



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 May 3, 2018, convening at 9:00 a.m. at the Doña Ana Mutual Domestic Water Consumers Association Board Room 5535 Ledesma Dr., Las Cruces, NM 88007:

Call to Order & Roll Call

Approval of Agenda

Minutes:

1. Minutes of 4-5-2018 Regular Meeting

Approval of New Members & Meters

Customer Issues and Public Input

Public Input will be limited to 3 minutes per person

Board President Report

Staff Reports

2. Executive Director

New Business

Consent Agenda

None

Unfinished Business

3. Approval of Budget Adjustment Resolution 2018-05
4. Approval to Renew Contract for Legal Counsel with Watson Smith, LLC

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 Stephanie Suggs at (575) 526-3491 on the Tuesday prior to the meeting or as soon as possible.



Doña Ana Mutual Domestic Water Consumers Association
Mailing Address: P.O. Box 866 • Doña Ana, NM • 88042
Physical Address: 5545 Ledesma Dr. • Las Cruces, NM 88007
(575) 526-4491 Office • (575) 526-9406 Fax

The following are the minutes of the Regular Board Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors, April 5, 2018 convened at 9:00 a.m. in the Doña Ana Mutual Domestic Water Consumers Association Board Room located at 5535 Ledesma Dr., Las Cruces, NM 88007:

Call to Order & Roll Call

President Melton called the meeting to order at 9:00 a.m. and called roll:

Vice President – Jamie Stull, Present

Secretary/Treasurer – Dr. Kurt Anderson, Present

Board Member – Dan Hortert, Present

Board Member – Tod Roberts, Present

A Quorum was declared

Others in Attendance:

Legal Counsel – Joshua Smith

Community Members – Narciso Valdez

Approval of Agenda

Mr. Roberts moved to approve the agenda for the April 5, 2018 Regular Board Meeting as presented; the motion was seconded by Dr. Anderson. The Chair called for discussion of the motion. Mr. Melton advised there will not be a staff report today as our Executive Director is out of office for an excused absence. The Chair called for a vote on the motion. The motion carried by roll call vote 5-0.

Minutes

Dr. Anderson moved to approve the Regular Board Meeting Minutes of March 15, 2018 as presented; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion; none was brought forward. The Chair called for a vote on the minutes; the motion carried by roll call vote 5-0.

New Members & New Meters

Dr. Anderson moved to approve the New Members and New Meters list as presented; the motion was seconded by Mr. Hortert. The Chair called for discussion of the motion. Mr. Melton advised we have four new meters; the remainder are new members for existing properties in our service area. The Chair called for a vote on the motion; the motion carried by roll call vote 5-0.

Customer Issues and Public Input

Mr. Narciso Valdez approached the Board of Directors with concerns regarding the base charge for a meter and the water loss protection that has recently been added to his billing. Mr. Valdez does not agree with the Association's standard base charge, nor does he wish to participate in the water loss protection. Mr. Melton explained that when a customer requests service, it becomes a contract to provide the capability to serve, which includes fixed operating costs. The accepted practice for most utility industries consists of at least two billing parts; the base charge (which is the cost of doing business), and the utilization or usage charge (based on the quantity of the service provided). As long as we provide the capability to serve we must charge the minimum base charge to every member. There is a potential for other fees; in the Association's case we have the new water loss protection, which was implemented in February 2018. A member can opt out of this program at any time. Every member received an insert in two billing cycles and several newsletters explained in detail our new leak protection program. Mr. Valdez was

presented two options; he can keep his meter with the minimum base charge or complete the request for having a meter removed. Mr. Melton cautioned with regard to having a meter pulled as having a meter reinstalled is considered a new account with all associated fees. Our fees are established by the Board of Directors in accordance with the Sanitary Projects Act through the statutes of the State of New Mexico. We have also had our operating costs reviewed by a nationally recognized rate expert in order to maintain as economical of a system for our membership as possible. At this time we charge less than the recommendation from our rate expert.

Board President Report

Mr. Melton congratulated and thanked our Executive Director and her staff for a successful Annual Membership Meeting. He also thanked the Board of Directors for their services.

Staff Reports

None

New Business

None

Unfinished Business

Dr. Anderson moved to approve Contract 6327054 Water Improvement Project; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. Mr. Melton advised he did have a few concerns that Ms. Horton was able to clarify regarding the connecting line to a neighboring water system. Mr. Hortert requested clarification on the field survey and mapping. Mr. Melton explained this assists with our GIS and internal workings. Mr. Melton also clarified the funding for this project is a result of excess

funding from prior projects with change orders to an existing project. The Chair called for a vote on the motion; the motion carried by roll call vote 5-0.

Open Discussion

Mr. Roberts inquired about the two wells that are currently inactive in the Picacho Hills area. Mr. Melton advised while we may not be currently using the two wells we do hold the easement, wells, and small pieces of property they sit on and it is our desire to continue to maintain this. Mr. Roberts asked if we have intentions of getting these wells online for back up. At this time, it is not economically feasible.

Adjournment

Mr. Stull moved to adjourn at 9:57 a.m. with a second from Dr. Anderson. The Chair called for a vote on the motion. The motion carried by roll call vote 5-0.

Kurt Anderson
Secretary/ Treasurer

Date

New Members and New Meters

Name	Address	Tap In Fee	Water Rights	Membership	Tax	Sewer	Other Fees	Total Fees
Desert View Homes	3030 San Lorenzo	\$ 1,255.00	\$ 1,750.00		\$ 233.60	\$ 1,667.00		\$ 4,905.60
Desert View Homes	3026 San Elizario	\$ 1,255.00	\$ 1,750.00		\$ 233.60	\$ 1,667.00		\$ 4,905.60
Mary Lowery	1624 Arco De Goya	\$ 1,255.00	\$ 1,750.00	\$ 75.00	\$ 412.50	\$ 5,170.00		\$ 8,662.50
Alberto Medrano	3027 San Elizario			\$ 75.00	\$ 3.75			\$ 78.75
John Engel	6620 Vista Hermosa			\$ 75.00	\$ 3.75			\$ 78.75
D. Elaine Johnson	4431 Sugar Sand Trail	\$ 1,255.00		\$ 75.00	\$ 66.50			\$ 1,396.50
Carlos Moran	1909 River Ct			\$ 75.00	\$ 3.75			\$ 78.75
Stanislas T. Czacki	1155 Puerta de Picacho			\$75.00	\$ 3.75			\$ 78.75
Susana Diaz	2867 La Union Ct			\$ 75.00	\$ 3.75			\$ 78.75
Mathew Mcconnell	4872 Raintree Ln			\$ 75.00	\$ 3.75			\$ 78.75
Frank Mitchell	11835 Warrior Lane			\$ 75.00	\$ 3.75			\$ 78.75
Jennifer Jasso	5375 Dona Ana Rd			\$ 75.00	\$ 3.75			\$ 78.75
Colleen Reed	12280 Ft Cummings			\$ 75.00	\$ 3.75			\$ 78.75
Raymundo Ramirez	12235 Ft McRae			\$ 75.00	\$ 3.75			\$ 78.75
Eloy Carlin	136 Coues Deer			\$ 75.00	\$ 3.75			\$ 78.75
Netsolar Construction	1564 Arco De Goya	\$ 1,255.00	\$ 1,750.00	\$ 75.00	\$ 415.00	\$ 2,444.20	\$ 2,425.80	\$ 8,365.00
		\$ 6,275.00	\$ 7,000.00	\$ 1,050.00	\$ 1,402.45	\$ 10,948.20	\$ 2,425.80	\$ 29,101.45



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

RESOLUTION # 2018 – 05

A RESOLUTION ADOPTING THE AMENDED 2017 - 2018 FISCAL YEAR OPERATING BUDGET FOR DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION.

WHEREAS, the Board of Directors of Doña Ana Mutual Domestic Water Consumers Association, New Mexico, has amended the operating budget for the fiscal year 2017 - 2018; and

WHEREAS, said budget was amended on the basis of need and through cooperation with all user departments, elected officials, and other department supervisors; and

WHEREAS the official meeting for the review of the budget was advertised in compliance with the New Mexico Open Meetings Act; and

WHEREAS it is the majority opinion of this Board that the proposed budget meets the requirements as currently determined for the fiscal year 2017 - 2018.

NOW, THEREFORE BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION, NEW MEXICO:

- 1. The accompanying budget will be the approved Amended Operating Budget for the 2017 - 2018 Fiscal Year for Doña Ana Mutual Domestic Water Consumers Association.**
- 2. The Resolution # 2017 - 08 overrides any and all other existing Budgets for the Fiscal Year 2017 - 2018.**

APPROVED, ADOPTED AND PASSED by the Board of Directors at the Regular Board Meeting held on May 3, 2018.

James F. Melton, President Y/N

Jamie Stull, Vice President Y/N

Dr. Kurt Anderson, Sec./Treas. Y/N

Gregory T. Robert, Board Member Y/N

Daniel Hortert, Board Member Y/N



Budget Adjustment Register

Adjustment Detail

Packet: GLPKT00906FY18 - FY 18 BAR

Adjustment Number	Budget Code	Description	Adjustment Date
BA0004FY18	FY 2018 Annual Budget	FY 2018 BAR	5/3/2018

Summary Description:

Account Number	Account Name	Adjustment Description	Before	Adjustment	After
100-10-4000-100	Water Sales Income	FY 2018 BAR	-3,187,800.00	-200,000.00	-3,387,800.00
May:	-200,000.00				
100-10-4015-100	Installation Charges	FY 2018 BAR	-200,000.00	-20,000.00	-220,000.00
May:	-20,000.00				
100-10-4110-150	Wastewater Revenue	FY 2018 BAR	-554,700.00	-75,000.00	-629,700.00
May:	-75,000.00				
100-10-4903-100	Service Charges	FY 2018 BAR	-7,500.00	-25,000.00	-32,500.00
May:	-25,000.00				
100-10-4905-150	Penalties	FY 2018 BAR	-5,000.00	-1,000.00	-6,000.00
May:	-1,000.00				
100-10-4910-100	Membership Revenues	FY 2018 BAR	-20,000.00	-3,000.00	-23,000.00
May:	-3,000.00				

Summary

Budget	Budget Description	Account	Account Description	Before	Adjustment	After
FY 2017 - 2018	FY 2018 Annual Budget	100-10-4000-100	Water Sales Income	-3,187,800.00	-200,000.00	-3,387,800.00
		100-10-4015-100	Installation Charges	-200,000.00	-20,000.00	-220,000.00
		100-10-4110-150	Wastewater Revenue	-554,700.00	-75,000.00	-629,700.00
		100-10-4903-100	Service Charges	-7,500.00	-25,000.00	-32,500.00
		100-10-4905-150	Penalties	-5,000.00	-1,000.00	-6,000.00
		100-10-4910-100	Membership Revenues	-20,000.00	-3,000.00	-23,000.00
			FY 2017 - 2018 Total:	-3,975,000.00	-324,000.00	-4,299,000.00
			Grand Total:	-3,975,000.00	-324,000.00	-4,299,000.00

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

For

LEGAL SERVICES

CONTRACT NUMBER RFP 2016 - 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 12 months commencing on July 1, 2018 and terminating on June 30, 2019. 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 2020. 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 ad 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 #2016 – 01, including all Appendices;

29.3.2 Exhibit 2: Contractor's proposal submitted in response to RFP #2016 – 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

State of New Mexico
County of Doña Ana

State of New Mexico
County of Doña Ana

Signed or attested before me on this 7th
day of July, 2016 by
Jim Melton, President of Doña Ana
MDWCA Board of Directors
And
Jamie Stull, Vice Present of the
Board of Directors

Signed or attested before me on this
_____ day of _____, _____ by
Joshua L. Smith, Watson Smith, LLC

My commission expires: _____

My commission expires: _____