



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 January 5, 2017, 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 12-15-2016 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

None

Consent Agenda

None

Unfinished Business

3. Approval of Resolution 2017-01 Open Meetings Act
4. Approval of USDA Grand Agreement
5. Approval of Annual Membership Agenda

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 is in need of 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 Nelson at (575) 526-3491 on the Tuesday prior to the meeting or as soon as possible.



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The following minutes are from the Regular Board Meeting of Doña Ana Mutual Domestic Water Consumers Association Board of Directors, December 15, 2016; convened at 9:00 A.M. in the Doña Ana Mutual Domestic Water Consumers Association Board Room located at 5535 Ledesma Mr., 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 – Kurt Anderson, Present

Board Member – Raymond Ponteri, Excused Absence

Board Member – Justin Sparks, Present

Others in Attendance:

Executive Director – Jennifer Horton

Legal Counsel – Joshua Smith

Community Members – Jim Hayhoe and Nancy Simmons

Approval of Agenda

Dr. Anderson moved to approve the agenda for the December 15, 2016 Regular Board Meeting as presented; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. The Chair called for a vote on the motion; the motion carried by roll call vote 4-0.

Minutes

Dr. Anderson moved to approve the minutes for the December 01, 2016 Regular Board Meeting as presented; the motion was seconded by Mr. Stull. The Chair called for

discussion of the motion. Dr. Anderson corrected a grammatical error. The Chair called for a vote on the amended motion; the motion carried by roll call vote 4-0.

Dr. Anderson moved to approve the minutes for the December 06, 2016 Special Board Meeting as presented; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. The Chair called for a vote on the motion; the motion carried by roll call vote 4-0.

New Members & New Meters

Mr. Stull moved to approve the New Members and New Meters list as presented for December 2016; Dr. Anderson seconded the motion. The Chair called for discussion of the motion. Mrs. Horton advised there are six (6) names on the list, all of which are new members. The Chair called for a vote on the motion; the motion carried by roll call vote 4-0.

Customer Issues and Public Input

Mr. Jim Hayhoe reported that during the PRV installations in the Village of Picacho Hills a leak was discovered on the Dona Ana Water side of the meter. He advised the Dona Ana MDWCA staff was quick to fix the issue.

Board President Report

President Melton reported that things have been fairly calm and that our Executive Director, Jennifer Horton, has been taking care of things quite well.

Staff Reports

3. Executive Director

See Attachment

New Business

No New Business

Unfinished Business

Dr. Anderson moved to approve Item four (4), approval of IRS form 990; the motion was seconded by Mr. Stull. The Chair called for discussion of the motion. Executive Director Jennifer Horton advised this is our annual tax return the auditors complete once the audit is submitted to the State. The Chair called for a vote on the motion; the motion carried by roll call vote 4-0:

Open Session

Mr. Melton addressed the Board to discuss the Open Meetings Act, specifically the number of board meetings held each month. Does the Board want to continue with two meetings per month, or reduce to one? The Board agreed to proceed with two meetings per month. Mr. Melton reminded the Board and the Public that the annual meeting is fast approaching; we need to begin generating interest within the Districts to try to meet quorum on the first attempt to avoid having to reschedule. At this time we will need 45 Members to attend in order to meet quorum. Mr. Melton is working with members in his District to encourage attendance. Mrs. Horton advised we do have a new feature in our software that will allow us to send a text message with announcements. Mr. Hayhoe offered to announce this in the PHPOA newsletter. Mrs. Horton mentioned we may have a vendor who is willing to donate an item for raffling to encourage further interest in attending the meeting. The meeting is tentatively scheduled for January 25, 2017 at 7:00 pm at the Dona Ana Elementary School.

Executive Director Jennifer Horton confirmed our annual audit has been completed and we did quite well. We have also resolved the issue of the vendor who had overcharged the Association \$27,000; we now have a pending credit.

The Board expressed gratitude toward our Executive Director and her staff for handling the audit well.

Adjournment

Dr. Anderson moved to adjourn at 9:54 a.m.; Mr. Stull seconded the motion. The Chair called for a vote on the motion: the motion carried by roll call vote 4-0.

Kurt Anderson
Secretary/ Treasurer

Date



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AMENDED RESOLUTION 2017 - 01
OPEN MEETINGS ACT COMPLIANCE

The Doña Ana Mutual Domestic Water Consumers Association of
Doña Ana County of the State of New Mexico

WHEREAS, the Doña Ana Mutual Domestic Water Consumers Association's Board of Directors met in regular session at 5535 Ledesma Drive, Doña Ana, New Mexico on January 5, 2017 at 9:00 a.m. as required by law; and

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978, Sections 10-5-1 to 4) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any Board, council, commission, administrative adjudicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the Association to determine annually what constitutes reasonable notice of its public meetings;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors that:

1. All meetings shall be held at 5535 Ledesma Drive, Doña Ana, New Mexico at 9 a.m. or as indicated in the meeting notice.
2. Unless otherwise specified, regular meetings of the Board of Directors shall be held twice each month on the first and third Thursday. The notice of the meeting and the agenda will be available from Doña Ana MDWCA staff at the address above and posted on the Association website at least seventy-two (72) hours prior to the meeting.
3. For any other meeting of the Board of Directors or any rescheduled regular meeting, with the exception of a Special or an Emergency meeting, notice shall be posted at least ten (10) days in advance of the meeting date. The notice of the meeting and the agenda shall be available to the public at least seventy-two (72) hours before the meeting and will be posted on the Association's website.
4. Special Meetings may be called by the Chairman or a majority of the Board of Directors upon three (3) days' notice. The notice shall include an agenda for the meeting or information on how members of the public may obtain a copy of the agenda. The notice of the meeting and the agenda shall be available to the public at least seventy-two (72) hours before any special meeting and will be posted on the Association's website.

5. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect persons or property from likely injury or damage or to protect the Association from substantial financial loss that is likely to occur.
6. For the purposes of regular meetings described in paragraph 2 of this resolution, notice requirements are met if notice of the date, time, place and information on how members of the public may obtain a copy of the agenda is posted on the Association's website and in the following locations:

Doña Ana MDWCA Office Bulletin Board.
7. For the purposes of special meetings and emergency meetings described in paragraphs 4 and 5 of this resolution, notice requirements are met if notice of the date, time, place and information on how members of the public may obtain a copy of the agenda is posted on the Association's website and in the following locations:

Doña Ana MDWCA Office Bulletin Board.
8. For the purpose of the Annual Membership Meeting, notice requirements are met if notice of the date, time, place and the agenda is provided to the local newspapers of general circulation, and by direct mail to the membership.
9. For all meetings, written notice will be provided to those newspapers of general circulation and broadcast stations licensed by the Federal Communications Commission that have made a written request for notice of public meetings.
10. In addition to the information specified above, all notices shall include the following language:

If you are an individual with a disability who is in need of 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 Jennifer Horton at (575) 526-3491 on the Monday prior to the meeting or as soon as possible.

11. The Board of Directors may close a meeting to the public only if the subject matter of such discussion or action is exempted from the open meeting requirement under Section 10-15-1(H) of the Open Meetings Act.
 - (a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the Board of Directors taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting.
 - (b) If a closed meeting is to be conducted when the Board of Directors is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the

subjects to be discussed with reasonable specificity, is given to the members and to the general public.

- (c) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for the closure.
- (d) Except as provided in Section 10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Board of Directors in an open public meeting.

PASSED by the Doña Ana Mutual Domestic Water Consumers Association's Board of Directors, this 5th day of January, 2017.

Jim Melton, President of the Board of Directors

ATTEST:

Jaime Stull, Vice President

Water and Waste System Grant Agreement
United States Department of Agriculture
Rural Utilities Service

THIS AGREEMENT dated _____, between

Dona Ana Mutual Domestic Water Consumers Association

a public corporation organized and operating under

Sanitary Projects Act 3-29-1-3-29-20 NMSA 1978

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ NA and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ NA of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ NA has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ NA or NA percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed NA percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

- A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated _____, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

Dona Ana County will transfer the Dona Ana Village Wastewater System to the Grantee. The real property to be transferred is described on Attachment A of the attached executed Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement" dated October 31, 1996. Grantee assumes the said grant agreement, and will abide by its terms and requirements.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

All equipment transferred by Dona Ana County to the Grantee.

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/1997]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ NA which it will advance to Grantee to meet not to exceed NA percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

President

attested and its corporate seal affixed by its duly authorized

Secretary/Treasurer

Attest:

By **KURT ANDERSON**
(Title) **Secretary/Treasurer**

By **JAMES MELTON**
(Title) **President**

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By _____
KATHY PFIFFNER (Title)
Community Programs Director

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

ASSOCIATION WATER OR SEWER SYSTEM GRANT AGREEMENT

THIS AGREEMENT dated October 31, 19 96, between

the County of Dona Ana, New Mexico

a public corporation organized and operating under Article X § 5 of the New Mexico Constitution and, further,

pursuant to § 47-7-1, et seq. of the New Mexico State Statutes
(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (~~water~~) (sewer) system to serve the area under its jurisdiction at an estimated cost of \$ 3,439,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 1,620,000.00 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 1,620,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 1,819,000.00 (2 Grants) or 52.9 percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a) of the Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 52.9 percent of the development costs, as defined by applicable Farmers Home Administration instructions.

GRANTEE AGREES THAT GRANTEE WILL:

- A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.
- B. Permit periodic inspection of the construction by a representative of Grantor during construction.
- C. Comply with any measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- D. Comply with all applicable state and federal laws and regulations and manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.
- E. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges,

whether for one or more classes of service, adopted by resolution date October 24, 19 96, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0074), Washington, D.C. 20503.

F. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

G. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

H. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

I. To execute Forms FmHA 400-1, "Equal Opportunity Agreement," and FmHA 400-4, "Assurance Agreement," and any other agreements required by Grantor which Grantee is legally authorized to execute. If any such forms have been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this Grant, another form of the same type need not be executed in connection with this Grant.

J. Upon any default under its representations or agreements set forth in this instrument, or in the instruments incident to the awarding of the grant, Grantee, at the option and demand of Grantor, to the extent legally permissible, will repay to grantor forthwith the original amount of the grant received with the interest accruing thereon from the date of default at the market rate for water and waste disposal loan assistance in effect on the date hereof or at the time the default occurred, whichever is greater. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

K. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

L. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantor may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

The Grant Agreement covers the following described real property (use continuation sheets as necessary).

See attached Exhibit "A".

M. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with grant funds. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided such definition would at least include all tangible personal property as defined above.

1. Use of nonexpendable property.

(a) The Grantee shall use the property in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the property in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by FmHA.

(2) Activities sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to FmHA sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of nonexpendable property. When the Grantee no longer needs the property as provided in paragraph (a) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than \$1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more. The Grantee may retain the property for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the property exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share \$100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the property elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the property, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for nonexpendable personal property shall also include:

(a) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage (at the end of budget year) of Federal participation in the cost of the project for which the property was acquired; location, use and condition of the property and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(e) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).

All system assets.

N. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

O. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

P. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

Q. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

R. Agree to account for and to return to Grantor interest earned on grant funds pending this disbursement for program purposes when the Grantee is a unit of local government or a nonprofit organization. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

S. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in items K and L above.

T. Include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

U. In construction contracts in excess of \$2,000 and in other contracts in excess of \$2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

V. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. §1875C-9) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found in 40 CFR 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the Contractor further agrees:

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

W. The following clause is applicable to nonprofit organizations:

As a condition of this Grant or Cooperative Agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated in this Agreement by reference, and such statutory provisions as are specifically set forth herein.

GRANTOR AGREES THAT IT:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 1,819,000.00

which it will advance to Grantee to meet not to exceed 52.9 percent of the development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

TERMINATION OF THIS AGREEMENT

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in Paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF Grantee on the date first above written has caused these presence to be executed by its duly authorized Chairman of the Board of Commissioners

and attested and its corporate seal affixed by its duly authorized County Clerk

ATTEST:

By *Rita Torres*
RITA TORRES
County Clerk
(Title)

By *Joe M. Lujan*
JOE M. LUJAN
Chairman of the Board of Commissioners
(Title)

Wherever "Farmers Home Administration", "FmHA", "Rural Development Administration", or "RDA" may appear, the term "Rural Utilities Service" is to be substituted.

and *[Signature]*

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By *M. Steven Anaya*
M. STEVEN ANAYA
State Director, Rural Development
(Title)

☆ U.S. Government Printing Office: 1995-655-046/60179

EXHIBIT "A"

LOCATION

Dona Ana, New Mexico

Parcels 1-10 & 16-25

BOUNDARIES

North – Diaz Road

South – Dona Ana School Road

East – Interstate 25

West – Dona Ana Lateral

LOCATION

Las Cruces, New Mexico

Parcels 11-15

BOUNDARIES

North – Taylor Road

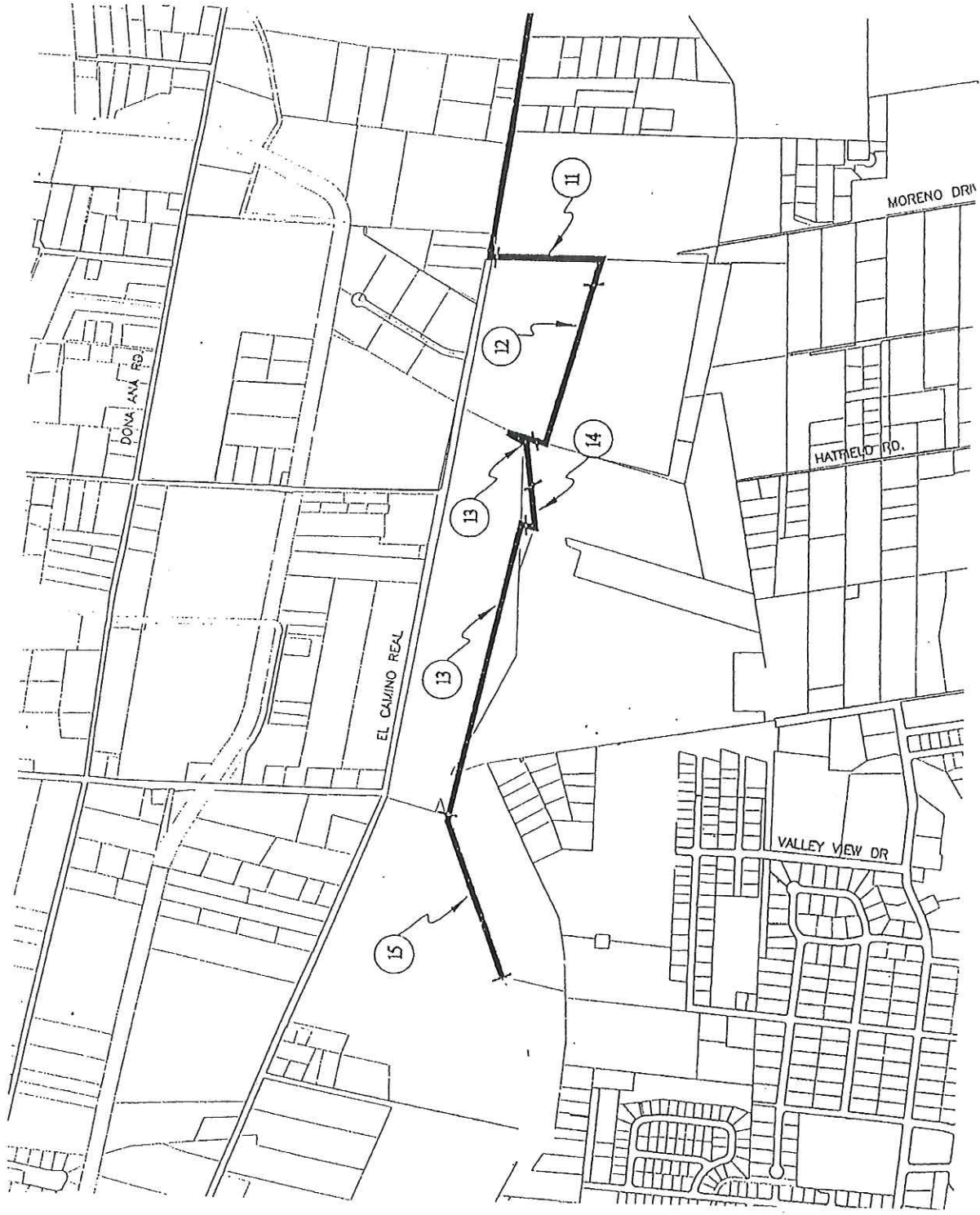
South – Bud Way Lane

East – Las Cruces City Limits/Elks Road

West – El Camino Real

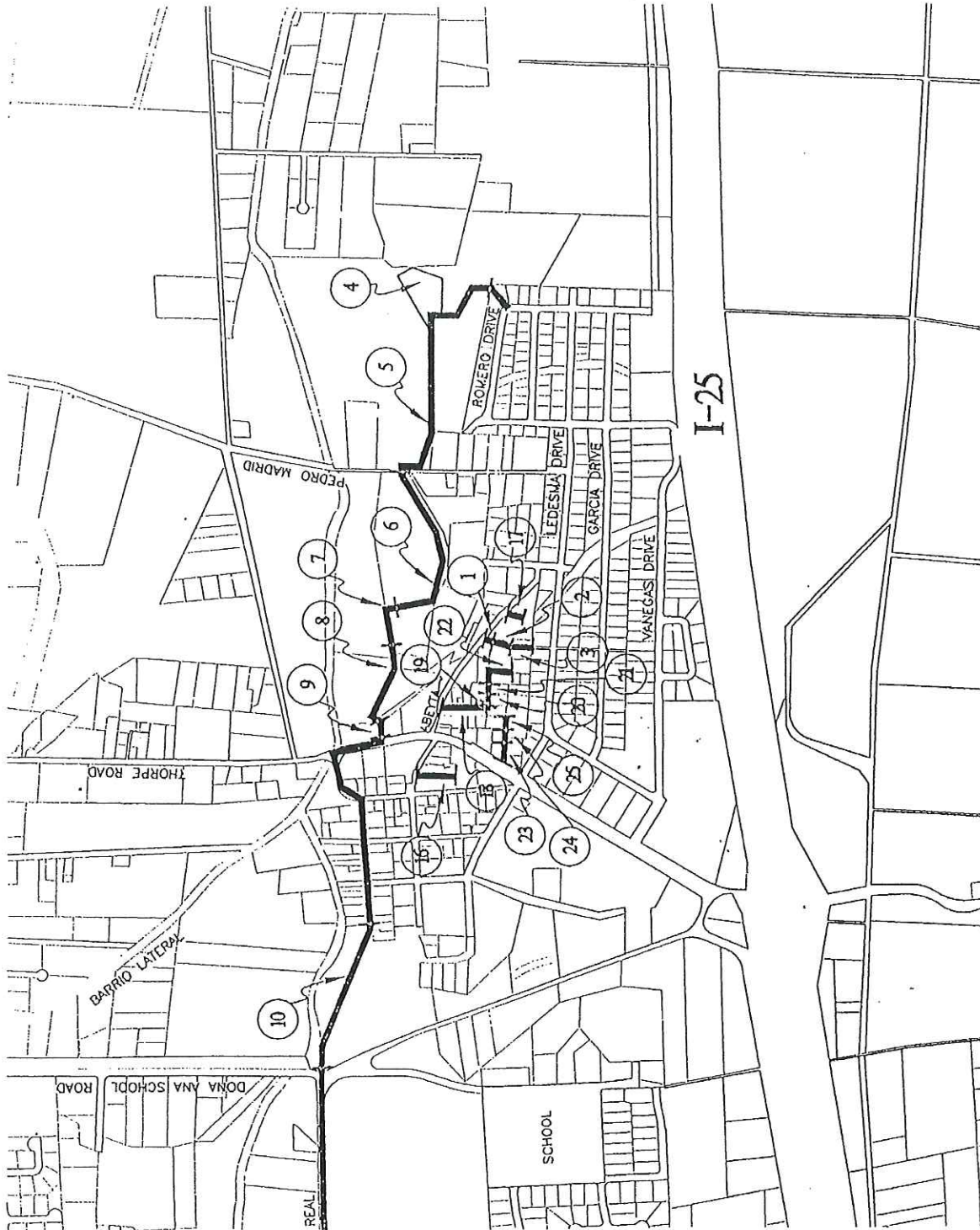
PROJECT LOCATION MAP

Parcels 11-15



PROJECT LOCATION MAP

Parcels 1-10 & 16-25





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 Annual Meeting of the Doña Ana Mutual Domestic Water Consumers Association Membership on January 25, 2017, convening at 7:00 p.m. at the Doña Ana Elementary School located at 5551 Camino De Flores Las Cruces, NM 88007:

Guests: Lilla Reid, Souder, Miller and Associates
Lee Peters, Peters Law Firm, LLC

<u>Call meeting to order</u>	Jim Melton, President
<u>Proof of Notice of Meeting & Proof of Quorum</u>	Jim Melton, President
<u>Approval of Agenda</u>	Jim Melton, President
<u>Introductions, Acknowledgements & Procedures</u>	Jim Melton, President
<u>Minutes:</u>	
• Approval of the Minutes of January 27, 2016 Annual Membership Meeting	Jim Melton, President
<u>New Business:</u>	
• Approval of Open Meetings Act Resolution #2017 – 01	Jim Melton, President
<u>Reports:</u>	
• Board of Directors	Jim Melton, President
• Litigation Report	Lee Peters, Peters Law Firm, LLC
• Engineering	Souder, Miller, & Associates
• Executive Director	Jennifer J. Horton, Executive Director

Public Input: All Discussions under this item must be limited to items **NOT** listed on the agenda.

Public Input will be limited to 3minutes per person

Adjournment

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Stephanie Nelson at (575) 526-3491 Ext. 1005 on the Friday prior to the meeting or as soon as possible. Please contact Stephanie Nelson at (575) 526-3491 Ext. 1005 if summary or other type of accessible format is needed.

Doña Ana MDWCA is an Equal Opportunity Employer