBRITO
Mutual Domestic Water Consumers Association (MDWCA)
A Non-Profit Association Formed Under the Sanitary Projects Act ("SPA"),
NMSA 1978 §3-29-1 through 3-29-20 NMSA.

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ARTICLE I

Name, Objectives, Purposes, Principal Place of Business

The corporate name is Sambrito Mutual Domestic Water Consumers Association (herein after "Association"), the objectives and purposes of this Association shall be as stated and provided in the Certificate of Association. The principal office of the Association shall be located at 95 County Road 4025, Ignacio CO 81137, which address is physically located in San Juan County, New Mexico, but due to its location near the Colorado border, the closest post office is located in Ignacio, CO. The Association may have such other offices within the County, as the Board of Directors may designate or as the business of the Association may require from time to time. The address of the registered office may be changed from time to time as provided by law.

ARTICLE II

Seal

The Seal of this Association shall be in the form of a circle and shall have inscribed in it the name of the Association, the words "A Mutual Domestic Association", and the date of original incorporation. The secretary of the Association shall have custody of the seal.

ARTICLE III

Fiscal Year

The fiscal year of the Association shall begin on the first day of January each year.

ARTICLE IV

Membership

Section 1. Membership/Customer

Property owners, or representative designated by the property owner to serve as their designated representative, within the geographical area served by the Association and reasonably accessible to the Association's water and sewer distribution system may become a Member of the Association by providing, proof of property ownership by appropriate instrument (as evidenced by fee title, mortgage, or real estate contract) including a legal description of such filed in the County Clerk's office; executing an agreement with the Association, which is a written agreement for each water and sewer connection that includes an agreement to purchase domestic water from an authorized tap and sewer service, and pay for it through monthly charges; and payment of other potential fees and/or obligations as stated in the Rules and Regulations set by the Board of Directors. Non-property owners within the service area of the Association that are customers of the Association because they rent or otherwise reside in a residence/commercial building located within the service area of the Association are entitled to water and sewer service to their primary residence/commercial building but they are not entitled to vote on Association business, Board of Director elections, or serve on the Board of Directors. The Association shall consider memberships in one of the following forms:

- A. The Association shall consider memberships in one of the following forms:
- a. **General Memberships** are entitled to water and sewer service to their primary residence/commercial building, must pay for such services through monthly charges, must sign a customer agreement, and must follow all Association Rules and Regulations. Members of the Association that own the residence or commercial building at which they receive water or sewer services within the service area of the Association, are entitled to vote on Association business, Board of Director elections as long as they are in good standing and not in arrears, and, provided the Member resides within the service territory of the Association, serve on the Board of Directors. Members who either do or do not reside within the service territory of the Association may also volunteer for various committees created by the Board of Directors. In accordance with state law, there is only one vote per Member, regardless of the number of lots owned by the Member or the number of owners of a lot or lots: Individual person, Legal Business Entity, or Married, Co-Tenants, or Joint Property owners, who shall own the single membership jointly as community property.
 - b. **Non-Property Owner Customers** are entitled to water and sewer service to their primary residence/commercial building, must pay for such services through monthly charges, must sign a renter/non-owner customer agreement, and must follow all Association Rules and Regulations. Customers of the Association that do not own the residence or commercial building at which they receive water or sewer services within the service area of the Association, are not entitled to vote on Association business, Board of Director elections, or serve on the Board of Directors. These customers can, however, volunteer for various committees created by the Board of Directors.
- B. To preserve the one vote per Membership principal required by state statute, in the case of a Membership where there is more than one individual property owner, or an entity that owns property within the limits of the community, each entity or Membership shall designate in writing a single individual to act as their official representative, who shall be entitled to one (1) vote for the Membership. Such designation may include alternative designated Members who may replace the initial designated Member. All actions taken by the designated Member or the replacement shall be binding on all other property owners.
- C. All applications for membership and/or transfer of membership shall be approved by the Board of Directors. Connection to the system shall only be approved and completed after the applicant has paid or agreed to pay all associated membership and connection/hook up fees and has complied with other requirements as stated in these Bylaws and Rules and Regulations of the Association.
- D. Membership shall not be denied because of the applicant's race, color, creed, national origin or sex. Provided, however, that membership may be denied if the physical infrastructure or legal capacity of the Association is inadequate to supply the needs of its existing Members and/or if it shall cause a financial hardship to its existing Members and/or is prohibited by funding agencies. In the event of a shortage of water, the Association shall take appropriate measures to provide water to meet the needs of existing Association Members before consideration of new membership applications. If a member refuses to obtain additional

metered connections so that each residence on the Members property is separately metered or it is discovered that a declaration statement has been falsified, the Association may terminate water service and the primary membership with 60 days advanced written notice.

Section 2. Additional Service Connections, Construction criteria, New Membership Application, Service to Non Members, Eminent Domain

- A. All approved Members shall be eligible to purchase additional service connections upon application to the Association. However, regardless of the number of properties/connections owned, each Member shall be limited to one vote and only one vote in all matters before the Membership requiring Membership approval. A written Water and Sewer User Service Agreement, in a form approved by the Board of Directors, shall be executed by the Member for each additional connection requested and by the Board of Directors. A Water and Sewer User Service Agreement shall not be approved until the Board has determined that capacity exists to add such connection and payment of, or payment arrangements for, all required fees and connection costs have been made and water rights requirements have been met.
- B. All service connections into the Association shall meet the Association construction criteria. All service connections requiring distribution line extension shall be paid for by the applicant, unless public funding has been approved including such connection within the stated scope of such project.
- C. New application for Membership shall be considered, provided that the Association has adequate infrastructure capacity, meets the needs of its current Members, has considered the revenue requirements of all Members, has considered that new service connections shall not cause undue hardship to the Association, new applicants bring or pay for water rights (if necessary and in accordance with the Rules and Regulations) and all expenses associated with the new connections, and the applicant complies with the Certificate of Association, Bylaws, and Rules and Regulations.
- D. Members are prohibited from permitting non-members to draw water from the Association water lines for use away from the property, to fill containers for non-member domestic use, or to fill animal stock tanks for commercial use. Domestic usage shall have priority over other uses.
- E. The Association acting through its Board of Directors may exercise the right of eminent domain to take and acquire the necessary property or rights of way for the construction, maintenance and operation of water lines and related facilities. The association shall exercise this right in the manner provided by the Eminent Domain Code.

Section 3. Rights, Privileges and Obligations of Members

The rights, privileges and obligations of all Members of this Association shall be equal. Members shall not have any individual legal interest or ownership in the assets of the Association, which may include land, related sewer infrastructure and equipment, water supplies, wells, diversion structures, well house, pumping equipment, water storage tanks, system meters, and all water system distribution lines up to and including the

metered box and contents near the Member's property line. The Member shall be responsible for maintaining all water and sewer lines within the Member's property from the point of meter box and plumbing fixtures on the Member's property. The Member shall promptly repair all water leaks or damaged pipes in accordance with the Rules and Regulations of the Association.

Section 4. Voting

- A. Each Member shall be entitled to one vote and only one vote on each matter submitted to vote at a meeting of the Members, regardless of how many connections/properties they own. No Member shall be permitted to vote in any election unless the Membership is in good standing, is not in arrears and has been approved by the Association Board of Directors.
- B. As stated in the Articles of Association, voting by proxy is not permitted.
- C. Voting by Mail/Electronic Mail - The date and time of elections shall be set by the Board in advance. The notice of elections shall be posted/sent to each of the Members. Any Member who cannot be present in person or virtually and voting at such date and time may contact the secretary in writing and ask for a form to cast the member's vote on all matters in the proposed schedule and the member's vote may be cast via mail/email to the Secretary in such time that it is received not later than the time of the election, as specified in the notice thereof. All such votes received by mail/email will be counted in the same manner and to the same effect as votes cast in person by members in attendance at the meeting. Voters casting their ballots by mail shall be counted in determining a quorum for the meeting.
- D. All elections and voting shall be conducted as stipulated in the Rules and Regulations. The voting policy, instructions as to how to cast a vote, and a sample ballot or complete information regarding what is being considered for the vote shall be made available to those Members who shall be casting a ballot/voting.

Section 5. Form of Membership Certificate

The Board of Directors shall determine the form of the membership certificate to which the membership is attached. The certificate shall clearly state the form of membership. The Association may issue a new Membership Certificate in the place of any certificate previously issued if the Member named in the certificate (a) makes proof in affidavit form that it has been lost, destroyed or stolen; and (b) satisfies any other requirements imposed by the Association. A copy of the Membership certificate issued to each Member must be retained in the Association Membership Record. The President shall sign the certificate and the Secretary shall attest and impress the seal of the Association.

Section 6. Membership Book/Record

As a part of the records of the Association, there shall be kept an official Membership Book/Record which shall contain a list of the certificates of membership which have been issued, noting the number of the certificate, the date when the board acted on it, the

number of service connections, and the name(s), physical address of the Member(s), legal description (unless an Association membership), and mailing address of the Member(s), if different, to whom issued or transferred.

Section 7. Transfer & Purchase of Membership

- A. Membership may be transferred with the land to a new property owner, provided that any required transfer fee has been paid to the Association and that the transferee shall be eligible for membership and shall be approved by the Board of Directors. The right to transfer shall be subject to the preferential right of the Association to purchase such membership as provided by the laws of the State of New Mexico. Any indebtedness to the Association shall be paid in full before the transfer is processed and noted on the books of the Association. A transfer of Membership or alternate designation of Member for a property with more than one owner, shall only be approved upon receipt of a written request and/or a demonstration of property conveyance by appropriate instrument filed in the County Clerk's office. Upon approval of such transfer, a new Membership Certificate shall be issued and the prior Membership Certificate shall be terminated and void for all future uses and purposes of the Association.
- B. The Directors may purchase a Membership on behalf of the Association in accordance with the Rules and Regulations of the Association. In the event of the purchase of the Membership by the Association, the proceeds shall first be applied to the payment of any indebtedness due to the Association by the Member.

Section 8. Transfer of Meter

All meters are the property of the Association and are permanently fixed at their respective service locations. Therefore, no meter is transferable from the property that it is intended to serve to any other location or property. In the event of the sale, transfer, assignment, lease or conveyance of the subject property by the owner of record, all of the rights to service from the meter that serves the subject property shall automatically be included in the sale, transfer, assignment, lease or conveyance of that property. This also applies to all duly authorized service connections that have inoperable meters or where no meters exist. In the event that a dwelling or place of service is permanently discontinued or eliminated by the owner of record and Membership relinquished, the Association may, in its sole discretion, elect to either remove the meter or retain the meter at its location to provide service for possible future users.

Section 9. Membership Status and Good Standing

Members of the Association have the obligation to keep their membership in good standing so that the association operates in the best manner to provide safe drinking water to all users. Board members or persons wishing to vote or serve on the Board must reside within the service territory of the Association, must be in good standing, and not have any amount in arrears.

Section 10. Terminating the Supply of Water Service.

The Board of Directors shall have the authority to terminate the delivery of water and or service to a member that fails to pay water fees and/or for other causes as stated in the Rules and Regulations of the Association. The Board shall act after a written notice of delinquency has been sent to the delinquent member by mail/email and/or by posting on premises of the service meter or location.

Section 11. Terminating Membership

- A. In addition to terminating water service, the Board of Directors shall have the authority to terminate the Membership of any Member in the event of non-payment of any water charges or assessments owing by such Member or for violating the Association's Bylaws or Rules and Regulations. The board must collect any amount due to the association from a terminated membership. In accordance with the Sanitary Projects Act ("SPA" - NMSA 1978 §3-29-1 to 3-29-20), the Association through its board of directors may place a lien on the property in the manner provided by the laws of the State. Such liens may include the amount of all outstanding assessments, charges and fees associated with the services. The Board of Directors may enforce the lien in a manner provided by the laws of New Mexico. The Board shall be entitled to recover all costs and attorney fees associated with such recovery under N.M. Stat. § 3-29-6(C).
- B. Any property owner whose Membership has been terminated may be eligible to apply for a new Membership upon payment of all previously owed monies and compliance with membership application set in this Bylaws and all Rules and Regulations of the Association.
- C. The Board shall not terminate any Membership until after a written notice of the delinquency or violation has been sent to the Member by mail and/or by posting on premises of the service location and the Member has been offered a hearing before the Board. The Member shall have the opportunity to correct the violation or pay the account in full and if the Member shall refuse or fail to comply, then the Board of Directors shall terminate the Membership.
- D. Any Member may voluntarily relinquish their Membership upon compliance with the Rules and Regulations prescribed by the Board of Directors for such an action. The Association shall issue a written notification of the termination or voluntary relinquishment of any Membership. Termination of Membership in any manner shall not release the Member or the Member's estate or successors from any debts due to the Association, which must be paid in full.

ARTICLE V

Meetings of Members

Section 1. Purpose of Annual Membership Meeting

The purpose of the annual meeting is to elect Directors, if applicable, provide reports to the Members regarding revenue, expenditures and overall financial condition, changes to and the condition of the water system, review the Consumer Confidence Report, and to transact such other matters as may properly come before the Members. Failure to hold the annual meeting at the designated time shall not work as forfeiture or dissolution of the Association.

Section 2. Date and Time of Annual Membership Meeting

The meeting of the Members of this Association shall be held at the times and places designated by the Board of Directors, but at least annually in or near the community. In the event that such meeting cannot be held within this timeframe, the meeting shall be rescheduled at a time agreed upon by the Board. In accordance with the Articles, Board Member elections shall be held every 2 years. The failure to hold an annual meeting shall not be cause for dissolution of the Association.

Section 3. Calling for a Special Meetings

Special meetings of the Members of the Association may be called at any time by the President, or upon a resolution of the Board of Directors, or upon a written petition to the President of the Board signed by twenty-five percent of the Members. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted, except such as is specified in the notice.

Section 4. Notice of Meetings

Notice of all meetings shall follow the Open Meeting Act ("OMA" - NMSA 1978 §10-15-1 to 10-15-4). Unless otherwise specified in the OMA resolution adopted annually by the Board, notice will be given as follows, at least ten (10) days prior to the annual meeting; three (3) days prior to a special meeting; one (1) day if possible prior to an emergency meeting. Such a notice will state the nature, time, place, and purpose of the meeting and be posted on the Association website and/or emailed/mailed by first-class mail to each member of record, directed to the address as shown upon the books of the Association. The failure of any Member to receive notice of an annual or special meeting of the Members shall not invalidate any action that may be taken by the Members at such meeting.

Section 5. Quorum

Fifty percent of the total present in person, provided that at least 10 Members of the Association are present, shall constitute a quorum at any meeting of the Members for the transaction of business. If a quorum is present, unless otherwise provided by law,

the affirmative vote of a majority of the Members at the meeting entitled to vote on the subject matter shall be the act of the Members. After a quorum has been established at a Member's meeting, the subsequent withdrawal of Members, so as to reduce the number of Members entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

If less than a quorum is present at any meeting of the Members, those present may adjourn the meeting. Provided that the proper notice is given all Members of the Association, another meeting shall be held within thirty (30) days. At the rescheduled meeting, the Members present shall constitute a quorum for the transaction of business and the notice of the meeting shall so state.

Section 6. Meeting Agenda

- A. The order of business at the annual meeting of the Members, and as far as possible, at other meetings, shall be:
 - 1. Calling to order and proof of the quorum
 - 2. Proof of notice of meeting
 - 3. Approval of Agenda
 - 4. Reading and/or approval of any minutes
 - 5. Report and Approval of officers and committees,
 - a. President's report
 - b. Secretary's report
 - c. Treasurer's report including financial statement report.
 - d. Operator's report
 - e. Other reports, such as Consumer Confidence Report
 - 6. Election of directors
 - 7. Unfinished business
 - 8. New business
 - 9. Other, such as questions or issues from the floor
 - 10. Adjournment

Section 7. Matters for the Membership

In addition to the election of the Board of Directors, the following actions shall require the affirmative vote or concurrence of the Members of the Association:

- A. Adopting an amendment or amendments to the Certificate of Association and/or Bylaws;
- B. Authorizing the sale, lease, exchange or other disposition of all or substantially all of the property and assets of the Association, not in the usual and regular course of business;
- C. Approving a plan of merger, consolidation, or exchange that is required to be approved by the Members.
- D. Adopting a resolution submitted by the Board of Directors to dissolve the Association;

- E. Adopting a resolution submitted by the Board of Directors to revoke voluntary dissolution proceedings.

ARTICLE VI

Directors of the Association

Section 1. Function of the Board of Directors

A board of at least five (5) directors shall manage the business and affairs of this Association. The powers and responsibilities of such board shall not include those conferred or reserved to the Members by law, the Certificate of Association, or these Bylaws. The Board has the following responsibilities:

- A. Selection of, and delegation of authority to officers necessary for the management of the Association's business and day-to-day operation of water and wastewater services;
- B. Hiring/procurement of a certified operator(s) for the day-to-day operation of water and wastewater services;
- C. Hiring/procurement of consultants, contractors, and other professionals as needed for the day-to-day operation of water and wastewater services;
- D. Purchase/procurement of goods and services needed for the day-to-day operation of water and wastewater services;
- E. Actions needed to comply with all regulatory requirements;
- F. Establishing policies for guidance of the management of the Association;
- G. Control of expenditures by completing and approving an annual budget and implementing a system of internal controls;
- H. Keeping Members fully informed of the business of the Association;
- I. Causing of financial and other required reports to be made and submitted to the appropriate regulatory authorities from time to time as is necessary or required by Federal and State Laws;
- J. Studying the requirements of Members and promoting good Membership relations;
- K. Prescribing the form of Membership certificates, service agreements, and other forms;
- L. Establishing water charges/rates through asset management principals; penalties, fees and the levying of assessments and the enforcement and collection thereof; and limitations on water use or consumption in accordance with the provisions of these Bylaws, equitable uniform Rules and Regulations, and the Laws of the State of New

Mexico.

- M. Make and adopt such Rules and Regulations, not inconsistent with law, the Certificate of Association or these Bylaws, as it may deem advisable for the management, administration, and regulation of the business and affairs of the Association.
- N. Ensuring the water system is properly operated and maintained to ensure the long-term integrity of the system and the ongoing ability of the system to deliver safe drinking water to its customers that meets all requirements of applicable Federal and State Laws and regulations.
- O. Planning for the short-term and long-term infrastructure needs of the water system.

Section 2. Election and Term of Board Members

- A. The business and affairs of this Association shall be conducted and managed by a Board of Directors, all of whom shall be Members in good standing of this Association. The Members of the Board of Directors shall be elected for staggered terms in the manner provided for in the Certificate of Association.
- B. **Members Qualified to be Directors** - All members who live in the service area of the Association and are Association customers shall be eligible and encouraged to become a director or to hold any position of trust in the Association. Board members are required to be in good standing with no outstanding payments due to the Association. At least two members from Rosa Meadows and two members from Lakeview Heights must be elected to ensure balanced representation amongst the two subdivisions.
- C. **Conflict of Interest to Serve on the Board**
 - 1. Immediate family members may not serve on the board at the same time. Immediate Family is defined as a spouse/domestic partner, parent, legal guardian, child or sibling, mother or father-in-law, spouse's child or sibling, son or daughter-in-law, grandparents, and grandchild.
 - 2. Directors and officers are obliged to disclose any actual, potential, or perceived conflicts of interest and abstain from both discussion and voting on any issues that come before the board where conflicts of interest may arise.
 - 3. Any Member who has been convicted of a crime that is designated under federal and/or state law as a felony or of any crime involving dishonesty or false statement shall disclose the existence of such criminal record to the Board, which must approve the member's eligibility to serve unanimously.
- D. **Board Training Requirements** - Board members are required to attend training as stipulated in state rules promulgated under the SPA. The purpose of the training is to help clarify, understand, and/or expand knowledge of their duties and responsibilities as board

members. Travel and related expenses may be reimbursed by the Association.

Section 3. Election and/or Meeting of the Officers

The newly elected Board of Directors shall meet within thirty days after the holding of the election, at which time their term takes effect. The Board shall elect among themselves a President, Vice-President, Secretary/Custodian of Records, and from among themselves, each of whom shall hold office through the next annual membership meeting and until the election and qualification of his or her successor unless removed by death, resignation, or for cause.

Section 4. Compensation of Directors

The members of the Board of Directors shall receive no compensation for their services as Directors. The Association may pay/reimburse expenditures for training and related efforts that would enable a Board Member to perform more effectively on behalf of the Association. Such reimbursements must be approved in advance by the board.

Section 5. Meetings of the Board of Directors

The Board shall hold meetings at such regular intervals as stated in the Association's Rules and Regulations and/or Open Meetings Act Resolution, but no less than once every calendar month. A majority of the board at any meeting shall constitute a quorum for the conduct of business thereat. If at any time during the meeting the quorum is lost, the Board may continue the meeting, follow the approved agenda, but may not take action on any agenda item. All meetings of the Board are open to the Membership/public as required by the Open Meetings Act.

Special or emergency meetings of the Board of Directors may be called by the President or by any two (2) Directors, who shall fix the time and place for the holding of the meeting. The Open Meetings Act resolution shall govern the required timing, content, and location of the requisite notice.

Section 6. Powers of the Board

The Board of Directors shall have the general power to act for the Association in any manner not prohibited by Statute or the Certificate of Association. The Board of Directors shall pursue sustainable management and financial methods, including asset management, accounting, audits, and/or conservation practices. Additionally, the Board of Directors must comply with Federal and State laws that govern the delivery of drinking water and management of the drinking water or system.

Section 7. Board Conflict of Interest and Disclosure

Directors must avoid actual or apparent conflict of interest and must disclose to the full

Board any such conflict. An actual or apparent conflict of interest occurs when a Director has, or may have, a direct, indirect, or material interest in a transaction between the Association and another entity and that Director or his/her immediate family might benefit financially or personally. An actual or apparent conflict of interest may also occur when a Director is in a position to influence a decision of the Association that may result in direct or indirect personal gain for that Director or his/her immediate family.

Immediate family is defined as a spouse/domestic partner, parent, legal guardian, child or sibling, mother or father-in-law, spouse's child or sibling, son or daughter-in-law, grandparents, and grandchild. When an actual or apparent conflict of interest exists, the Director must excuse himself/herself from consideration of that transaction by absenting himself /herself during Board discussion prior to a vote on the transaction and may not vote on that transaction. A transaction or the basis for imposing liability is not void if the transaction was fair at the time entered into and is approved by the remaining Directors knowing of the transaction and the actual or apparent conflict of interest and reasonably believing in good faith that the transaction is fair to and in the best interest of the Association.

Section 8. Vacancies

If the office of any Member of the Board of Directors becomes vacant by reason of death, resignation, retirement, disqualification or otherwise, except by removal from office by the membership or expiration of term, the remaining Directors shall by a majority vote, choose a successor who shall hold office until the next annual meeting of the Members of the Association, at which time the Members shall elect a Director for the unexpired term or terms, providing that in the call of such meeting a notice of such election shall be given. If such a vacancy occurs within three months of the annual meeting, the board may elect to leave the vacancy unfilled until then. Any person chosen as a successor or elected to serve for the remainder of an unexpired term must meet the qualification for board members as discussed in Section 2 of this Article.

Section 9. Removal of Member of the Board of Directors

- A. Any Director or officer of the board may be removed from office for cause shown by a vote of not less than 2/3 of the Members of the Association present at any annual meeting, or at any special meeting of the Members called for that purpose. The Director or officer shall be informed in writing of the charges against him/her at least [ten (10) days] before such meeting. The Director/officer shall have the opportunity to appear in person or by counsel, and present witnesses in his/her behalf. Vacancies caused by such removal shall be filled by the vote provided in these Bylaws for election of Directors at the meeting where the removal occurs. Employees and agents, other than Directors and Officers, may be removed from office or employment at any time by action of the Board of Directors.
- B. Self-Removal of Members of the Board of Directors - Any Member of the Board of Directors who fails to attend three (3) consecutive or a total of five (5) regularly scheduled, meetings of the Board of Directors in a one year period may be deemed to have resigned from the Board unless a majority of the remaining board members vote to retain them.

Section 10. Indemnification of Directors and Officers

The Association shall indemnify any Director or Officer or former Director or Officer of the Association against reasonable expenses, costs and attorney's fees actually and reasonable incurred by them in connection with the defense of any action, suit or proceeding, civil or criminal, in which they are made a part by reason of being or having been a Director or Officer. The Director or Officer shall not be indemnified if they shall be adjudged to be liable on the basis that they breached or failed to perform duties of their office and the breach or failure to perform constitutes willful misconduct or recklessness.

ARTICLE VII

Duties of Board Members and Officers

Section 1. Duties of the President

The President shall preside over all meetings of the Association and the Board of Directors, shall call special meetings of the Board of Directors and perform all acts and duties usually performed by an executive and presiding officer. He or She shall sign all membership certificates, notes, bonds, mortgages, contracts and other instruments on behalf of the Association. He or she shall be an ex-officio member of all standing committees and shall have such powers and shall perform such other duties as may be properly required of him or her by the Board of Directors. Make a full report of all matters and business pertaining to his or her office to the members at the annual meeting, or at such other time or times as the Board of Directors may require.

Section 2. Duties of the Vice-President

The Vice-President, in the absence or disability of the President, shall perform the duties of the President. However, in case of death, resignation or disability of the President, the Board of Directors may declare the office vacant and elect his or her successor, to fill the unexpired portion of the president's term.

Section 3. Duties of the Secretary

The Secretary, unless otherwise directed by the Board of Directors, shall:

- A. Keep a complete record of all meetings of the Association and of the Board of Directors in compliance with the Open Meeting Act;
- B. Attest the President's signature on all Membership certificates and other papers pertaining to the Association;
- C. Keep the corporate seal, complete and attest all certificates issued and affix said Association seal to all papers requiring seal;

- D. Keep a proper Membership certificate record, showing the name of each Member of the Association and date of issuance, surrender, transfer, termination, cancellation or forfeiture;
- E. Prepare, serve, mail, or deliver all notices required by law and by these Bylaws;
- E. Make a full report of all matters and business pertaining to his or her office to the members at the annual meeting, or at such other time or times as the Board of Directors may require.

Upon the election of his or her successor, the Secretary shall turn over to the successor the Association seal and all books and other property belonging to the Association that he or she may have in his or her possession.

Section 4. Duties of the Treasurer.

The Treasurer shall be covered in the performance of his or her duties by a surety bond in an amount to be determined by the Board of Directors. The premium for such bond shall be paid by the Association. The Treasurer and the Board of Directors shall implement and comply with a system of internal controls to minimize the possibility of misappropriation of the system's funds. The Treasurer and the Board of Directors shall in keeping with the system of internal controls determine, and describe in the Rules and Regulations, which persons shall be responsible for the following tasks:

- A. Have general charge and supervision of the financial books and records of the Association;
- B. Maintain a record of the indebtedness of the Association and to the Association;
- C. Maintain a record of the payments made and the current condition of all accounts;
- D. Make a full report of all matters and business pertaining to his or her office to the Members at the annual meeting, and at such other time or times as the Board of Directors may require;
- E. Collect all assessments and monies due the Association and deposit same in the depository designated by the Board of Directors; and,
- F. Disburse funds or assure that disbursement is conducted under direct guidance and oversight, keep the Association current of all compliance reports and accounts payable, and shall make a report on the business transacted by him or her on a monthly basis or as requested.

Upon the election of his or her successor, the Treasurer shall turn over to the successor all books, records, accounts, and other property belonging to the Association that he or she may have in his or her possession.

Section 5. Duties of Guardian and Custodian of the Records

The records of the Association are maintained according to the requirements of law and the Rules and Regulations of the Association and made available upon receipt of a written request in compliance with the Inspection of Public Records Act (NMSA 1978 §14-2-1 to 14-2-12) and other applicable State Laws. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity. The Association reserves the right to charge a reasonable cost for copying the documents requested. This cost will be stated in the Rules and regulations.

Section 6. Duties of Members at Large

Board members shall respond to assignments delegated by the President of the Board of Directors. The Members at large may be requested to substitute at a meeting of the Board of Directors in any of the regular offices of the Association and/or to assume co-chairmanship of any committee the board or the Membership may see fit to establish. Upon electing a successor they shall relinquish any and all property of the Association. However, they retain any and all co-chairmanships of committees which may have been assigned and which have not been terminated by completion of their work or by other action of the board.

Section 7. Other Employees or Agents

The Board of Directors may hire a manager, certified operator, meter reader, bookkeeper, and other agents/contractors or employees, which may be necessary to superintend the Association and its construction, maintenance and repair. Such agents/contractors or employees may be authorized by the Board of Directors under its direction and pursuant to its Rules and Regulations to provide for the delivery of water and service to the Members of the Association. The Board of Directors shall establish personnel policies and procedures and stipulate those Directors and employees requiring a surety bond in the performance of their duties. Such agents or employees shall be paid a compensation for the performance of their duties in an amount determined by the Board of Directors and paid by the users of the Association. Employees and agents may be removed from office or employment at any time by action of the Board of Directors. No immediate family member of a director, as defined in Article VI, Section 2.D.1, shall be hired as an employee or contractor of the Association.

Section 8. Paid Training by the Association

If the Association agrees to pay for training for a member of the board, other than that required by the SPA, and/or the community, such training must be necessary for the operation of the water association. The person receiving the benefit must agree to perform the duties for which they were trained for during a period specified in a written agreement between the Association and the person receiving the training. If they resign or are relieved for cause, that person must reimburse the Association for all training related costs.

Section 9. Performance Bond

Officers and or contractors and employees of the Association who have the authority to sign financial documents and control funds of the Association shall be covered in the performance of their duties by a surety bond, in an amount to be determined by the Board of Directors. The association shall pay the premium(s) for these bonds.

Section 10. Property of the Association

Any property and/or records that belong to the Association, which is in possession of Board members, employees or agents of the association, must be returned to the association within fifteen (15) days of resignation, termination, dismissal or end of term.

Section 11. Water in exchange for Service

No services, contract, employment, or easements for the association may be compensated by reduced water rates, free water, free or reduced hook ups, etc. Compensation must be in U.S. currency and recorded in the books of the Association.

Section 12 Sale of Membership for Non-payment

The Board of Directors shall have the authority to sell the membership of any member in the event of non-payment of any water charges or assessments owing by such member within thirty (30) days after demand for payment by mail, properly addressed to such delinquent member. The proceeds of any sale of membership over and above the amount due the Association shall be paid to the delinquent member. In lieu of such sale of membership, the Board of Directors may purchase the membership on behalf of the Association at a price determined by the Board to be the fair value of the membership provided that in the event of either a sale of the membership or the purchase thereof by the Association, the proceeds shall be first applied to the payment of any indebtedness due the Association by the delinquent member. Notwithstanding the rights of the Association to terminate the membership of a delinquent member, the Association through its Board of Directors, shall have the additional right to terminate the water service to the delinquent member after thirty (30) days written notice by mail of the delinquency, which shall include a notice of termination of water service.

ARTICLE VIII

Water Charges, Assessments, and Distribution of Services

Section 1. Providing Water and Sewer Services

Water and sewer service shall not be provided by the systems of the Association, except to users who are Members of the Association as set out in the Association's Rules and Regulations. All service connections shall pay a minimum monthly service fee regardless of whether or not they use the service. In compliance with Federal and/or State laws, water service connections shall be metered and a certified operator shall make all connections. A representative of the Association shall have the right at all reasonable hours and after prior notification to enter upon member's premises for the purpose of

inspection and enforcement of state and federal laws including inspection related to unauthorized connections, cross connection, leak detection, line integrity.

Section 2. Establishing Rates and Budget

The Board of Directors shall establish a rate schedule to be charged the Members for services provided by the Association. The established rate schedule shall apply to each Membership Certificate by an approved rate schedule in effect. The Board of Directors shall review the established rate schedule of charges at least annually, to assure that sufficient income shall be generated for the upcoming year to cover anticipated expenses. This determination shall be based on the estimated budget for the coming fiscal year that considers the previous year's actual expenses, anticipated infrastructure and equipment replacement/ repair needs and contributions to reserve funds. The board shall make a presentation of the rate structure to the Membership at the annual meeting.

Section 3. Assessments

If at any time prior to the end of any fiscal year, it appears in the judgment of the Board of Directors that the amount derived, or which shall be derived, from the collection of water and/or sewer charges during any fiscal year shall be insufficient to pay, when due, all costs incident to the operation of the Association's system(s) and the payment of all debts of the Association, the Board shall make and levy an assessment against each service connection in the Association so that the total amount reasonably expected to be collected from water and/or sewer charges are fully paid, when due, all cost of operation, maintenance, replacement and repayments on indebtedness, or other expenses of the year's operation.

Section 4. Establishing Reserve Funds

Although this Association is a non-profit Association for the mutual benefit of its Members, the Board shall establish rates at a level which provides for a percentage of annual operating revenues to be placed in a fund (s) to be used for the purpose of reserve funds for infrastructure and equipment replacement/repair, contingency, emergency, and sustainability of Association assets. If necessary, the Board of Directors shall follow federal and/or state guidelines to determine the total amount of such reserve funds and at which amount it shall be maintained.

Section 5. Water Usage by Members

The Member is held responsible to use the supplied domestic water in a prudent manner. Unnecessary usage or wasting of water during irrigation or other outdoor usage shall not be permitted. Members shall be warned in writing of such abuse. Second or subsequent offenses shall result in a fine levied against the Member in such an amount as shall be determined by the Board of Directors. Continuing abuses may result in termination of Membership.

Section 6. Shortages

In times of water shortage or drought as determined by the Board of Directors, the Board shall determine how water rationing rules shall be applied. The following sequence shall govern the delivery of water:

- A. Water shall first be delivered for in-door domestic uses and volumes delivered to each household shall be set at a maximum quantity to protect the health and safety of the water customers according to the Rules and Regulations of the Association.
- B. If sufficient supplies exist, then water shall next be delivered to commercial customers at quantities sufficient to meet efficient uses, and subject to implementation of any mandatory conservation measures set out in the Rules and Regulations of the Association.
- C. Other uses will be considered after satisfying A. and B. above.

Section 7. Non User/Not Active Members.

In regards to non-user/ not active members of the Association, the board shall have the additional right to terminate the membership of a member who is delinquent as specified in the Rules and Regulations of the Association

ARTICLE IX

Non-Liability for Debts of the Association

The private property of the Members shall be exempt from execution or other liability for the debts of the Association and no Member shall be individually liable or responsible for any debts or liabilities of the Association.

ARTICLE X

Amendments to the Bylaws

These bylaws may be repealed or amended by a majority vote of a quorum of the Members present at any annual meeting of the Association, or at any special meeting of the Association called for that purpose. The Members shall not have the power to change the purposes of the Association so as to decrease its rights and powers under the laws of the state, or to waive any requirement of any provision for the safety and security of the property and funds of the Association or its Members.

We the undersigned below Secretary and President of the Sambrito MDWCA, an Association existing under the laws of the State of New Mexico, hereby certify that the foregoing is a true and correct copy of the Bylaws, together with all amendments thereto, as of this 3rd day of November, 2021.

Mike House

President

Deb Holder

Secretary