



*Doña Ana Mutual Domestic Water Consumers Association Mailing
Address: P.O. Box 866 • Doña Ana, NM • 88032 Physical Address: 5535
Ledesma Dr. • Las Cruces, NM 88007 (575) 526-3491 Office • (575) 526-
9306 Fax*

Agenda

The following are the items for consideration at the Regular Board Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors on February 4, 2021, convening at 9:00 a.m. via Zoom

Meeting ID: 825 4608 6730

Passcode: 079778

Call to Order & Roll Call

Approval of Agenda

Minutes

1. Minutes of January 25, 2021 Special Meeting

Customer Issues and Public Input

Public Input will be limited to 3 minutes per person

Board President Report

Staff Reports

New Business

Unfinished Business

2. Approval to award RFP 2021-01 – Legal Services
3. Approval of Contract for Watson Smith, LLC – Legal Services

Board Open Discussion

Adjournment

A copy of this agenda may be requested by phone by calling (575) 526-3491 or in person at 5535 Ledesma Drive, Las Cruces, NM 88007. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, if summary or other type of accessible format is needed, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Margo Lopez at (575) 526-3491 on the Tuesday prior to the meeting or as soon as possible.

Doña Ana Mutual Domestic Water Consumers Association is An Equal Employment Opportunity Agency.



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The following are the minutes of the Special Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors, January 25, 2021 convened at 10:00 a.m. via Zoom.

Call to Order & Roll Call

President Melton called the meeting to order at 10:00 a.m. and called roll:

Vice President – Jamie Stull, Present (Zoom)

Secretary/Treasurer – Kurt Anderson, Present (Zoom)

Board Member – Paul Maxwell, Present (Zoom)

A Quorum was declared.

Others in Attendance:

Executive Director- Jennifer Horton (Zoom)

Office Manager- Margo Lopez (Zoom)

Member- Jim Hayhoe (Zoom)

Approval of Agenda

Dr. Anderson moved to approve the agenda as presented; the motion was seconded by Mr. Stull. There was no discussion and the motion passed unanimously by roll call vote 4-0.

Minutes

Dr. Maxwell moved to approve the Regular Board Meeting Minutes of January 7, 2021 as presented; Dr. Anderson seconded. There were minor editorial changes suggested. Dr. Maxwell moved to approve the notes as amended, Dr. Anderson seconded, there was no further discussion, and the motion passed unanimously by roll call vote 4-0.

Customer Issues and Public Input

None

Mr. Jim Hayhoe was present.

Board President Report

President Melton stated the Operations team has returned to work and as result of their absence the department is approximately 2 to 3 weeks behind schedule.

Staff Reports

None

New Business

None

Unfinished Business

None

Open Discussion

President Melton led discussion on the need for 2 board meetings a month during our current crisis. He suggested during this time the meetings be moved to 1 a month and

stated a Special Board Meeting may be scheduled should action need to be taken, until the COVID restrictions are lifted. Most agreed, however Dr. Anderson felt having the 2 meetings were important to receive the necessary monthly data and reports. Further discussion ensued. President Melton proposed with the current COVID restrictions in place the 2 regular board meetings will remain on the schedule, with the 1st Thursday of the month to be a tentative meeting if a board member has any agenda items to address. The board member will notify the Board President by noon of their request with a minimum of 4-days-notice, prior to the 1st meeting. This is to ensure the agenda is properly providing a 72-hour notice. If there is no reasonable business to be conducted that meeting will be cancelled. The 2nd meeting will remain on the 3rd Thursday of each month and will include staff reports, data, and updates. This meeting will tentatively act as the regular scheduled board meeting. All agreed to a trial.

Dr. Maxwell stated he met with State Representative Luis Terrazas to introduce himself, to brief him on Mutual Domestic, and Dona Ana MDWCA. He further stated he brought Representative Terrazas up to date on the Arroyo's Project and he and Mr. Hayhoe took him to see the issues of the Picacho Hills Arroyo's. The next step in design would be approximately \$100,000.00.

Dr. Maxwell stated following his visit with Representative Terrazas a Zoom meeting with Representative Terrazas, Senator Jeff Steinborn, Representative Nate Small, Mr. Hayhoe and Dr. Maxwell took place to discuss the last CARES Act. He stated Mutual Domestic were not qualified as government and the members could not apply for the funds available to assist with their utility bills. Dr. Maxwell further shared water bills are delinquent more than 2 months and penalties over \$103,000.00 have accumulated. He continued to state our local legislatures were interested in supporting Mutual Domestic.

Dr. Maxwell mentioned he spoke to the editor of the Bulletin with regards to running an ad in the public service announcement for the vacancy of District 3. The editor suggested to do an interview or story on Dona Ana MDWCA. Information was provided to Ms. Horton and an update will be provided.

Dr. Maxwell asked if a COVID Status Update on staff could be added to the monthly reports going forward. President Melton provided an update stating Operations is fully staffed and back at work, however, has fallen behind. He further suggested board members can also ask for an update during staff reports.

At 10:56 a.m. Dr. Anderson announced his departure.

President Melton thanked Dr. Maxwell for his efforts with the Bulletin. He further stated he felt it would be best to go through NM Rural Water Association rather than the legislatures as Ms. Horton has good contacts with NM Rural Water Association to assist with the delinquent accounts and how to handle them.

President Melton asked how Representative Terrazas responded to the prioritization of the ICIP as it shows the priority for the wastewater side. He stated the board approved a plan on how to maintain the system quality with the priority being the lift station and force main line improvements for the Dona Ana systems. He further stated he hoped Representative Terrazas was made aware of the priority as the system is very antiquated and in poor condition with the multiple breaks each month, where raw sewage is pumping into the ground where people live. President Melton stated he was interested on the emphasis Representative Terrazas was willing to give on that project and to the wells in Dona Ana that went down and the tanks that were out of water. He further stated through the efforts of Ms. Horton, Ms. Lopez, and staff they were able

to get the state involved to provide the people of the Dona Ana system with drinking water. Dr. Maxwell stated the meeting with Representative Terrazas was to introduce himself and an introductory to discuss Mutual Domestics along with things that were relevant to his area such as Picacho Hills and Picacho Hills Arroyos. He further stated there were no details about Dona Ana MDWCA projects, the ICIP or anything beyond the Arroyos as he did not have the knowledge or details of the other areas. However, Dr. Maxwell stated he did mention the delinquent accounts for the water utility bills to take advantage of the moment.

President Melton asked Dr. Maxwell what other projects Senator Jeff Steinborn and Representative Nate Small expressed interest in. Dr. Maxwell stated there were no specifics.

Mr. Stull suggested that Dr. Maxwell include all areas for Dona Ana MDWCA not select districts. He asked when setting up a meeting to include everyone to discuss what the Association needs overall. Dr. Maxwell expressed the are timing issues, however, would be willing to do so with some support.

Mr. Hayhoe stated he works the Picacho Hills problems year-round and stated there was never any intent by the board to do anything with the legislatures and felt this would also be beneficial to Dona Ana MDWCA.

President Melton stated anytime a discussion is to be set up with a legislative group he will make himself available by phone to discuss the desires of the board not the desires of a district. He will support the entire membership not just his own district.

Dr. Maxwell suggested 2 proposals. Proposal 1: Create a legislative plan for the current session and put together a plan to focus on the agreed upon Capital Asset Request. Dr. Maxwell asked for a meeting to be held as it is currently scheduled next week. Proposal 2: Initiate in November a standard item on the agenda to discuss our position going forward for the legislative session that begins in January, to provide adequate time for staff and the members going forward into the legislative sessions and to ensure it is done annually. President Melton confirmed Dr. Maxwell's request to put together a plan, have it discussed, and finalized a week from Thursday.

Mr. Hayhoe stated there are 2 Bills that have been filed that have a direct impact on Dona Ana Mutual board / member activities. Mr. Hayhoe agreed to supply President Melton the Bill Numbers per the President's request.

Adjournment

Mr. Stull motioned to adjourn at 11:22 a.m., with a second from Dr. Maxwell. The motion passed unanimously 3-0.

Kurt Anderson
Secretary/ Treasurer

Date

**DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS
ASSOCIATION (“ASSOCIATION”)**

For

LEGAL SERVICES

CONTRACT NUMBER RFP 2021 - 01

THIS AGREEMENT is made and entered into by and between Watson Smith, LLC, whose address is 1100 S. Main., Ste. 21, Las Cruces, NM 88005 (“Contractor”) and Doña Ana Mutual Domestic Water Consumers Association (“Association”).

It is mutually agreed between the parties:

1. DEFINITIONS:

1.1. “Acceptance”-means approval, after a test period, of software, communications, card products, systems production facility, or any other component of this project, by the Association.

1.2 “Agreement Administrator”-means the individual assigned by the Association to administer the Agreement.

1.3 “Contract”-means an agreement for the procurement of items of tangible personal property or services. “Contract” and “Agreement” are used interchangeably, and both refer to this Agreement.

1.4 “Determination”-means the written decision of the Association or the written agreement of the parties that becomes an amendment to this Agreement in accordance with paragraph 16.

1.5 “Project Manager”-means the Association-identified employee or consultant who reports to the Association regarding the services and products contracted in this Agreement.

1.6 “Services”-refers to legal services, including letters, telephone conference, presentations, briefs, legal filings and memoranda that the Contractor develops under this Agreement.

1.7 “Task”-means a specific piece of work or activity.

2. DETAILED SCOPE OF WORK: The Association desires to contract legal services for an independent law firm. Responsibilities include attending monthly board meetings, or meetings of the Board of Directors if requested, addressing any legal matter that arises, including but not limited to State of New Mexico water law, reviewing contracts, reviewing services and goods proposals and procurement, advising on personnel matters, drafting and reviewing and defending resolutions, conduct of litigations, statutes and regulations, planning and zoning, historic preservation, environmental law, prosecution of litigations, intergovernmental affairs, legislative lobbying. Offerors must possess necessary licenses to enable them to provide representation to the Association before New Mexico State and Federal Courts. Contractor will be expected to be proactively aware of and prepared to counsel regarding, matters of import to the Association.

3. DUTIES AND RESPONSIBILITIES: Contractor shall perform legal counsel at the direction of the Association Board of Directors and/or Executive Director. The Association shall have ultimate approval authority with regard to litigation strategy and all pleadings shall be submitted to the Association Board of Directors and/or Executive Director within a reasonable time prior to filing.

4. The Association retains the right to require a change in Offeror representatives if the assigned representatives are not, in the opinion of the Association, meeting its needs adequately.

5. All work performed by the Contractor under this Agreement must conform to applicable government laws, regulations, and codes as well as to acceptable industry standards and practices. This conformance includes but is not limited to all relevant State of New Mexico laws and statutes.

6. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Association.

7. The term of the Agreement shall be for 5 months commencing on February 4, 2021 and terminating on June 30, 2021. The Association reserves the right to renew this Agreement for up to three (3) additional one year terms (or portions thereof). In no event, however, shall the term of the Agreement exceed four years ending 2024. Furthermore, at any time during the term of the Agreement, the Agreement is subject to early termination or termination for lack of funding in accordance with Paragraph 8.1 or Paragraph 8.2 of the Agreement.

8. TERMINATION:

8.1 Early Termination – Notwithstanding any other provision of this Agreement, the Association may terminate this Agreement by delivering to the Contractor notice of the intent to terminate at least thirty (30) days prior to the intended date of termination. By such termination, the Association may nullify obligations, if any, already incurred for performance or failure to perform prior to the date of termination. Termination under this Paragraph may be made with or

without cause. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE ASSOCIATION IN SUCH CIRCUMSTANCES AS THE CONTRACTOR'S DEFAULT OR BREACH OF CONTRACT.

8.2 Termination for Lack of Funding – The terms of this agreement are contingent upon sufficient authorizations and funding being or having been made by the Association for the performance of this Agreement. If sufficient authorizations and appropriations are not or have not been made by the Association, or are discontinued by the Association, this Agreement shall terminate upon written notice being given by the Association to the Contractor, the Association's decision as to whether sufficient authorizations or appropriations are or have been made, or are or have been discontinued, shall be accepted by the Contractor and shall be final.

9. COMPENSATION:

9.1 Travel and Lodging: Contractor personnel travel and lodging fees are reimbursable at actual travel costs.

9.2 Payment of Taxes: New Mexico gross receipts taxes levied on amounts payable under this Agreement shall be paid by the Contractor. The Contractor shall agree that the responsibility for payment of all state and federal taxes assessed on the compensation received under this Agreement shall be the Contractor's obligation and be identified under the Contractor's federal and state identification number(s). New Mexico gross receipts taxes shall be itemized separately on the invoice.

9.3 Condition of Payment: Upon completion of agreed upon services, Contractor shall submit an invoice to the Association for payment. Each invoice shall identify the services and describe the services performed.

10. INSURANCE:

The Contractor is required to obtain minimum insurance coverage, as follows:

10.1 Workers' compensation insurance to cover obligations imposed by applicable federal and state statutes with the minimum levels required by law.

10.2 Commercial general liability insurance with a minimum combined single liability of \$1,000,000.00 for each occurrence. The policy shall include coverage for bodily injury liability, contractual liability for liability assumed under this License, owner's and Contractor's protective liability, and broad form property damage. The policy shall contain a severability of interests provision.

10.3 Comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than the minimum required by the State of New Mexico, for each occurrence with respect to Licensee's vehicle, whether owned, hired or non-owned, assigned to or used in the performance of work.

10.4 The policies required by #1 and #2 shall be endorsed to include Contractor, its officers, agents and employee's and additional insured and shall stipulate that the insurance afforded shall be excess and not contributory insurance.

10.5 Contractor and its insurers providing the required coverages shall waive all rights to subrogation against the Association and members of its governing bodies, its officers, agents and employees.

10.6 Insurance is required prior to commencing any work and Licensee shall furnish Licensor with Certificates of Insurance as evidence those policies provide the required coverages, conditions, and limits and are in full force and effect. Such certificates shall provide that not less than thirty (30) days advance notice of cancellation, termination, or alteration shall be sent directly to Licensor address as follows:

Doña Ana Mutual Domestic Water Consumers Association
P.O. Box 866
Doña Ana, NM 88032

10.7 Contractor understands and agrees that he will not be covered under the worker compensation insurance policy of the Association, or provided any employee benefits or other monetary benefit of any type or nature for performing the work.

11. INDEMNIFICATION:

11.1 In addition to the Contractor's liability as provided for in Paragraphs 9.2 and 10, of this Agreement, the Contractor shall indemnify, defend, and hold harmless the Association and their officers and employees from and against any and all claims, demands, liability, suits, causes of action, losses, damages, fines, fees, attorney fees, penalties, costs, expenses, injuries to property, judgments (including defense costs and attorney's fees) that occur or arise out of or in connection with:

11.1.1 Contractor's performance or failure to perform under any provision of this Agreement;

11.1.2 Contractor's breach of any term, condition, warranty or representation contained in this Agreement;

11.1.3 Contractor's provision of services that are not in accordance with any applicable law, rule, regulation, or provision of this Agreement;

11.1.4 Contractor's failure to perform in accordance with the standard of care contained in Paragraph 2.12 of this Agreement; or

11.1.5 Any error, omission, fraud, embezzlement, theft or negligence of Contractor.

11.2 It is understood, however, that the Contractor's obligations under this Paragraph 7 do not extend to liabilities resulting from causes beyond the control and without the fault or negligence

of the Contractor, including acts of God, war or civil commotion, fire, earthquake, or other natural disaster, and unforeseeable acts of any federal, state, or local government or the Association thereof.

12. QUALITY ASSURANCE: The Agreement Administrator shall apply the following quality assurance process to all deliverables produced by the Contractor:

12.1 Quality assurance shall be a process whereby the Agreement Administrator determines that the deliverable complies with Agreement requirements, including all relevant standards and procedures and is correct and functional.

12.2 Quality assurance begins with personal receipt by the Agreement Administrator or her designee of the deliverable from the Contractor.

12.3 The Agreement Administrator shall have thirty (30) calendar days from the date of the receipt of deliverables to complete a quality assurance review.

12.4 If the deliverable provided by the Contractor is accepted under quality assurance, the Contractor will be notified of the acceptance in writing.

12.5 If the deliverable or any portion(s) thereof is unacceptable under quality assurance, the Agreement Administrator shall notify the Contractor in writing within thirty (30) calendar days from the date of receipt of that deliverable.

13. ASSIGNMENT: The Contractor shall not assign nor transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior, written approval from the Association. No such assignment or transfer shall relieve the Contractor from its obligations and liabilities under this Agreement.

14. SUBCONTRACTING: The Contractor may be subcontract portions of the services to be performed under this Agreement with prior, written approval of the Association.

15. STATUS OF CONTRACTOR: Notwithstanding any other provisions of this Agreement, the Contractor, and its agents and employees, are independent Contractors performing professional services for the Association and are not employees of the Association. The Contractor, including its agents and employees, shall not, by virtue of this Agreement, accrue leave, retirement, insurance, bonding, use of the Association vehicles, or any other benefits afforded to employees of the Association. The Contractor acknowledges that all sums received under the terms of the Agreement are reportable by it for income tax purposes as self-employment or business income.

16. RELEASE: The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Association, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Association to any obligation not assumed within the

terms of this Agreement by the Association, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

17. CONFIDENTIALITY: Any information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Association except as may otherwise be required by law.

18. CONFLICT OF INTEREST: The Contractor warrants that it presently has not interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor shall comply with the provisions of the Governmental Conduct Act, NMSA 1978, and Sections 10-16-1 to 10-16-8, regarding contracting with a public officer or state employee.

19. AMENDMENTS: This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto.

20. EQUAL OPPORTUNITY COMPLIANCE: The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

21. APPLICABLE LAW: This Agreement shall be governed by the laws of the State of New Mexico. Notwithstanding any other provision of this Agreement, in the event of a lawsuit involving this Agreement, venue shall be proper only in a New Mexico court of competent jurisdiction of the courts of the State of New Mexico over such lawsuits.

22. RECORDS AND AUDITS: The Contractor shall maintain such detailed records as may be necessary to demonstrate its performance of the duties required by this Agreement, including the date, time, and nature of services rendered. These records shall be maintained for a period of three years from the date of the final payment under this Agreement and shall be subject to inspection by the Association, the New Mexico Department of Finance and Administration, the Chief Information Officer, and the New Mexico State Auditor. The Association, New Mexico Department of Finance and Administration, and the New Mexico State Auditor shall have the right to audit any billings or examine any records maintained pursuant to this Agreement both before and after payment. Payment under this Agreement shall not foreclose the right of the Association to recover excessive and/or illegal payments.

23. ENFORCEMENT OF AGREEMENT/WAIVER: A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right

thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express in writing and signed by the party alleged to have granted the waiver. A waiver by a party of any of its rights shall not be effective to waive any other rights.

24. NOTICE OF PENALTIES: The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28, as amended, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

25. ON-SITE RESPONSIBILITIES: The Association agrees to provide the Contractor's personnel, while performing on-site services, for the following:

25.1 The Association shall provide designated personnel as assigned by the Executive Director to work with the Contractor's personnel in all aspects of legal consultation.

25.2 While performing on-site services in the Village of Doña Ana, the Association will provide the Contractor's personnel reasonable facilities including use of a copy machine, multimedia equipment, personal computer, local telephone service, and FAX machine.

26. AGREEMENT ADMINISTRATOR: The Association shall appoint an administrator for this Agreement who shall be the official contact between the Contractor and the Association in all matters concerning this Agreement. All events, problems, concerns or requests affecting this Agreement must be reported by the Contractor to the Administrator in a timely manner. The Administrator shall approve and accept all Agreement products and services prior to payment.

27. NOTICES: All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon telephone confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

To The Association:

Doña Ana Mutual Domestic Water Consumers Association
P.O. Box 866
Doña Ana, NM 88032
Tel: (575)526-3491

To Contractor:

Watson Smith, LLC
110 S. Main St. Ste. 21
Las Cruces, NM 88005
Tel: (575) 528 – 0500

Each party may designate a different person and address by sending written notice to the other party, to be effective no later than ten (10) days after the date of the notice.

28. MERGER: SCOPE OF AGREEMENT:

29.1 The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or the Association or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

29.2 This Agreement incorporates all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

29.3 This Agreement incorporates by reference the following Exhibits:

29.3.1 Exhibit 1: A complete copy of RFP #2021 – 01, including all Appendices;

29.3.2 Exhibit 2: Contractor's proposal submitted in response to RFP #2021 – 01, including any amendments and best and final offers;

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the Association, below.

Doña Ana Mutual Domestic Water
Consumers Association

Watson Smith, LLC

By: _____
Jim Melton, President of the
Board of Directors

By: _____
Joshua L. Smith, Watson Smith, LLC

By: _____
Jamie Stull, Vice Present of the
Board of Directors